Implementation of the Land Registration etc (S) Act 2012
Response from G L Gretton
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Preliminary

I appreciate the extensive work that has gone into the preparation of the consultation document.

It was not always clear to me to what extent the proposals would be for insertion in the new Rules, and to what extent they would be simply about Keeper's practice, to be set out, for instance, in Practice or Guidance Notes. In what follows I do not generally address this issue, but where it seems to me of particular significance whether a proposal should be in the Rules or not, I say something on the point.

In general policy terms, I think that it is better to keep the Rules as short as possible; thus for the most part where there is a need to put some flesh on to the 2012 bones, that should be done through Keeper's practice.

At one or two places I have not succeeded in understanding the question. This may well be due to some misunderstanding on my part, for which therefore I apologise in advance.

Finally by way of introduction, I regret that the time I have been able to devote to this consultation has been limited.

Q 1

I am not sure whether this question is asking about what should be in the new *Rules*, or whether it is simply about Keeper' intended *practice*.

As far as the new Rules are concerned, I think it would be inappropriate for them to say that a separate title sheet should always be used. That would contradict the legislation, which confers on the Keeper a discretion. The Rules should not fetter that discretion.

If the question is not about the Rules but about the Keeper' intended practice, I have no strong views. The legislation leaves the matter to be determined by the Keeper's judgment as to what is convenient.

Q 2

Yes.

Q 3

Yes.

Q 4

I am not sure that I understand the issue. Land certificates, or, in newspeak, extracts, need to bear the date of issue. But the question is about the title sheet itself. When someone consults a title sheet, then unless the Keeper by mistake shows him the title sheet in a superseded version, the customer will inevitably be looking at the title sheet in its "as of today" form. (The only qualification to that concerns pending entries as noted in the Application Record).

I fear I must be missing something!

The question does, however, prompt in me another thought. If an extract of a title sheet is issued, perhaps the Rules should say that the extract should bear a statement on these lines: "This extract does not reflect any registration application that was pending as at the date of issue."

Q 5

Yes.

Q 6

I think that the issue is really this: are users of the system commonly going to want to know about the price in the previous transaction? If so, then it would be sensible to include the price, as in the current system. Otherwise, the price should not be included, for title sheets should not be cluttered up with information that is seldom wanted and that can be obtained by other means.

So this is a question that is very much for practicing conveyers, not for me.

Q 7

Yes.

I have always had a suspicion that date of entry was originally included due to a misunderstanding of its legal significance.

Q 8

Yes.

Q 9

No view.

Q10

On balance I agree.

Q 11

There are arguments both ways. I do not object to what is proposed. If this proposal is adopted, then perhaps it ought to be set out in the Rules.

Q12

This seems acceptable. If this proposal is adopted, then perhaps it ought to be set out in the Rules.

Q 13 and Q 14

Yes, subject to one comment. Q 13 says that there is to be a verbal description, while Q14 seems to contemplate the possibility that there might not be. I may be failing to understand.

Q 16

I don't think that I understand.

Para 1.44 of the consultation paper says that "to manage cadastral units that straddle land and sea (and therefore two separate mapping systems), the Keeper intends to create two title sheets and two cadastral units to meet at the MLWS…" But Q15 seems to presuppose that there will be straddling title sheets. There must be something that I am missing.

Q 17

I have no definite view.

Q 18

Yes.

Q 19

Yes.

Q 20

Yes.

Q 21

I have no strong view but this is probably a good idea.

One qualification, however, that a complete list would be hard to compile, because one can never be sure what obscure enactment there might be which might authorize registration of some weird and wonderful deed. So if the Keeper does set out a list, there should, I incline to think, be a health warning, saying that the completeness of the list cannot be guaranteed.

(Note that the 2012 Act says "enactment" which is a broad term that includes private statutes, local statutes, and statutory instruments.)

Q 22

Yes.

Q 23

Yes.

I incline to think that the Rules should mention Approved Development Plans.

Q 24

Yes.

This subject should probably be regulated by the Rules.

Q 25

Yes.

This subject should probably be regulated by the Rules.

Q 26

Yes.

This subject should probably be regulated by the Rules.

Q 27

I have no clear view.

Q 28

I have no clear view.

Q 29

Yes.

Q 30

I do not agree.

Where electronic communication is possible, it should be used. I agree to that extent. But there is no legal requirement to have an email address.

If all applications were done on behalf of clients by law firms, electronic-only notification would be acceptable. But just as the law does not say "thou shalt have an email address", it does not say "thou shalt deal with RoS solely through a law firm."

Paper notification imposes extra costs on RoS, no doubt. The solution is, I suggest, that the registration fee should be higher for those who require to be notified by letter.

Q 31

See Q 30 above.

Q 32

Yes.

Q 33

I have no concluded view. But probably the approach is reasonable.

Where a standard security needed to enforce a standard security that had been recorded in the GRS, the policy would mean that the creditor would need to search to check whether registration in the LR had taken place. But that would not be a major hurdle.

Para 2.37 says: "In relation to a previously recorded standard security over the underlying plot, the Keeper may have difficulty confirming who the current creditor would be…" I do not understand this. If the standard security has been assigned, the assignation will have been recorded. (An unrecorded transfer would have effect as between assignor and assignee, but would still leave the assigner as the legal security holder.)

Q 34

Yes.

Q 35

Yes.

Q 36

Yes.

Q 37

Yes.

Q 38

I would incline to answer this in the negative. My general view of policy is (as mentioned above) that there should be a presumption against putting anything into the rules. Entry into the Rules should happen only where there is a really strong case for doing so. I don't think that such a case exists here.

Q 39

Yes.

Q 40

Yes.

Q 41

Yes.

Q 42

Yes.

Q 43

Yes.

Q44

Yes.

But there is an issue here that the Consultation Paper does not mention but which is important.

Reduction may be (i) of a void deed or (ii) of a voidable deed.

The former is another name for a declarator: it declares that the deed is and always was void. It does not *change* anything. Example: a disposition is registered. Later the granter raises an action to have the disposition reduced on the ground of forgery. If the action succeeds, the result is not that the disposition becomes invalid. Rather, the Court declares that it is and always was invalid.

The reduction of a voidable deed is different. A voidable deed is fully valid, subject only to the possibility that someone has, and exercises, an option to have it set aside. (In real life many voidable deeds never are set aside.) Example: a disposition is registered. Later the granter raises an action to have the disposition reduced on the ground that he was induced to sign it by means of fraud. If the action succeeds, the result is that the disposition becomes invalid.

The reason that the void/voidable distinction is important for Land Register purposes (as well as for other purposes) is that it makes a difference as to how the decree is given effect to in the land register.

Where a void deed is reduced, the decree of reduction is given effect to by *rectification*.

Where a voidable deed is reduced, the decree of reduction is given effect to by *registration*.

Hence it is important for all those concerned – and of course this includes the Keeper – to know which is which. To make things simple, the wording of the decree should make matters clear.

Q 45

Yes. (But the thought of an arbitral reduction of a registered deed makes me shudder.)

Q 46

Yes.

Q 47

Yes.

Q 48

Yes.

Q 49

I have not thought this issue through. But my preliminary view is that advance notices should not be introduced for unilateral deeds, including changing orders.

Q 50

I have no strong view. But (i) the proposed name perhaps does not sufficiently indicate what the agreement is about, ie water boundaries, and (ii) the word "shifting" is perhaps wrong in that such an agreement is anti-shifting. What about "Water Boundary Agreement"?

Q 51

Yes.

Q 52

I have no strong view.

Q 53

This seems reasonable.

Q 54

I do not agree. (Assuming that I have understood the 2012 Act, and also what RoS is proposing.)

In the SLC draft Bill, s 41 said:

> If at any time a caveat is placed on a title sheet, the Keeper's warranty in respect of an application—
> (a) which refers to that title sheet, and
> (b) is received at or after that time,

is subject to the caveat for so long as the caveat remains in place.

This has been omitted in the 2012 Act. It has been replaced by a provision in s 75(2) saying that in granting warranty, "the Keeper must have regard to any relevant caveat."
As I read the 2012 Act, the effect of s 75 is that the Keeper, in granting warranty, should modify that warranty to reflect the caveat. If s/he does not do so, the result would be that the warranty would be unmodified, with the result that the Keeper would be liable in circumstances where (as a matter of the policy underlying the legislation) s/he should not be liable.

So it seems to me that whenever there is a caveat the Keeper should modify warranty accordingly. (That would have been unnecessary had s 41 of the SLC Draft Bill been enacted.)

Q 55

Yes.

Q 56

Yes

Q 57

Yes.

Q 58

I don't see that there is a live issue here. Usually the identity of "those affected" will be obvious. In the exceptional case where the Keeper is unsure whether consent has been given by all who are "affected" then rectification should not be made, at least until there is a court order clarifying the position.

Q 59

This seems appropriate, but it might be worth checking with someone more expert than myself on the 2003 Act.

Q 60

I fear that I do not understand the question.

The basic rule in the 2012 Act is that where an entry in the LR is not justified by the deeds, the LR is inaccurate and ought to be rectified.

But the Act specifies an exception, in certain types of case, where the rules is that the LR is *not* to be rectified, but, instead, the parties concerned should have the rights (or lack thereof) that the LR *says* that they have (or that they lack). This is realignment. It is the converse of rectification.

Where there is realignment, the effect is that the entries in the LR are deemed accurate. Accordingly, where there is realignment, no question of rectification can arise.

Q 61

No view.

Q 62

Yes.

Q 63

I agree that there should be an optional form. I have no strong view as to whether this should be in the Rules.

The discussion in paras 11.19 ff is about forms. This is therefore the appropriate place for me to express my view that the ordinary form/s for applications for registration should be as short and simple as possible. See para 12.112 of the SLC Report.

Q 64

Yes.

Q 65

I agree that there should be an optional form. I have no strong view as to whether this should be in the Rules.

Q 66

Although I recognize that it is probably a lost cause, I would raise the question of dates of birth. The SLC recommended that the DOB should be part of the designation of a natural person. That recommendation was not adopted in the 2012 Act (see para 37.41 of the SLC Report).

In my view, it is open to the Rules to spell out what is required for the designation of natural persons, and I would recommend that DOB be included, for the reason that DOB is required in all other areas of official and business affairs, and is required in the conveyancing systems of all other countries.