

Response Type:

Normal Response

Collector:Web Link
(Web Link)[Edit Response](#)[Delete](#)**Custom Value:***empty***IP Address:**

31.52.104.9

Response Started:

Sunday, December 8, 2013 8:12:37 AM

Response Modified:

Sunday, December 8, 2013 9:16:14 AM

[Show this Page Only](#)**1. Name**

Jonathan Edwards

2. Organisation Name:

McVey & Murrucane

3. Postal Address:

13 Bath Street Glasgow G2 1HY

4. Email

jedwards@mcvey-murrucane.com

5. 1: Are you responding as : (please select below)

on behalf of a group or organisation (go to 2c)

6. 2a: INDIVIDUALS Do you agree to your response being made available to the public (in the Scottish Government library and on the RoS website)?**No Response****7. 2b: Where confidentiality is not requested, we will make your response available to the public on the following basis (Please select ONE of the options)****No Response****8. 2c: ON BEHALF OF GROUPS OR ORGANISATIONS The name and address of your organisation WILL BE made available to the public (in the Scottish Government library and on the RoS website). Are you content for your response to be made available?**

Yes

9. 3: We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Government to contact you again in relation to this consultation exercise?

Yes

[Show this Page Only](#)**1. Question 1: Do you agree that the Keeper should use separate title sheets for the landlord's and tenant's rights on all occasions rather than opting to use a single title sheet?**

No

while it is difficult to envisage the nuts and bolts of the new system, a lease of a property is a very substantial right, and it will make professional life simpler if a leasehold interest is fully detailed on the interest relating to the property over which the lease has been granted. It is appreciated that this will make, on occasion for more complex documents, but if a solicitor is acting in the field of commercial work then

they should be able to deal with this complexity.

[Show this Page Only](#)

1. Question 2: Do you agree with the proposed change of name and terminology for this entry?

Yes

[Show this Page Only](#)

1. Question 3: Do you agree that a schedule in the property section is the appropriate means to reflect the cross-referral to other title sheets?

Yes

[Show this Page Only](#)

1. Question 4: Do you consider that the "date title sheet updated to" should continue to be reflected in the title sheet and provision made in the Rules?

Yes

[Show this Page Only](#)

1. Question 5: Do you agree that the Keeper should omit from the property section of the title sheet details of the map reference and size of a registered plot?

Yes

[Show this Page Only](#)

1. Question 6: Do you agree that the Keeper should continue to disclose the consideration in the proprietorship section and provide for this in the Rules?

Yes

[Show this Page Only](#)

1. Question 7: Do you agree that the date of entry should no longer be included in the title sheet?

No

There are many reasons why the conveyancer is interested in the date of entry, particularly having regard to CML rules, other aspects of property law and reducing risk from fraud. Given that the archive will require a separate search not available online, the date of entry is a very useful piece of information

[Show this Page Only](#)

1. Question 8: Do you agree with the proposed approach for the removal of overriding interests no longer required to be entered?

Yes

[Show this Page Only](#)

1. Question 9: Has the reference in the property section to a deed constituting a servitude been of assistance to you?

Frequently

[Show this Page Only](#)

1. Question 10: Do you agree that the land register should not reflect information regarding occupancy rights?

No

I have answered in the negative here because it is not entirely clear how evidence of such rights will be recorded in practice. One of my concerns overall about the application of the Act (and particularly in this respect) is that we do not revert to having to consider ancillary documents relating to properties which will not only setback the concept of dematerialisation but also provide very considerable problems for lenders. If one considers the original concept of a logbook for a property which has been updated by the

advent of the electronic age then this seems a backward step. It may be that this point has already been considered.

Show this Page Only

1. Question 11: Do you agree that discontinuous areas of land that are relative to each other by ownership and purpose may be grouped as a single cadastral unit?

Yes

Show this Page Only

1. Question 12: Do you agree that the seabed should be designated as a single operational area?

Yes

Show this Page Only

1. Question 13: Do you agree that the description of a seabed plot should comprise a verbal description, a description by reference to longitude and latitude coordinates, and a plan?

Yes

2. Question 14: Do you consider that where such information is submitted to the Keeper it should be included in the property section?

Yes

3. Question 15: Do you consider that a table of latitude and longitude coordinates should be utilised where all or part of the plot is covered by water i.e. should not be limited to seabed plots only?

Yes

Show this Page Only

1. Question 16: Do you consider that including the plan of the individual flat as supplementary data to the title sheet is helpful?

Yes

Show this Page Only

1. Question 17: Do you consider that including the plan of the individual area leased as supplementary data to the lease title sheet is more helpful than showing the data on the cadastral unit?

No

I answer in the negative here only to the extent that I am concerned that the supplementary data including the lease plan is on a different basis from that on the plan relating to the underlying title. As long as they both utilise the same scale and OS map then it is fine. However if different maps are involved then it is an area where there is considerable uncertainty

Show this Page Only

1. Question 18: Do you agree that where an area of common ground is affected by the 25-metre rule, the whole of the common area should be treated as a separate cadastral unit?

Yes

note: this is answered in the affirmative provided that both titles clearly state their relationship with each other on the face of the title

Show this Page Only

1. Question 19: Do you accept that where historical conveyancing does not quantify the share, and where common law rules apply, the Keeper should require specification of shares in the deed to be registered?

Yes

note: this will require education of the profession. Particularly in Edinburgh where titles historically are poor in respect of older tenements, there is a lack of confidence in relying upon either the common law or the Tenements (Scotland) Act

[Show this Page Only](#)

1. Question 20: Do you agree that where multiple plots of land with differing uses are owned in common, the shared areas should be grouped as a single cadastral unit?

Yes

[Show this Page Only](#)

1. Question 21: Do you agree that a list of registrable deeds together with the enactment under which they are registrable will assist you in completion of the application form?

Yes

note: I hope there is a section later on to add any other views which will cover the application of the authority of the Keeper in items such as this

[Show this Page Only](#)

1. Question 22: Do you agree with this approach for supporting documents?

Yes

note: again the successful application of this rule will depend upon the quality of the Keeper's advice. It does have the potential to cause havoc

[Show this Page Only](#)

1. Question 23: Do you agree that reference to an individual house plot from an approved development plan is sufficient to describe the part of the plot in terms of the conditions of registration?

Yes

[Show this Page Only](#)

1. Question 24: Do you agree that the Keeper should issue an email to acknowledge when an application for registration is entered onto the application record?

Yes

2. Question 25: Do you agree that the provisional title number should be contained in the acknowledgement?

Yes

3. Question 26: Do you agree that the acknowledgement should also contain the other information that is currently included, namely details of the subjects, deed, parties, date of registration and application number?

Yes

[Show this Page Only](#)

1. Question 27: Do you agree that, in the limited circumstances where they will be permitted, the requisition policy should be applied equally to all application types?

Yes

2. Question 28: Do you agree that nothing further on requisitions is required in the Rules?

No

To be honest while the comments made by you make a general sense, I think that the application in practice will be enormously challenging to the profession. It is difficult to tell from the material provided so far but it seems to me that the possibilities of unintended consequences may be very great. In particular a current very considerable problem with the register is the collapse of earlier registrations affecting later registrations. That in part relates to the time in which it takes to register a first registration or particularly

transfer of part. It may well be that I have missed the relevant information but, without there being speedy registrations of cases involving first registration or transfers of part, I think that the results may be extremely inequitable.

[Show this Page Only](#)

1. Question 29: Do you agree that a period of standover of 30 days in relation to requisitions made under the Act is appropriate?

Yes

note: but see my response to the previous question which places concern over the application of this generally

[Show this Page Only](#)

1. Question 30: Do you agree that notification upon the acceptance, rejection or withdrawal of an application should be by electronic means only?

Yes

2. Question 31: Do you agree that the applicant should provide an email address for the grantor or the grantor's agent on the application form?

Yes

3. Question 32: Do you agree that where no email address is available in respect of the notification provisions relating to automatic plot registration, Keeper induced registration, prescriptive claimants or rectification, that the Keeper should notify by post to the last known address of the person?

Yes

[Show this Page Only](#)

1. Question 33: Do you consider that in terms of section 41 the Keeper should notify only the proprietor of the plot of land registered as a result of an automatic plot registration under section 25?

No

I answer in the negative only because it is not clear really how this will be implemented in practice. Where there is automatic registration of the underlying title, the party who may have considerable interest is any lender and potentially other parties. It would be helpful if the keeper could provide some kind of early notice on the register if there is a transaction which is likely to involve automatic registration of the underlying title

[Show this Page Only](#)

1. Question 34. Do you agree that the Keeper's policies for evidence of possession in terms of section 43(3) should be set out in guidance rather than prescribed in the Rules?

No

note: in anticipation of the 2012 act and generally in terms of the new management of the Keeper from 2010, the Keeper has taken a much harder line. As will be stated elsewhere I believe that it will be helpful to have a "standard" by which the Keeper will address such matters of opinion together with an appeal process

2. Question 35: Do you agree that the types of evidence set out above should be required and that guidance on the appropriate wording of affidavit evidence should be provided?

Yes

but see my point about standards and, later, appeals

[Show this Page Only](#)

1. Question 36: Do you agree that the requirements for evidence of notification in terms of section 43(4) should be set out in guidance rather than prescribed in the Rules?

Yes

[Show this Page Only](#)

1. Question 37: Do you agree that notification under section 43(4) should be by recorded delivery mail in order to satisfy the Keeper that notification has taken place?

Yes

2. Question 38: Do you agree that the requirement for recorded delivery mail and a prescribed style for giving notice should be included in the Rules?

Yes

[Show this Page Only](#)

1. Question 39: Do you agree that under section 45(1) the Keeper should only re-notify those persons already notified by the applicant under section 43(4)?

Yes

2. Question 40: Do you agree that where notification has already taken place under section 43(4)(a) or (b) then notification by the Keeper should be by mail (but not recorded delivery) to the same address?

Yes

3. Question 41: Do you agree that in terms of section 45(2) where the numbers involved could make individual notification prohibitive the Keeper should explore alternatives such as notification to a residents' association?

Yes

[Show this Page Only](#)

1. Question 42: Do you agree that the Rules should make further provision regarding a minimum period for notification to take place prior to a prescriptive claimant application being submitted?

Yes

2. Question 43: If so, do you agree that 60 days is a suitable period?

Yes

[Show this Page Only](#)

1. Question 44: Do you agree that draft styles should be developed for decrees of reduction and orders for rectification of documents, and that the Keeper should seek to have these styles included in the Rules of Court?

Yes

2. Question 45: Do you agree that the Keeper should publish guidance on the registration criteria for arbitral awards in advance of the designated day?

Yes

[Show this Page Only](#)

1. Question 46: Do you agree that the advance notice form should include both the application form and the advance notice in one document?

No

but what if the information changes between the date of application for the advance notice and the actual application?

[Show this Page Only](#)

1. Question 47: Do you agree that a plan capable of allowing the plot of ground to be identified should be a requirement for an advance notice for a deed that will be a breakaway deed from subjects in the Sasine Register?

Yes

again profession requires education on quality of plans

Show this Page Only

1. Question 48: Do you agree that the end of the protected period is the appropriate time to remove the delineation from the cadastral map?

Yes

Show this Page Only

1. Question 49: Would you see a benefit in any other unilateral deed being included in an Order under section 64?

Yes

Show this Page Only

1. Question 50: Do you agree that the name of the deed used to register a fixed boundary agreement should be Shifting Boundary Agreement?

Yes

2. Question 51: Do you agree that the note in the property section of the affected title sheets should be drafted as follows? Note: The boundary between the points lettered A - B in blue on the Cadastral Map has been agreed in terms of the [Shifting Boundary Agreement] between [xxxx] and [xxxx] registered [xxxx].

Yes

Show this Page Only

1. Question 52: Do you agree that the property section is the appropriate place to enter a caveat against the title?

Yes

Show this Page Only

1. Question 53: Do you agree that requests to vary warranty in between registration events should be submitted on a specified form?

Yes

Show this Page Only

1. Question 54: Do you agree that the Keeper should not restrict warranty purely on the basis of the existence of a caveat?

Yes

Show this Page Only

1. Question 55: Do you agree that for warranty granted as part of a registration under section 25 or 29, there should be a statement on the title sheet to show that warranty was granted under section 74?

Yes

Show this Page Only

1. Question 56: Do you agree that any interest rate paid on claims for compensation should be aligned to the Bank of England Base Rate?

Yes

Show this Page Only

1. Question 57: Do you agree that the persons to be notified of a rectification should not be prescribed in the Rules?

Yes

Show this Page Only

1. Question 58: Do you agree that the parties consenting to rectification should be capable of demonstrating that they would have title and interest to be heard in court on the issue?

No

not sure. This is an area where unintended consequences could apply

Show this Page Only

1. Question 59: Do you agree the Keeper should only consider removing a burden as a result of section 50 of the Title Conditions (Scotland) Act 2003 where she is provided with details of a manifest inaccuracy in a particular title sheet and the manner of rectification sought?

Yes

Show this Page Only

1. Question 60: Do you consider that where realignment may not have occurred, other than in exceptional cases where matters are beyond doubt, the Keeper can only rectify where judicial determination has established that the register is inaccurate?

No

Not sure about this. Even the current registration system is plagued with problems on inaccurate boundaries and a variable approach on the part of the Keeper in dealing with these. In other words the practitioner does not know what is going to happen. On the face of it, judicial determination seems a very high bar for the normal person rather than some equitably-based expert panel

2. Question 61: Do you consider that where realignment may not have occurred, other than in exceptional cases where matters are beyond doubt, the Keeper can only rectify where judicial determination has established that the register is inaccurate?

No

See above. My responses may be borne of ignorance of how the new system will work. In addition the current accuracy of the OS maps can be pretty patchy particularly in rural areas. One of the major issues is the different scales that apply to OS maps in different locations

Show this Page Only

1. Question 62: In which circumstances would you need an extract with evidential status showing more than one cadastral unit at a time?

Again, without experience of the new type of maps, it is difficult to answer. When one is dealing with a complex problem or the acquisition of property for a developer one can envisage such an extract being required of more than one unit. Rather than the data being supplied on paper, is there any intention to provide an online viewer for the cadastral units, so that the multi layer nature of the information can be considered. Again all of this may not make any sense but it is difficult to envisage that this time

Show this Page Only

1. Question 63: Do you agree that access to the Keeper's registers should be provided for by order of the Scottish Ministers and that such access should continue via the Customer Service Centres by letter, email or in person?

No

given the nature of today's conveyancing, possible delays in considering the archive element of the register are of concern. It is appreciated that from a public point of view such information cannot be safely made available. However, why can this information not been made available to solicitors

Show this Page Only

1. Question 64: Do you agree that an optional form to inform the Keeper of potential manifest inaccuracies in the land register should be prescribed in the Rules?

Yes

Show this Page Only

1. Question 65: Do you agree that the Rules should prescribe only one application form?

Yes

Show this Page Only

1. Question 66: Do you agree that the Rules should prescribe an optional form to obtain extracts of the title sheet, cadastral map or document in the archive record?

Yes

Show this Page Only

1. Please give additional comments about any aspect of implementation of the Act and related matters here (if you have any further additional comments then please email consultations@ros.gov.uk):

Please accept my apologies at the outset if any of the following comments reflect my limited understanding of the implementation of the act. From a practitioner's point of view, the important aspects of the Act are that the disruption to the conveyancing process, additional anxiety for the conveyancing public and additional cost to the conveyancing public are kept to the minimum. From my review of your implementation strategy, I fear that the implementation of the act will cause considerable disruption. As with all conveyancing changes, it takes time for the impact of the changes to disseminate amongst the whole profession. I stressed in respect of the proposed introduction of compulsory Separate Representation that a standards-based system is required for conveyancing in Scotland. The new Act makes that all the more necessary. I worry that an introduction date in autumn 2014 without a corresponding introduction of new standards-based approaches in conveyancing will cause a lot of problems. I have not read the Act sufficiently to be completely aware of restraints upon the actings of the Keeper. As I have alluded to in some of my answers the keeper has taken a much harder line in recent years. I understand that this was necessary but the harder line does not appear to have also had with it associated checks and balances. With such an enormous change as that which will come with the 2012 Act, it would be perhaps in the interest of both the keeper and the profession to have some form of "Expert Committee" to whom appeal could be made in respect of something that appears to be manifestly unjust. It is certain that the Act will bring with it unintended consequences as well as shocks to the system such as those that were created by judgements on repossessions and the recent Lundin case. In such events the position of the Keeper has seemed to be enormously risk averse. That is understandable but it seems to me that the Keeper needs to be prepared to offer pragmatic and practical advice in the resolution of such problems more quickly. Given that these shocks to the system are likely to be more numerous in the implementation of the new Act, the keeper might want to consider a different approach to the remedy of such problems even if it is advice to the profession that they should obtain an independent title indemnity insurance. There are many other comments and thoughts I have but I will limit these to those which I have outlined. Overall, I understand (I think!) what the keeper is trying to achieve. I have concerns in its implementation and the ability of the entire profession to accommodate these changes without a great deal of handholding. As an example, because of the "one shot" rule, I think that most purchasing solicitors should be obtaining a power of attorney from the seller of a property to enable an amending document to be executed in the event of rejection. Traditional solicitors may be resistant to such an approach but it is these types of practicalities which will be to the fore