

## REGISTERS OF SCOTLAND

### DIGITAL TRANSFORMATION – NEXT STEPS

30 November 2016

The introduction of the *Land Registration etc. (Scotland) Act 2012* (the 2012 Act) laid the foundations for conveyancing and land registration in Scotland to move out of the paper world and into the digital world. Much has already been achieved but the next steps in the journey will require changes to be made to the land register rules, using the regulation-making powers provided for that purpose in the 2012 Act. This consultation focuses on these changes and is in two parts. Part one sets out proposals for the introduction of new digital services in the Land Register; and part two sets out proposals for some consequential changes and other improvements to the land registration application form to support digital submission.

Comments on the proposals set out in this consultation are invited by **22 February 2017**, with a view to new regulations coming into force (subject to the approval of Parliament) later in 2017.

#### **1. Do you agree that transition to a digital first service should be the next step?**

Introductory remark: This response is submitted on behalf of the Rural Property Department at Lindsays.

Yes in principle, but subject to the service being workable in practice and a sensible timescale for the transition. We are concerned that the proposals outlined in the consultation seem to be geared towards simpler transactions. We wonder whether more complex situations—which rural conveyancers are perhaps more used to dealing with than most—have been fully thought through.

#### **2. Do you agree with the proposed timescale of 1 April 2018 for prescribing that advance notices over part be fully digital?**

Yes (if not sooner). However, we would welcome clarity on whether plans will require to be digitally executed in the same way as an electronic Disposition. Our view is that this should not be required, since it is not required for an Advance Notice for a Dealing with Whole. If it is required we think the timescale should be

no sooner than 1 April 2018, since while many solicitors now have smartcards and readers for digital signatures, they are not widely used.

### **3. Do you agree with a notice period of six months?**

No. In our view this is too short and 9-12 months would be appropriate. We are conscious that queries still arise on the 2012 Act changes, two years on, in complex cases. We are also concerned at the proposal for the transitional period to end on 1 April, as this coincides with financial year end for most conveyancing firms – a very busy and stressful time already. A date in May or June would better suit the profession.

### **4. Do you agree the initial focus for digital registration, following launch of the digital discharge service, should be provision of channels aimed at standard securities and dispositions?**

We agree in principle, but would suggest that Dispositions that do not create title conditions should be digitalised first, at the same time as Standard Securities. Dispositions that do create title conditions should be digitalised later, along with Deeds of Conditions/Servitude/Real Burdens and Long Leases.

Presumably the reason for not digitalising Deeds of Conditions etc. and Leases sooner is that these are more complex and will require large amounts of text to be added to the Land Register, which is not well suited to a system of online forms. The same logic applies to Dispositions creating title conditions.

We are concerned by the comment (at paragraph 1.18) that these are submitted “very occasionally” which suggests that discussion regarding such Dispositions may have been brief. For rural conveyancers these are the norm.

We would welcome clarification in due course on how unusual situations will be dealt with: e.g. deeds covering both registered and unregistered subjects, where currently two forms are required for the same deed; deeds between multiple parties; new/varied title conditions; variations to the Standard Conditions within Standard Securities; deeds covering more than one Registration County (if Counties will continue to be relevant).

We would also welcome clarification in due course on whether, when deeds requiring large amounts of text to be copied into the Land Register come to be digitalised, these may be submitted as a digitally signed PDF document or whether the text would have to be shoehorned into an online form; and if as a PDF, whether a scanned image of a paper document will be accepted or whether it must be copiable text.

We would not welcome a situation where the text had to fit within a box in an online form, particularly as the current forms have poor support for special characters (quotation marks being a particular problem).

**5. What deed types do you consider we should prioritise for new services subsequent to securities and dispositions?**

We find it surprising that there is no mention of Voluntary Registrations here. Although this is not a “deed type”, it seems illogical for Dispositions inducing First Registration to be digital only and Voluntary Registrations to be paper only.

We suggest the next deed type should be Deeds of Restriction. In many cases these follow shortly after a Disposition of the same subjects (e.g. in new build sales) and so could perhaps be linked somehow to the Disposition in order to avoid duplication of plans. It would be odd for Dispositions, Standard Securities and Discharges to be digital only and Deeds of Restriction to be paper only.

Thereafter perhaps deeds creating/varying title conditions and Long Leases could be tackled.

**6. Do you consider that for the limited purpose of dual recording, it should be permissible to record an electronic deed in the sasine register or should be permissible to record a paper copy of the digital deed?**

We favour the first option: recording an electronic deed in the Sasine Register. It would be inconvenient for such Dispositions to have to be submitted twice—once online and once on paper—and this would create problems of marrying the two up at Registers. Whether Registers then print the deed at their end or set up electronic recording in the Sasine Register is not a question we feel the profession needs to be concerned with.

We would suggest simply adding a check box to the online registration form to indicate that dual recording is required.

As mentioned above, we are concerned that Registers consider this a rare situation, as for our sector it is common.

**7. Do you agree that ten working days from the date of digital submission is an appropriate period to allow the prior deeds to be submitted?**

No.

We would question why it should be necessary to submit prior deeds on paper at all. We feel this is the worst of both worlds: applications would have to be submitted twice, once online and once on paper. This creates unnecessary work and will create problems of marrying applications up at Registers, with potential for wrongful rejections. Rather than straddling both sides of the fence, first registrations should be either entirely digital or entirely paper-based.

If the digital route is chosen, in most cases the prior deeds could be scanned and uploaded with the online form. There could then be a check box to indicate that

further paper deeds will follow by post (for example, where these are too large to scan), it being understood that this is not the norm.

Alternatively, Registers could simply accept that, until the Land Register is complete, first registrations will continue to be paper based. If a bundle of deeds is being posted to Registers anyway, why not include the new Disposition and paper form as is done now? This would be a temporary situation as eventually all properties will be registered.

If the split-medium approach is followed (which we believe would be impractical), ten working days is too short. Letters sometimes go astray and when they do more time will be needed to (a) find out that this has happened and (b) resubmit the application. Otherwise the first we will know of a problem is when the application is rejected.

The consultation paper mentions linking the deadline to the Advance Notice period but the logic is not clear. Will the date of registration not be the date of the online application? If instead it will be the date of receipt of the prior deeds, this should be made clear and explicitly consulted on. In any event, Advance Notices are typically lodged 5-10 days before completion, leaving 20-25 more days for applications to be received before the end of the protected period.

Accordingly we feel a maximum of 15-20 working days would be more appropriate.

We would also welcome clarity on how Registers will match prior deeds to online applications. Will the system generate a receipt and bar code to be printed and enclosed with the prior deeds? (Again this raises the question: why not simply send the whole form and the Disposition by post as we do now?) In our experience Registers are not good at dealing with situations where not everything is submitted together and the proposal will dramatically increase the frequency of this. It would be very unfortunate if the profession had to resort to sending applications by recorded delivery/tracked DX in every case, so that it could be proven that Registers had in fact received the prior deeds.

#### **8. Do you have a view on alternative ways you would like to present supporting documents accompanying a digital application?**

Yes – these should be scanned and uploaded with the application wherever possible. The split-medium approach proposed does not advance digitalisation and in our view is worse than the existing system.

#### **9. Do you agree with the main changes that we propose to make to the application form?**

Yes in principle, but subject to maintaining the flexibility required to deal with complex or unusual situations. In particular, we would welcome clarity on situations where a deed relates to both registered and unregistered subjects.

**10. Are there any other changes you suggest we should make with a view to simplifying it and making it easier to follow?**

Yes. Currently the paper form asks for details where the validity of the deed to be registered is dependent on the registration of a related deed. However, this question does not appear anywhere in the electronic form. It can only be answered if the applicant notices the question on the final form and either adds a text box to the PDF (for which few have the software) or writes on the printed form by hand. Clearly this is illogical. The question should either be added to the electronic form, or deleted altogether. We note this is a very common situation, e.g. when a Standard Security accompanies a Disposition.

Also, it is currently very difficult to complete a form for a deed affecting both registered and unregistered subjects, or affecting unregistered subjects which straddle a County boundary. This could be made easier.

**11. Do you agree that instead of prescribing the content of the application form in the Land Register Rules, the keeper should publish the land registration application form on an administrative basis so that it can be amended from time to time, following consultation and due notice, without the need for changes to be made to the rules?**

We agree that flexibility is required during the transition phase so that Registers can respond quickly to feedback from the profession. However, if this continues there is an issue of democratic accountability and transparency. Ministerial approval of changes to the forms should not be abolished altogether. We feel that the proposal should last for six months after digitalisation becomes compulsory, with any subsequent changes being by Statutory Instrument.

**12. Do you agree that this approach should be adopted for both applications submitted on paper and applications prepared through a digital service provided by the keeper?**

Yes subject to our comments on question 11 above. We see no reason for the two to be treated differently. In many cases they will interrelate so a split approach would be impractical.

However, for paper forms it is crucial that older versions should continue to be accepted for a time after the change, since otherwise they will become obsolete while in transit, and unfair rejections will follow.

For electronic forms consideration will need to be given to situations where a form is drafted and saved prior to a change but submitted after. It would be inconvenient if these had to be drafted afresh.

The profession's key requirement is certainty.