

## FINAL PARTIAL BUSINESS AND REGULATORY IMPACT ASSESSMENT

### 1. Title of proposal

Registers of Scotland Fee Review 2020 Consultation.

### 2. Purpose and intended effect

#### Background

Registers of Scotland (RoS) is a Scottish public body and is categorised as a Non-Ministerial Office (NMO). RoS is headed by the Keeper, who is a non-ministerial office-holder in the Scottish Administration and the Chief Executive of RoS. RoS' function is to maintain the public registers for which the Keeper is statutorily responsible and make the information they contain publicly available.

Further information on how RoS operates is set out in its [framework document](#).

RoS's work is demand-led, in response to activity primarily in the property market. Its work is self-financing and is funded from the fees it charges. RoS revenue is generated from charging fees for both statutory and non-statutory activity. Fees have remained unchanged since 2011, with minor exceptions.

The full financial impact of the measures necessitated by the Coronavirus (Covid-19) pandemic is not yet known, but RoS's predictions anticipate that there will be at least some impact on the housing market and therefore RoS's revenues. Registration fees generated by transfers of property generate approximately 90% of RoS's revenue. Applications to the Land Register are currently predicted to be up to 35% lower than forecast in our corporate plan for the remainder of the financial year, with other registers similarly affected. Any hiatus in the housing market and its ongoing recovery are not factors that RoS can influence directly.

#### Rationale for Government intervention

Statutory responsibility for the setting of fees charged by RoS lies with Scottish Ministers. This consultation is being undertaken on their behalf and with their authority.

Fees must be charged in accordance with the requirements of the Scottish Public Finance Manual and in accordance with the powers set out in section 110 of the Land Registration etc. (Scotland) Act 2012. The Scottish Public Finance Manual sets out that the standard approach for setting charges and fees is full cost recovery.

RoS has introduced significant technological and business changes to minimise the impact of the lockdown on the housing market and maximise its ability to continue to generate revenue during the crisis. RoS reviewed and implemented where possible all opportunities to manage income and expenditure.

Efficiency improvements in systems and processes have enabled RoS to absorb increases where they have arisen in its operating costs within the existing fees structure until now. However, current forecasts of future income and expenditure show that RoS needs to increase fees if it is to recover its costs over the next five years.

The combination of increased staff costs, the investment required to develop new modern systems of registration and the downturn in the market following the Coronavirus pandemic taken together mean statutory fees now need to be increased to reflect RoS's costs.

### 3. Consultation

#### Within government

The Keeper has been consulted on the proposals in compliance with section 110(3) of the Land Registration etc. (Scotland) Act 2012.

#### Public consultation

A public consultation on the Registers of Scotland Fees) (Amendment Order proposals took place between 26 October 2020 and 24 December 2020 which was hosted on the RoS website. Citizen Space, the Scottish Government's consultation hub was used to gather responses. RoS will publish an analysis of the responses received to the consultation following its closure. All responses received by the end of the consultation period will be considered by Scottish Ministers prior to them laying the Fees (Amendment) Order before the Scottish Parliament, planned for January 2021 with an implementation date of 1 April 2021.

#### High-level analysis of consultation responses

Question	Positive	Neutral	Negative
Do you have any comments on the proposed fees as set out in Annex A of this consultation?	13	21	10
Question	Yes	No	No response
Do you agree that rejection fees should be removed?	40	4	
Do you agree that voluntary registration fees should continue to be lower than standard registrations?	38	6	
Do you agree that Registers of Scotland should retain the ability to vary statutory fees by an amount not exceeding £10 in such circumstances as described in the paper?	33	10	1
Do you agree that registration fees for the Crofting Register and the Register of Community Interests in Land should remain unchanged?	38	4	2
Do you agree that registration through Registers of Scotland digital registration systems should continue to cost less than standard registrations?	39	5	
Do you agree that the fees we charge for these services should at a minimum recover our costs?	36	8	
Do you agree that Registers of Scotland should review its statutory fees on an annual basis?	24	19	1

#### Business

RoS conducted a pre-consultation exercise to seek the views of solicitors, private searchers, lenders, consumer groups and others who use its services to gather views on any impacts the increase in fees would have on them.

#### **4. Options**

##### **Option 1 - Do nothing**

With the increase in costs detailed above, this option would mean RoS is not able to comply with provisions of the Scottish Public Finance Manual which requires it to meet costs from fees raised.

The consultation received 44 responses which were supportive of RoS raising its fees to return to a cost-neutral position.

##### **Option 2 - Introduce a new Fees Order**

This option raises fees. The proposed fee order maintains the structure of RoS's current fees model, with minor amendments to rejections, copy deeds and searches. The fee structure differentiates on the value of property transactions, with higher fees associated with higher value properties.

##### **Sectors and groups affected by Options 1 and 2**

The services provided by RoS are offered to the public and to business, including associations and other organisations, on the same basis. The same fee structure applies to all persons irrespective of their size or status. This ensures that fees are charged fairly to all.

##### **Option 1 - Costs**

This option presents no implementation costs.

##### **Option 1 - Benefits**

Not implementing a revised fees order would provide a very marginal cost saving to consumers buying and selling property, for example, the fee for registration of a property valued at £195,000 is anticipated to rise by a further £10 to £260. Disbenefits include RoS's increased costs being met by the Scottish Consolidated Fund. This is not compliant with RoS's requirement to meet its costs through fees charged per the Scottish Public Finance Manual. To reduce costs to match any decrease in income would impact its ability to fulfil its statutory functions.

Whilst the responses to the consultation were very supportive of RoS raising fees, a few respondents commented on the timing of the rise following the recent £10 rise in October 2020, and the impact that the health emergency caused by Coronavirus may be having on the property market.

##### **Option 2 - Costs**

This option presents minor implementation costs which will be met by RoS.

##### **Option 2 - Benefits**

The proposed fees will enable RoS to appropriately recover the costs of registration, providing copy deeds and conducting searches. With the exception of removal of the rejection fees, and some changes to how copy deeds and searches are charged, no substantial changes are proposed to the method by which fees are charged, only to the amounts charged, thus retaining consistency for customers.



Respondents to the consultation were supportive of RoS being returned to a cost-neutral position by raising its fees.

### **Rejections fee**

RoS intends to remove the rejection fee of £30. The cost of administering a rejection accounted for most of the £30 rejection fee, but these costs have fallen substantially following the opening of the digital submission service thus removing costs associated with scanning, handling and posting physical deeds. Applicants will continue to be incentivised to get applications right first time, to avoid the application being rejected and registration delayed.

Respondents to the consultation were very supportive of RoS removing the rejection fee.

### **Power to vary registration fees in between Fees orders**

RoS proposes retaining the power (contained in Article 4 of the Registers of Scotland (Fees) Order 2014) to enable the Keeper to vary registration or recording fees. This is expressed as plus or minus £10. The use of such power to increase fees would only be where necessary to prevent material damage to the Keeper's financial position and the damage arises from conditions which cannot be otherwise mitigated by the Keeper. The Scottish Ministers will be consulted about any proposed increase or decrease in fees. Three months' notice will be given on the RoS website before raising fees using this power.

RoS utilised this existing power in October 2020 to increase some statutory fees by £10 to help mitigate some of the adverse impacts of the Covid-19 health emergency following consultation with the Scottish Ministers and with three months' notice to customers, but further rises are necessary to return RoS to a cost-neutral position.

Respondents to the consultation were supportive of RoS retaining this power.

## **5. Scottish Firms Impact test**

There will be no differential impact on small business as a result of the proposed fees, as fees apply equally to all customers, and it is expected that the size of the business does not of itself impact the product or service it requires to obtain from RoS.

RoS continues to conduct an exercise to seek the views of solicitors, searchers, lenders, consumer groups and housebuilders who use our services.

The following organisations were contacted by telephone:

- First Scottish Searching Services
- Persimmon Homes Limited
- Aberdeenshire Council
- Nationwide Building Society
- McPhee & Partners

Responses from consultees were broadly supportive of the need to increase fees and considered the increases to be fair.

They were positive about the removal of the rejection fee although some had a slight concern that the rejection rate would rise causing more work for RoS.

They were supportive of the proposal to maintain the current feeing structure.

Larger bodies requested as long a period as possible prior to adoption of a new fees model so to allow them time to introduce changes and agree any necessary contractual revisions.

Respondents to the public consultation were supportive of RoS raising its fees, however, a few law firms commented on the rises particularly at the highest end of the fee scale. These respondents did not indicate that the rises would have any effect on the market.

### **Competition assessment**

The fee review was conducted in accordance with generally accepted accounting principles. The proposals do not directly or indirectly limit the range or number of suppliers, limit the ability of suppliers to compete, reduce suppliers' incentives to compete vigorously, or limit the choices and information available to consumers. In respect of the provision of registration services, RoS is not in competition. The fees for such services are in respect of the provision of a public service.

No comments were received in respect of competition as part of the consultation.

### **Consumer assessment**

The proposed fee increase will increase the cost of registration to consumers. Within the overall context of professional fees and services associated with the transfer of property, the proposed increases are relatively small. It is not considered that consumers whose circumstances make them more vulnerable will be particularly affected by the increase. Registration fees for the Crofting Register will remain unchanged at £90.

Most statutory fees were subject to a £10 increase (pursuant to the Keeper exercising her discretionary power as discussed at 4 above) in October 2020.

Examples include:-

- The fee for registration of a property valued at £150,000 will rise by a further £10 to £260.
- The fee for registration of a property valued at £3,000,000 will rise by a further £290 to £3,300.
- The fee for an advance notice will remain at £20.
- The fee for registration of a document in the Registration of Inhibitions will remain at £25.
- The fee for registration of a Standard Security will rise by a further £10 to £80.

Most respondents were supportive of RoS raising its fees, however, some commented on the rise on lower-priced products. These respondents did not indicate that these rises would have any effect on the market.

### **Test run of business forms**

No new statutory forms for business will be introduced.

### **Digital impact test**

Following the national lockdowns announced on 23 March 2020, RoS closed its offices to all staff and postal applications for registration. RoS quickly obtained provision in the temporary Scottish Coronavirus Acts to enable applications for registration to proceed on the basis of electronic copies of traditional (i.e. paper) documents submitted to RoS through an online portal on the RoS website (the 'Digital Submission Service'). RoS will seek to place these emergency provisions on a permanent legislative footing in order to make online submission the default position. All applicants in

possession of a direct debit account with RoS have now successfully transitioned to submitting applications through the Digital Submission Service, which has proved popular with applicants.

Deeds submitted through the Digital Submission Service currently attract the same fee as those submitted by post. These are not true digital deeds and, other than digital discharges, there is currently no available method of submitting true digital deeds (i.e. those created and authenticated electronically) for registration. Deeds created by and submitted through the RoS digital discharge system will be subject to a lower registration fee of £60 compared to a fee of £80 for deeds submitted through the Digital Submission Service.

Respondents to the consultation agreed that digital deeds should attract lower fees than traditional deeds.

## **6. Legal Aid Impact Test**

It is not expected that the proposed increase in fees will give rise to increased use of legal processes or create any new rights or responsibilities that will have an impact on the legal aid fund. Any organisation or individual using RoS services will require to pay the new fees.

No comments were received that related to legal aid, access to justice or other such aspects as part of the consultation.

## **7. Enforcement, sanctions and monitoring**

There is a statutory requirement for most types of application to be accompanied by the appropriate fee failing which registration will be refused. The Keeper will consistently apply the increased fees once introduced.

For the minority of applications in registers under the Keeper's control, where prepayment is not a legal requirement, the Keeper will invoke debt recovery procedures to recover monies due. No changes are proposed to this practice as part of the fee review.

## **8. Implementation and delivery plan**

It is anticipated that the draft fees order will be laid before Parliament in January 2021 with the provisions coming into force around April / May 2021. All reference material will be updated with the new fees prior to this date, with customers being kept informed of the forthcoming increase in fees through articles on the RoS website, direct communications and other media. RoS will also undertake internal communications and training to ensure RoS staff are aware of the new fee structure so they are well placed to deal with enquiries.

## **9. Post Implementation Review**

As discussed in the consultation and in its corporate plan, RoS will adopt a practice of reviewing its fees on an annual basis to ensure these are optimised to reflect cost-recovery. Revenue generated from fees will also be monitored by and subject to scrutiny from Scottish Government Finance.

## **10. Summary and recommendation**

Having regard to RoS's financial position and its requirement to operate on a cost-recovery basis as set out in the Scottish Public Finance Manual, RoS cannot pursue Option 1.

The responses received to the public consultation to the proposals to raise fees were positive, with no feedback received which would necessitate a revision to any of the proposals set out in the



consultation. The proposed fees in Option 2 will enable the Keeper to appropriately recover the costs of registration.

#### **11. Declaration and publication**

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

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Jennifer Henderson, Keeper and Chief Executive

Registers of Scotland

Date: 20/1/21

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