



**THE LAW SOCIETY
of SCOTLAND**
www.lawscot.org.uk

Consultation Response

Implementation of the Land Registration etc. (Scotland) Act 2012

The Law Society of Scotland's response

November 2013

Introduction

The Law Society of Scotland aims to lead and support a successful and respected Scottish legal profession. Not only do we act in the interests of our solicitor members but we also have a clear responsibility to work in the public interest. That is why we actively engage and seek to assist in the legislative and public policy decision making processes.

This response has been prepared on behalf of the Society by members of our Property Law Committee (“the Committee”). The Committee is comprised of senior and specialist lawyers who are experienced in both residential and commercial property transactions.

General Comments

The Committee welcomes the opportunity to respond to this important consultation which reforms and restates the law in relation to the registration of rights to land in the Land Register of Scotland.

Question Responses

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?

Yes

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

Yes

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

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

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?

No.

Information regarding size could continue to be of use to those wishing to serve a notice to quit under a lease. By virtue of the Sheriff Court (Scotland) Act 1907 non-agricultural land over 2 acres requires a longer notice to quit period than non-agricultural land that is smaller in size. Although the 2 hectare measurement in the Land Registration (Scotland) Act 1979 does not tie in with this, if the Land Register currently shows that land is over 2 hectares, a party serving a notice to quit for non-agricultural land will know that a longer notice to quit period is required. The Committee is of the view that it would be useful going forward if the Keeper were able to state on the title sheet if the land was more than 2 acres (not hectares).

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

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

No

The Committee is of the view that the inclusion of the date of entry of the current proprietor in the proprietorship section in the title sheet is helpful. For example it is helpful to ascertain prescriptive periods in insolvency situations.

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

Yes

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

Frequently

The Committee is of the view that having details of the deed creating the servitude assists when considering the detail of a servitude especially when the entry in the title sheet is not specific enough. It is particularly important to see full details of a servitude given (a) how

important servitudes can be in transactions and (b) the multiplicity of the different types of servitude and ways in which they can be exercised/paid for.

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

Yes

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

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

Yes

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?

The Committee is of the view that the Keeper should seek input on the queries raised in Questions 13, 14 & 15 from solicitors with technical expertise in this context for example those solicitors who act for wind farm operators and the Crown Estate.

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

Please see the response in Question 13.

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?

Please see the response in Question 13.

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

Yes on the assumption that the pertinents are exclusive (for example cellarage) and if they can be identified on a plan.

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?

Yes

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

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?

No

The Committee is of the view that in many instances it would not be a simple exercise to narrate the share because it may prove impossible to work out the share without extensive research which would be expensive for clients. The Committee anticipates particular problems in this regard in first registration applications.

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

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 subject to having sight of the list of registrable deeds and the enactment under which they are registrable.

The Committee is of the view that the Keeper should also consider the impact of “mixed” deeds for example a Disposition which conveys land but which also creates real burdens and servitudes.

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

No.

The Committee is of the view that the Keeper requires to consider the commercial implications of this approach for complex developments such as shopping centres and wind farms where the applicant may not hold all of the documents required. For example a tenant may not hold the landlord’s title deeds where a shopping centre is being sold and the lease is in the process of being granted.

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

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

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

Yes

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

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

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

Yes

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

No

The Committee is of the view that the period of standover should be 42 days to reflect business practices.

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

Yes in principle subject to there being adequate IT coverage across the whole of Scotland and also to the entitlement to request a paper copy if so desired.

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?

No.

The Committee is of the view that for confidentiality reasons the email address should only be provided for the grantor's agent.

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

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?

Yes

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?

Yes

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

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

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

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 subject to this being by recorded delivery mail or equivalent.

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 in principle subject to the Keeper having qualitatively assessed the original list.

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

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

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

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

Yes

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

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

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

Yes

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

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

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

Yes

If so, what deeds do you feel would be appropriate for inclusion?

Deed of Conditions

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

No

The Committee is of the view that it should be called a Fixed Boundary Agreement.

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].*

No

The Committee is of the view that it should be referred to as a Fixed Boundary Agreement.

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

Yes

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

Yes

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

Yes

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

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 in principle subject to the outcome of the referendum on Scottish independence which may necessitate the need to provide for an alternative in the future.

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

Yes in principle but useful to have a framework of relevant persons and possibly include this in guidance.

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?

Yes in principle but the Keeper will require to explain how someone demonstrates “interest” for example by way of a materiality test.

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

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?

Yes

Question 61: In which circumstances would you need an extract with evidential status showing more than one cadastral unit at a time?

The Committee is of the view that it might be useful to have an extract which showed both a shared plot and a sharing plot.

Question 62: 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?

Yes

Question 63: 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

Question 64: Do you agree that the Rules should prescribe only one application form?

Yes

Question 65: 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

Question 66: 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):

The Committee is of the view that as a number of practical/implementation issues arise from for example, certifications in application forms or the information disclosed on searches, early engagement with the profession on the form/wording/extent of applications and reports is imperative.

For further information and alternative formats, please contact:

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