

Final Business and Regulatory Impact Assessment

Title of Proposal

The Registers of Scotland (Voluntary Registration, Amendment of Fees, etc.) Order 2015

Purpose and intended effect

- **Background**

Registers of Scotland (RoS) is a non-Ministerial Government Department within the Scottish Administration and is headed by the Keeper of the Registers of Scotland, who is responsible for compiling and maintaining 17 public registers relating to property and other legal documents.

The largest registers maintained by the keeper are the property registers. The General Register of Sasines, established in 1617, is a register of deeds. This is gradually being replaced by the map-based Land Register of Scotland, established by the Land Registration (Scotland) Act 1979. The 1979 Act was largely replaced on 8 December 2014, with the commencement of the main provisions of the Land Registration etc. (Scotland) Act 2012.

One of the main purposes of the 2012 Act is to allow for the completion of the register and Scottish Ministers have asked the keeper to complete the register over a 10-year period.

Currently, around 58% of properties in Scotland are on the Land Register but only around 26% of the land mass, as the bulk of those properties are urban dwellings.

- **Objective**

The objective of this Order is to incentivise uptake of voluntary registration applications. A voluntary registration application is where a person who owns property that is recorded in the General Register of Sasines applies for it to be registered in the Land Register, without any requirement for an underlying transaction. That contrasts with the way property usually comes onto the Land Register which is via 'triggered' registration (such as a sale where the new owner will register the property as part of the conveyancing process).

The proposals in the Order provide for:

- a 25% reduction in the fee for voluntary registrations;
- closure of the Register of Sasines to new standard securities, so that an owner would first require to apply for voluntary registration and in such cases to apply no fee to the voluntary registration application; and
- removal of the keeper's current discretion to refuse a voluntary registration application.

RoS anticipate that, taken together, the proposals will lead to an upturn of around 5,000 voluntary registration applications per year. This will contribute to the overall objective of completing the Land Register. Over the period in which the register is to be completed that would equate to around 5% of the total remaining unregistered titles. (That assessment is subject to fluctuations in the property market generally and in the mortgage market specifically.) This policy will be combined with other strands of the land register completion policy in order to deliver the overall objective.

The Order is also introducing a small number of fees for copy documents from other registers to bring the existing Fees Order into line with what is requested in practice by customers. Additionally, two fees in relation to the Land Register are being clarified. It is considered that these minor changes will not have an impact on business.

- **Rationale for Government intervention**

There are two parts to this strand of the completion policy. The first is to incentivise voluntary registration by reducing the cost (in so far as this is within the control of Government); the second is to lever voluntary registration by linking it to the granting of a new security. Both steps require secondary legislation.

A completed Land Register will be a national asset for Scotland, providing a single, comprehensive, publicly-searchable register that improves clarity on landownership.

RoS contribute to the Scottish Government's purpose *"to focus government and public services on creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth."* In particular, the work of RoS aligns with the Scottish Government's strategic objective - Wealthier and fairer - through helping Scotland become *"the most attractive place for doing business in Europe."* The completion of the Land Register should ensure that we offer the public a service that is *"high quality, continually improving, efficient and responsive to people's needs."*

Consultation

- **Within Government**

Scottish Ministers have committed to the registration of all public land within five and RoS are engaging with areas across government with responsibility for, or ownership of, land. Ministerial approval for the consultation was given by the Minister for Business, Energy and Tourism.

- **Public Consultation**

A twelve-week consultation on Land Register Completion took place between 4 July 2014 and 4 November 2014 and was available on the Registers of Scotland and Scottish Government websites. The consultation included questions relating to the closure of the Register of Sasines to new securities and the proposed fee reduction

for voluntary registrations. In total, 47 responses were received. These included responses from:

- stakeholder groups, including the Council of Mortgage Lenders, Scottish Land & Estates and the Scottish Property Federation
- 17 local authorities
- four other public sector bodies
- four firms of solicitors
- a number of voluntary organisations

- **Business**

Consultation with business took place under the public consultation mentioned above, stakeholder workshops and also through an additional stakeholder engagement exercise where the following organisations were contacted:

- **Solicitors**

- Law Society of Scotland
- Optima
- Your Conveyancer
- Aberdein Considine
- Irwin Mitchell
- Walker Laird
- Turcan Connell
- Wright Johnston & MacKenzie LLP

- **Commercial and residential lending**

- Council of Mortgage Lenders
- Virgin Money
- Royal Bank of Scotland
- Lloyds Banking Group
- TSB
- Skipton Building Society
- Yorkshire Building Society Group
- UKAR (holding company for Northern Rock and Bradford & Bingley)

This group represents a cross section of business dealing with mortgages and remortgages in Scotland. Nine responses were received to the engagement document and were taken into account in formulating the proposals.

Options

Option 1: Do nothing

This approach would result in the Sasine Register remaining open to standard securities and no change to voluntary registration fees.

Option 2: Introduce secondary legislation

This approach would result in:

- 25% reduction in fees for voluntary registration; and
- closure of the Sasine Register to standard securities with no fee for

associated voluntary registrations.

Sectors and groups affected

Option 1 will not impact on any particular group or sector.

In option 2, the reduction to the voluntary registration fee will apply to any owner who is able and willing to make a voluntary registration application. It will not impact any particular group or sector. The proposed closure of the Register of Sasines to securities will impact on owners of property recorded in that register who are taking out a new mortgage or granting some other form of security. It will also impact on mortgage lenders and on solicitors/legal advisors involved in the mortgage process. The requirement for voluntary registration when a standard security is granted over a property recorded in the Sasine Register will result in some changes to process and procedures for those mortgage lenders and solicitors and will have some additional costs.

Benefits - option 1

There are no benefits associated with option 1.

Benefits - option 2

As stated above, this approach would speed up completion of the Land Register by increasing the rate of voluntary registration applications. Once property is registered, it becomes easier to deal with and conveyancing is generally simpler, quicker and cheaper. Both the owner of the property and the lender will be able to benefit from the keeper's warranty (guarantee) attached to the registration, which is not available in the Register of Sasines. It therefore removes an element of risk from the process. For the wider public, information on who owns land will be easier to find and interpret.

Costs - option 1

Option 1 would increase costs on the keeper because it would require a greater role for keeper induced registration to meet the policy objective. RoS is still considering how best to use keeper induced registration but are clear that it will be more expensive than voluntary registration and may not deliver some of the benefits (such as warranted title).

Costs - option 2

It is possible there will be some additional costs to business as a result of the requirement for voluntary registration before granting a new security. Initial views from stakeholder engagement suggest they may be £100-£300. Some stakeholders have suggested that some of that cost may be passed on to customers, although others have expressed a strong desire to continue with 'fee free' services. Our assessment is that any additional cost at this stage will be off-set by more straightforward conveyancing the next time the property is transacted upon. In addition, the modest extra cost also brings the benefit of warranty (guarantee) given by the keeper, which would not be available in the Register of Sasines and that reduces exposure to risk for the homeowner and the lender.

The bulk of the costs – in terms of the lower and waived registration fees - will fall on,

and be met by, Registers of Scotland. It is difficult to assess the costs because it will depend on when, in the 10-year period, property is registered and that has to be considered along with Registers of Scotland's bi-annual fee review process. Additionally, this is all work that Registers of Scotland will be required to complete over the 10-year period anyway. Accordingly, the appropriate cost to consider is not the cost of processing the work but the differential in fee income when the 25% reduction is considered and when no fee is applied following a new security.

25% fee reduction

Income lost through offering this reduction is estimated to be £13.5m.

The main assumptions behind this costing are:

- All public sector land will be registered by voluntary registration within the two year timescale (and so attract the 25% fee reduction);
- Average fee is £329;
- The same £329 average fee applies across all sectors; and
- The 25% reduction starts on 1 July 2015 and runs to 30 June 2017.

No fee voluntary registration (where the Register of Sasine is closed to new securities)

We have estimated revenue lost to RoS as £14,800,000. That assumes: 45,000 titles representing 5% of the Sasine Register being brought over to the Land Register during the nine-year period starting 1 April 2016 and that the average fee waived is £329.

Legal Aid Impact Test

The legislative changes have been discussed with the Legal Aid Team and they will not give rise to increased use of legal processes or create new rights or responsibilities that will have an impact on the legal aid fund.

Enforcement, sanctions and monitoring

The policy being proposed amends or removes existing fees. Registration will only be completed where the appropriate fee is paid or arrangements satisfactory to the keeper are in place. The keeper ensures that fees are collected and nothing in this proposal changes the position.

The fee changes here will be reviewed again in line with Registers of Scotland's bi-annual fee review.

Implementation and delivery plan

The proposed reduction to the fee for voluntary registration is expected to come into force in June 2015. It is straightforward to implement and only requires a minor IT change to the Registers of Scotland fee calculator.

The proposal to close the Register of Sasines to new securities is expected to come into force in April/May 2016. The long lead in time is deliberate to ensure that mortgage lenders and others have sufficient time to change processes etc. in

advance of implementation. During that period RoS will be working with those parties to establish what services can be provided to minimise the cost impact of the changes.

Post-implementation review

Fees will be reviewed as part of Registers of Scotland's commitment to a bi-annual fee review.

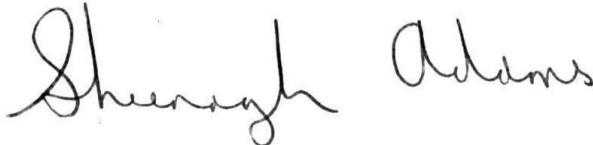
Summary and recommendation

Option 2 is recommended. The proposed closure of the Sasine Register to standard securities and the general reduction in fees for voluntary registration will accelerate the completion of the Land Register and contribute towards meeting the target completion date of 2024. Where a voluntary registration is required in order to grant a new security, the proposal removes the element of cost that is in the Government's control. In addition, RoS will work closely with business in this area to consider bespoke products to deal with any practical difficulties.

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.

Signed:

A handwritten signature in black ink that reads "Sheenagh Adams". The signature is written in a cursive style.

Date: 04/05/15

**Sheenagh Adams
Keeper of the Registers of Scotland**