

Completion of Land Register

Response by the Council of Mortgage Lenders to the Registers of Scotland Consultation paper

Introduction

1. The Council of Mortgage Lenders (CML) is the representative trade association for mortgage lenders. Our 125 members comprise banks, building societies, insurance companies and other specialist mortgage lenders who, together, lend around 95% of the residential mortgages in the UK. In addition, the CML's members have lent over £60 billion UK-wide for new-build, repair and improvement to social housing of which just under £4 billion is in Scotland.

2. CML Scotland welcomes the opportunity to respond to the consultation by the Registers of Scotland on completion of the Land Register in Scotland.

General Comments

3. We note that Scottish Ministers have invited the Keeper of the Registers of Scotland to complete the registration of all land in Scotland over the next 10 years. While welcoming this decision and understanding the advantages of the Land Register over the Sasine Register this is certainly an ambitious timetable given that the Land Register has existed since 1981 and to date only 58% of all property titles and 26% of Scotland's land mass have been registered.

4. The consultation paper envisages all land within the public sector being registered within an initial 5 year period and work being done with local authorities and housing associations to register their housing stock which is already not registered. We note that it is being proposed in relation to the latter that a similar process will be followed to the 6 large scale voluntary transfers which have been undertaken in Scotland.

5. Over and above this it is proposed that the Land Register will be completed by:

- All transfers of title having to be registered in the land register
- Closing the Sasine Register to Standard Securities
- Ending the Keeper's discretion to refuse a voluntary land application
- Introducing keeper induced registration

6. It may be worth exploring with organisations in the private sector who own multiple properties throughout Scotland if they would be prepared to register voluntarily those properties which are not already on the Land Register. This may assist in speeding up completion of the Land Register.

7. The concern of our members will to ensure that what is being proposed does not delay the completion of an effective security in their favour which could expose them to the risk of loss. In the recent past we saw issues particularly in the new build sector where delays in registering their security lead to lenders facing losses and being more exposed to the risk of fraud. We would not wish to see a repeat of that and we therefore believe that it is vital that service standards are developed around completion of the Land Register and are monitored on a regular basis.

Specific Questions

Standard Securities

Do you agree that Scottish Ministers should close the Sasine Register to Standard Securities?

CML Scotland

8. We can understand why the grant of a Standard Security has been selected as a trigger for the property to be registered in the Land Register although we note this will require a voluntary application for registration of the property by the owner. However before we can be supportive of this we believe that our members will require certain assurances.

9. The consultation paper highlights that levels of re-mortgaging in the residential mortgage market have fallen considerably since the early to mid 2000s. A combination of the financial crisis of 2007/8 and the current low interest rate environment which has existed for the last 7 years have been a contributory factor in this regard. The economic outlook points to interest rates rising albeit on a gradual basis and with this we would expect to see levels of re-mortgaging increasing. It will be interesting to understand how the Registers of Scotland would handle additional workloads if levels of re-mortgaging were to increase significantly.

10. At paragraph 25 of the consultation there is an assumption that on every occasion where a Standard Security is granted in favour of a lender it will be supported by an examination of title on behalf of the lender to ensure that the party granting the security has a good title to the property. It is suggested that this examination of title could support voluntary registration in the Land Register. While we believe with new lending that will always be the case there are exceptions to this in the residential re-mortgage market.

11. It is our understanding that some lenders offer a "slick" re-mortgage process requiring limited title checks to be undertaken and it is often the case that they will rely on the examination of title undertaken on behalf of the previous lender. The level of checks can vary from lender to lender and can also vary depending upon the mortgage product being offered.

12. We suggested to the Keeper that a workshop be arranged with lenders and their Solicitors to discuss this matter and we are pleased that this was agreed to with a workshop being held on 16 October 2014.

13. The main points coming out this workshop from our perspective were as follows:

- There is a need to obtain a better handle on the potential number of re-mortgage cases where the property is registered in the Sasine Register.
- There will be a need to educate borrowers that they will be faced with additional costs in the re-mortgage transaction in view of the need to transfer the title from the Sasine Register to the Land Register and the examination of title which will be required as a consequence.
- Adequate notice will require to be given to lenders and their Solicitors of the intention to close the Sasine Register to Standard Securities so that they can put in place a process for dealing with re-mortgage transactions
- It will be necessary for Registers of Scotland to develop a slick process for registering the borrower's title in the Land Register and thereby allowing the Standard Security in favour of the new lender to be registered as soon as possible.

Do you agree that the fee for the associated voluntary registration of the property should be waived?

14. We agree that this would be appropriate.

Do you agree that closure of the Sasine Register for Standard securities should be introduced across Scotland at the one time or should it be introduced on a staggered basis by county or groups of counties?

15. We agree for the reasons outlined in the consultation paper that it would be best to introduce this across Scotland at the one time.

Closure of Sasine Register to other deed types

What deeds do you consider it appropriate to close the Sasine Register to and so require voluntary registration of title to give legal effect to the deed?

16. We would suggest that this should be restricted to deeds being granted by the owner and where it will require their Solicitor to have checked title in connection with the preparation of the deed.

Do you agree that the fee for the associated voluntary registration should be waived?

17. Yes.

Voluntary Registration

Do you agree that the legal power the Keeper has to refuse a request for voluntary registration should be removed, irrespective of the proposals on introducing additional triggers?

18. Given the desire to complete the Land Register with a 10 year period it is appropriate that voluntary registration should be allowed and the Keeper's discretion to refuse is dispensed with.

Do you agree that a reduced fee should apply to voluntary registrations? If so, do you agree with the proposed 10% reduction?

19. Yes—the 10% reduction seems reasonable.

Closure of Sasine Register to other deed types

Do you agree with the proposed approach to piloting Keeper Induced Registration (KIR) to inform a consultation on the detailed approach and strategy for KIR?

20. We consider that the pilot exercise to KIR outlined in the paper is a sensible one with the lessons learnt from the pilot then being able to form a more detailed consultation on KIR.

Should other elements be included in the pilot and what should these be?

21. None of which we are aware.

Approach to completion

Do you agree with the proposed approach to completion?

22. The approach outlined in the paper of initially using triggers for registration, encouraging voluntary registration and registering public land before introducing KIR is a sensible approach.

Funding Land Register Completion

Have you any views on our proposals for funding completion of the Land Register?

23. It is noted that eradication of historic works and a more straight forward registration process under the Land Registration (Scotland) Act 2012 should free up resource to allow for voluntary registration and KIR and it will only be KIR where the costs will be incurred solely by the Keeper. We also note that the Keeper will seek to grow her reserves through efficiencies as opposed to fee increases to accommodate the future costs of KIR.

24. Should economic conditions continue to improve then it is likely that the Keeper will be faced with increasing levels of property transactions and from the perspective of our members it will be vital that the Keeper has adequate resources to deal with both business as usual as well as completion of the Land Register.

25. While we assume that detailed modelling will have been conducted by the Keeper before putting forward these proposals they do on the face of it seem rather ambitious.

Further contact

26. This response has been prepared by the CML in conjunction with its members. Any comments or enquiries should, in the first place, be directed to:

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