

Aberdeenshire Council response upon the Completion of the Land register

Completion of the Land Register Public Consultation

Please note that this form must be returned with your response to ensure that we handle your response appropriately.

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1. Are you responding as: (please tick one box)

On behalf of a group or organisation go to 2c

2a. INDIVIDUALS

Do you agree to your response being made available to the public (in the Scottish Government library and on the RoS website)?

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Yes, make my response, name and address all available
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The name and address of your organisation will be made available to the public (in the Scottish Government library and on the RoS website). Are you content for your response to be made available?

Yes

3. We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Government to contact you again in relation to this consultation exercise?

Yes

22. The 2012 Act provides for the completion of the Land Register in four ways:

I. by requiring registration in the Land Register of all transfers of land (including those not for money). This will coincide with the closure of the General Register of Sasines to all new transfer deeds. The impact of this is considered in paragraph 18 above;

II. by giving Scottish Ministers the power (section 48) to close the Sasine Register to standard securities and/or to all deed types on a county-by-county or all-Scotland basis. Closure of the Sasine Register in this way will create additional “triggers” that will increase the number of properties having their first registration onto the Land Register;

III. by giving Scottish Ministers the power (section 27) to end the Keeper’s discretion to refuse a voluntary land registration application; and

IV. by giving the Keeper the power (section 29) to undertake “Keeper-Induced Registration” (KIR), whereby a property can be registered without the Keeper having received a registration application.

These provisions and the Keeper’s proposals and plans for each are detailed below.

Closure of the Sasine Register to standard securities

23. Section 48 of the 2012 Act gives a power to Scottish Ministers, after consultation with the Keeper and other appropriate persons, to close the Sasine Register to standard securities (section 48(2)) or other specific deed types (section 48(3)). These powers may be exercised for different cases and

purposes. For example, this could allow the register to be closed to all standard securities in the first instance or for different provisions to apply in different areas of Scotland. Before these powers can be enabled, section 48(7) requires that the Keeper's discretion to refuse an application for voluntary registration under section 27(3)(b) be removed. The reason for this is perhaps best explained by an example. If the Sasine Register is closed to a standard security, the creditor's rights under the security can only be made real through registration of the security in the Land Register. To enable registration of the security, there must be a Land Register entry for the property. Thus, the property to which the security relates must be registered in the Land Register either before or at the same time as the security. As there is no statutory trigger for this, the proprietor must apply for voluntary first registration in the Land Register.

24. Based on historic figures for standard security deeds entering the Sasine Register we estimate some 50,000 standard securities would be impacted over the 10-year completion period by using the power in section 48(2). That figure is based on the current low-level of re-mortgaging compared with the active re-mortgage market that was prevalent in the early-to mid-2000s. If the levels of re-mortgaging were to return to those levels, the impact on completion of the Land Register would potentially double. Closing the Sasine Register to standard securities would have a significant impact on completion. We propose that steps be taken to commence section 48(2).

25. We recognise that this will involve the proprietor in applying for voluntary registration. However, we note that a title examination has to be carried out on behalf of the creditor to support the standard security and in most cases this is paid for by the debtor. We recognise that the legal process around the grant of a new standard security will have to evolve to support the requirement for voluntary registration of the property. We anticipate that lending institutions and the legal profession will be sufficiently flexible to adopt new processes that can best support the proprietor. In this regard, we note that in recent years we have seen an increasing number of requests, relating to commercial loans, for voluntary registration due to a potential lender requiring the certainty of a Land Register title before granting a loan. In order that the registration cost of a voluntary registration does not act as a barrier to a party acquiring a new mortgage, we would propose that subordinate legislation prescribe that the voluntary registration fee be waived where it relates to the grant of a standard security

26. It is proposed that this section be introduced to all registration counties at the same time. Introducing it on a staggered basis would mean different legal requirements for different parts of Scotland and so would place additional burdens on lending institutions and their legal advisers, particularly in those situations where transactions involved properties in different parts of Scotland. To enable the commencement of section 48(2), we would propose to remove the discretion afforded to the Keeper under section 27(3)(b) to refuse a voluntary application for registration. Over the next ten years, we anticipate that introduction of this trigger would result in circa 45,000 additional first registrations.

Question 1: Do you agree that Scottish Ministers should close the Sasine Register to standard securities?

Answer:

Yes

Question 2: Do you agree that the fee for the associated voluntary registration of the property should be waived?

Answer:

Yes

Question 3: 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 by groups of counties?

Answer:

Yes. A one-time closure seems more appropriate

Closure of the Sasine Register to other deed types

27. The powers in section 48 envisage that the Sasine Register can be closed to other deeds as well as those set out in sub-sections (1) and (2). Those remaining deeds comprise in the main discharges of standard securities, local authority charge deeds, deeds of conditions and deeds of servitude. (See Appendix 1 for a breakdown of the deed types.) Post the Designated Day, the other common deed still to be entered on the Sasine Register will be the advance notice.

28. Many of the deed types listed in Appendix 1 are deeds that are drawn up by and granted by a body other than the proprietor. We consider that it would raise a number of practical difficulties at this time to require the property to be registered in order that such a deed could be registered. In effect, we would have to carry out a Keeper-induced registration (KIR) of the property. Our desire is to approach KIR systematically in the first instance, working where we can with the proprietor to register all properties such a body may have. That approach brings structure and economies of scale. We do, however, recognise that as the programme of completion advances, it may be appropriate to re-consider this for those deed types not granted by the proprietor.

29. It may still be that the Sasine Register should be closed to some of the remaining deeds, in particular those deeds where it is the owner of the

property that is granting them and where they seek to inform the nature of the title. Examples would be Deeds of Condition and Deeds of Servitude. In those instances, the grantor of the deed will have engaged the services of a solicitor who will need to be aware of the title position and have reference to the deeds that make up the title. In those instances, we consider that, as is the case for closing the register to standard securities, the additional work involved would not cause substantial inconvenience and would better inform those parties who will subsequently transact with the property. As with standard securities, we would propose that the voluntary registration fee be waived.

Question 4: What deeds do you consider it appropriate to close the Sasine Register to and so require voluntary registration of the title in order to give legal effect to the deed?

Answer:

- **The Register should only be closed to Standard Securities.**

The aim of promoting the completion of the land register is to promote economic development however this proposal could have a greater adverse impact upon economic development than any proposed benefits.

Currently, Aberdeenshire Council, like most councils enter into many types of deeds on an annual basis but for minimal return e.g. servitudes for unlocking development sites, servitudes/wayleaves to utility companies, granting title to small area of ground to allow expansion of business or homes etc. The financial return for these transactions are not significant and the resource implications for completing the transactions are currently of a level to sustain these types of transactions.

The current proposal would require significant extra resources and costs for putting titles onto the land register and it may mean it is no longer viable to enter into such transactions for the council, or as the Council has a duty to achieve best value, this may mean it no longer be possible to enter into such transactions unless the other party would be willing to meet the council's costs and which could significantly delay and add costs to such low value transactions.

Registration should not end for deeds of servitudes or any deeds where there is minimal consideration being granted and we suggest a figure of £10,000 or less.

Closing the register to statutory notices would also have a significant impact on the Council's ability to enter into improvement grants e.g. the Housing (Scotland) Act 1987 section 246(7) allows notice of payment of improvement grant to be recorded against the grantees titles and in

2013/2014 councils entered into 1338 of these .These grants are mostly for improvements to Housing stock and improvement for disabled adaptions and the majority are not for significant sums. If however the property has to undertake voluntary registration then costs of this would substantially detract from the grant as grantee's tend to put some fund towards the works but instead some ,or all of that would have to go to the cost of registration .This would have impact upon work generated for the building industry from these grants.

- The Sasine register should not be closed where only a discharge or renunciation of a deed is being recorded
- Unilateral deeds imposed by Councils should not trigger voluntary registration e,g Notice of costs, charging orders ,Tree preservation orders, . These are often imposed under another statute e.g Housing acts ,Planning acts etc to recover costs due to the councils or protect the Built or local Environment .The extra time and resources to undertake registration would prejudice the Councils ability to protect the environment ,recover costs due to it and place additional strain on under pressure Councils budgets .

It's not also clear how the council could voluntarily register of a title where it's only interest is serving a statutory notice against the title as it has no proprietary interest in the property. Would the keeper induce registration and how would this work where the notices are time critical e.g tree preservation orders, as if it's a Keeper induced registration it would need to ensure these notices can be put in place in accordance with current timescales.

If such notices can only be implemented by Keeper induced registration then is the keeper to take responsibility for these notices and the implications for them not being timeously recorded.

Could the keeper also confirm it will share its legal advice on the implications of the Land Registration Acts upon these statutes as referred to above?

Question 5: Do you agree that the fee for the associated voluntary registration of the property should be waived?

Answer:

Yes

Voluntary Registration

30. The Keeper has operated an open door policy for voluntary registration for some time and this will continue. We propose that Scottish Ministers take the necessary steps to remove the Keeper's discretion to refuse an application for voluntary registration. We note that Scottish Minister's

commitment to register all public land in the next five years will significantly increase the volume of voluntary registrations. In addition, we will actively engage throughout the next ten years with those who may have an interest in voluntary registration. We note that the 2012 Act creates more opportunities for this (for instance automatic plot registration on a lease can make it more practical for a landlord to register their whole title as this makes the grant of any further leases more straightforward). Along with the triggers for registration, voluntary registration remains our preferred approach for moving land from the Sasine to the Land Register.

31. Currently, the registration fee for a voluntary application is the same as for a trigger-based conveyance of title; it is based on the consideration (price paid) or the value, whichever is greater. This is because the benefits to the applicant from registration are the same irrespective of whether the application is submitted as a result of a trigger or on a voluntary basis. Similarly, the costs to the Keeper in processing the application are the same. We do recognise that the more properties that are registered through triggers or voluntary registration the less there will be to tackle through Keeper-induced registration, for which no fee is proposed with the costs being met from the general pool of registration and other income generated by the Keeper. Consequently, we do recognise the benefit in encouraging a growth in voluntary registration. We are also mindful that the level of registration fee is often not the critical factor in determining whether or not to proceed with a voluntary registration; for complex property titles, the legal and associated costs of the title examination will form the bulk of the expense incurred by the applicant. On balance, we consider there should be a modest fee discount to aid the promotion of voluntary registration. We propose that the registration fee should be reduced by 10% for voluntary registration.

Question 6: Do you agree that the legal power the Keeper has to refuse a request for voluntary registration should be removed, irrespective of the outcome of the proposals on introducing additional triggers?

Answer:

This is an issue for the Keeper, although it seems contrary to endorse retaining this power when trying to encourage completion of the Land Register. It should be noted the whole act is based upon an assumption that councils will voluntary registration their titles but no contact was made upon that point by the Keeper which is unfortunate as councils could have confirmed this was never a viable option. we refer to answer 4 above and the occasions where in some bipartite deeds (eg Servitudes) the automatic triggering of a voluntary registration over the burdened title would cause considerable additional work disproportionate to the transaction itself and so should not trigger first registration .

Question 7: Do you agree that a reduced fee should apply to voluntary registrations? If so, do you agree with the proposed 10% reduction?

Answer:

No.

Only a 100% reduction in the registration fee is appropriate given demand for Councils to register all their titles within five years, The final Report of the Land Reform Review Group stated that , “ that the Scottish Government should be doing more to increase the rate of registrations to complete the Land Register, including a Government target date for completion of the Register, a planned programme to register public lands “

It is noted that target is that this would be completed within five years but with no consultation with any Councils as to how this was to be achieved and certainly no planned programme as yet.

There appears to be an assumption that voluntary registration under these circumstances will derive a benefit to the presenting authority however as already intimated the cost implications would greatly outweigh any benefit to the council

The current practice in Aberdeenshire council is that when a title query arises it will be allocated to the legal department ,and depending upon priority the titles will be revised and a confirmation of ownership will be confirmed and albeit it's not an electronic system, the answers are given without undue delay or impact upon subsequent planned economic development .

Aberdeenshire Council have over 10,000 title individual title packets ,mostly sasine titles ,covering a large geographic area and the resource implications for placing these on the land register would be a minimal requirement to employ 5 solicitors, two planning technicians and an archivist . The cost implication of this when also added to registration fees ,search fees , plan preparations could be over £2 million a year over five years . The benefit simply do not outweigh the costs when the council is already looking to make significant cost saving over the next five years. Many of the council assets relate to operational buildings and facilities which will have been acquired long before the introduction of the Land Register, and there is simply no compelling case for these titles to be added to the land register just for the sake of it.

**The Councils current asset portfolios is valued at millions of pounds. The corresponding registration dues, even with a 10% reduction will result in a very significant cost on top of the resource costs
Any council registrations brought forward in response to the completion exercise should attract no fee.**

The resource implications for this have not been considered and it is unlikely there are the enough qualified conveyancing solicitors to undertake this work , and the Council has currently two conveyancing

solicitor posts unfulfilled. We draw your attention to again RICS report which confirmed lack of conveyors was a significant matter in slowdown in property market (<http://www.rics.org/uk/knowledge/market-analysis/rics-residential-market-survey/>)

We would call upon a proper quantification of costs and resource implications to be undertaken by Scottish government and from there the required funding be made available if these timescales are to be adhered to.

Keeper-induced Registration

32. From the Designated Day, the Keeper, for the first time ever, will have the power to register property on the Land Register without having received an application (section 29(1)). Our focus in the first five years will be trigger-based and voluntary registration, particularly the voluntary registration of public land. The more properties that come in through these routes the less KIR there will be. However, KIR is essential to completing the Land Register; the Land Register will not complete without it. The reason is simple: not every property owner will be impacted by a trigger event or wish to engage with us through voluntary registration. KIR must therefore work.

33. Given the newness of this power, the Keeper intends to test its use through piloting a number of approaches. This will enable us to highlight the specific challenges of this new approach and will let us develop processes and policies to deal with them. It will also let us plan an approach that best meets the needs of the property owner and those placing reliance on the Land Register with the aim of completing the Land Register. For KIR will not be without challenge. Unlike with a trigger based registration or a voluntary registration, the Keeper will not have had the benefit of the involvement of a solicitor acting for the applicant, who will have examined title, obtained and interpreted the appropriate pre-registration reports, will have discussed the title with his or her client and so be fully aware of all information pertinent to the title to the property. Although the Keeper will have access to the title deeds as recorded in the Sasine Register, an extensive set of maps and associated records and for many urban properties will already have carried out extensive title research as part of her preparation for trigger based registrations, issues will arise.

34. The 2012 Act recognises this. So, for instance, in terms of mapping the legal boundaries of a property, the Act acknowledges that under KIR, the Keeper may not always be able accurately to identify them, for instance, where the title deeds for the property contain a general conveyancing description such as 'all and whole the farm and lands of Kennedies along with the houses, timber standing or fallen, plains, muirs, paths.....'. Although the Keeper will have access to a range of current and historic maps as well as any neighbouring registrations, such a description could lead to the Keeper under- or over-mapping the extent of the property. If the extent is under-mapped the proprietor will become aware when the Keeper notifies them with

details of the registration, as is required. If the extent is over-mapped, the 2012 Act provides a general exception to the Keeper's warranty under section 74(3)(a)(ah), the effect of which is that the 'over-registration' is not warranted. The owner or a third party with title and interest would be able to apply for rectification.

35. Equally, difficulties can arise in establishing the owner of the plot of land. Again, in many cases, the Keeper will be able to establish this information with reasonable certainty from the Sasine Register and other records. However, there will be some instances where that certainty will not be possible. For example, where the title is held with a survivorship destination, it will not be possible to establish from the Sasine Register alone whether the destination has operated or been extinguished. The 2012 Act recognises this difficulty and offers two possible solutions. First, section 30(5) provides that where, under KIR, the name or designation of any person to be entered in the title sheet cannot or cannot with reasonable certainty be determined then the Keeper may enter a statement that the name or designation is not known or not known with reasonable certainty. Second, where the Keeper is sufficiently certain to enter a named proprietor but is not sufficiently certain to warrant the accuracy of that entry then the Keeper may exclude warranty.

36. Whilst the 2012 Act can provide statutory solutions for key issues, the challenge will be to minimise the occurrence of such issues. A pilot exercise will establish where the risks lie and the circumstances where full warranty can be granted and those where it cannot. The pilots will also identify many of the practical and legal problems that have to be resolved and will enable the Keeper to put forward proposals for a detailed approach to KIR. The Keeper would propose to consult further on the detailed approach to and strategy for KIR following evaluation of a number of pilot KIR exercises.

37. The pilots that the Keeper intends to run are as follows:

- registering Scotland's heritage assets – RoS will work with charitable bodies such as the National Trust for Scotland, the John Muir Trust and the RSPB to register, by way of KIR, a sample of land and property that is important to Scotland's historic and natural environment. Such land and property is unlikely to enter the Land Register through other routes;
- registering properties in RoS research area – see paragraph 18. These properties tend to be the remaining flats in a tenement or houses on an estate where the majority of titles have already been registered. We intend to register around 1,000 of these properties over a one-year period to assess any issues around undertaking KIR in this type of scenario ;
- registering titles that support other Scottish Government initiatives. Examples of such initiatives include the work being progressed by the Crofting Commission to register crofting common grazings land (estimated at some 5500 square kilometres) and the registration of estates that are subject to a pre-emptive right to buy over land under the Land Reform (Scotland) Act

2003. We will aim to register a small number of titles related to such initiatives;

- registering titles in non-research areas – it is important to establish the specific opportunities and challenges associated with this not-insignificant tranche of titles. This is because any closure of the Sasine Register to certain unilateral deeds (such as those mentioned in paragraph 27 above) may require the Keeper to first register the property through the Keeper-induced registration powers. We will seek to register a cross section of urban, rural, commercial, residential and agricultural properties; and
- registering coastal titles and titles located in or extending into territorial waters –the 2012 Act, for the first time, gives the Keeper the power to register titles in Scotland’s territorial waters. We intend to undertake a small pilot project to test procedures and the inter-relationship between the cadastral map and the map of the sea. We will work closely on this with Marine Scotland.

38. The initial pilot-based approach to KIR will not inhibit the pace of completion; our focus in the first five years will be trigger-based and voluntary registration, particularly the voluntary registration of public land. The more properties that come in through these routes the less KIR there will be. KIR must, however, work and the proposed pilots will identify many of the practical problems that have to be resolved.

Question 8: Do you agree with the proposed approach to piloting KIR to inform a consultation on the detailed approach to and strategy for KIR?

Answer:

- **NO**

It is noted that no councils and particularly those with large rural portfolios have been included in any pilot and such a pilot should be set up to include this Council.

- **More information on Keeper research areas, with particular reference to how these affect Council Housing estates would be beneficial and would inform the pilot project.**

Question 9: Should other elements be included in the pilot and what should these be?

Answer:

- **Common Good, insofar as this is similar in nature to the public interest elements which the Keeper intends to include in respect of Scotland's heritage assets and coastal titles .**
- **Large Local Authority housing estate titles, complete with split offs under "right to buy" legislation would be a valuable exercise to help inform the KIR process.**
- **Public Parks**
- **Agricultural land and country estates**
- **Land held with no title, eg under Local Acts, land held under Royal grants that are pre -sasine register**

Approach to completion

39. Scottish Ministers have set a ten-year timeframe for completion. Our favoured approach is to encourage property owners to register their titles either as a result of the triggers for registration or through voluntary registration. During the first five years, the emphasis will be on:

- (1) trigger based registration – ensuring all such applications are processed within the Keeper's published service standards setting the maximum time to process first registration applications;
- (2) registration of public land – we envisage this will be based on a set of service level agreements between RoS and individual public bodies;
- (3) promoting voluntary registration – we will run targeted sector based campaigns to encourage voluntary registration. One off voluntary applications will be dealt with in accordance with published service standards setting the maximum time to process first registration applications;
- (4) pilot Keeper induced registration – pilots will run through late 2014 and 2015.
- (5) consult on detail and approach to KIR – late 2015; and
- (6) commence, initially low level, KIR following evaluation of consultation - 2016.

40. Progress will be monitored on an ongoing basis with information being provided in the Keeper's Annual Report. During the second five year period, the emphasis will shift slightly. Focus will remain on (1) and (3) above and activity will increase around KIR. We feel that the proposed approach strikes the right balance in that it favours use of triggers and voluntary registration over KIR in the early years. It also acknowledges the target to register all public land within the first five years. As the period progresses and we have more transparency as to those properties that look less likely to enter the

register, we can ramp up KIR, from the initial focus on heritage assets to those that will fill in much of the title and land mass gaps. Finally, we can tackle the wholly unregistered land.

Question 10: Do you agree with the proposed approach to completion?

Answer:

No, the council cannot agree with the proposed approach to completion, especially in respect of the 5 year time period for registration of public land for the reasons set out at in this response as regards the costs and resource implications. Why is it considered necessary to impose any timescale at all and why has no analysis of the cost implications been undertaken?

There is reference to Service level agreements but absolutely no detail on what these will contain and the rights and responsibilities on the parties. Much more information on this is required before the Council can give any more detailed comment. In absence of such proper cost and resource analysis it is not possible to comment upon this with any accuracy.

Funding Land Register completion

41. Completing the Land Register will consume resources. Helpfully, the eradication of historic stocks of work and the forthcoming move to a more straightforward registration process under the 2012 Act will free up some resource within RoS that can be allocated to progressing voluntary registration and KIR. Encouraging a growth in trigger based applications and, to an extent, voluntary registration will ensure costs can be managed as in overall terms the costs of this work is covered by the registration fee. The main impact on costs will be the extent to which Keeper-induced registration is used, as costs will be incurred solely by the Keeper. Based on the proposed approach to Land Register completion this is likely to be a matter for the latter five years. The Keeper will seek to grow her reserves, through efficiencies as opposed to fee increases, to accommodate the future costs of KIR.

42. The Registers of Scotland (Fees) Order 2014 proposes no change to the current fees for registration. The Keeper is committed to reviewing fees every two years. This bi-annual review will consider the ongoing costs of completion. This is required by section 110(3)(b) of the 2012 Act which provides that before making a Fees order Scottish Ministers must consult with the Keeper about 'the expenses incurred by the Keeper in bringing all titles to land into it'. Any proposed change in fees, be it the introduction of new fees or a decrease or increase in fees would be publicly consulted upon following such a review.

43. During the passage of the 2012 Act, questions were asked as to whether the Keeper would pay any solicitors' costs in respect of legal work instructed by owners of property that the subject of a Keeper-induced registration. As Keeper-induced registration will not change a person's legal rights, an owner should not need to employ a lawyer. However, if an owner chooses to employ a lawyer to check the extract of the title sheet and title plan supplied, and the Keeper has made an error, in terms of section 84 of the Act, the Keeper must pay compensation for the reimbursement of reasonable extra-judicial expenses incurred by a person in securing rectification of the Land Register. There are no plans to change this approach.

Question 11: Have you any views on our proposals for funding the completion of the Land Register?

Answer:

Yes

Paragraphs 41-43 above appear to relate purely to the Keeper's costs and which is really a matter for the Keeper.

There is no recognition in the consultation paper that these proposals could have significant financial implications for Councils and other parties .

In order for Local Authorities to seriously contemplate an undertaking of this size, there would have to be a recognition that this cannot be achieved from existing resources and it would require significant funding and which could only come from the Scottish government Given that if these requirements are forced upon all Councils (and other significant landowners) will be trying to recruit in the same time frame, doubt has been expressed as to the ability of the market to meet this demand both in terms of relevant numbers and expertise and we again refer you to RICS report from August 2014 quoting an acute lack of conveyancers being issue in property transactions

(<http://www.rics.org/uk/knowledge/market-analysis/rics-residential-market-survey/>)

Land Reform Issues

44. This consultation focuses on the use of the provisions set out in the Land Registration etc. (Scotland) Act 2012 (the 2012 Act) for enabling completion of the Land Register. The Land Reform Review Group recently suggested that additional triggers for registration should be considered, over and above those provided for by the 2012 Act. Their report suggests that 'one approach to this would be making certain types of public grants and tax concessions to land owners for the management of buildings and land,

conditional on the property involved being registered in the Land Register.’ This suggestion will be considered further. The review group also made recommendations on beneficial ownership and on who might be eligible to register particularly in Scotland. We are mindful of the need for such analysis to take place in the right policy context and the appropriate context is that of land reform. Scottish Ministers have committed to consider the recommendations of the Land Reform Review Group and their suggestion on completion will be considered as part of that.