Passage of the

Land Registration etc.
(Scotland) Bill 2011

SPPB 174
Passage of the
Land Registration etc. (Scotland) Bill 2011

SP Bill 6 (Session 4), subsequently 2012 asp 5

SPPB 174
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Foreword

Purpose of the series

The aim of this series is to bring together in a single place all the official Parliamentary documents relating to the passage of the Bill that becomes an Act of the Scottish Parliament (ASP). The list of documents included in any particular volume will depend on the nature of the Bill and the circumstances of its passage, but a typical volume will include:

- every print of the Bill (usually three – “As Introduced”, “As Amended at Stage 2” and “As Passed”);
- the accompanying documents published with the “As Introduced” print of the Bill (and any revised versions published at later Stages);
- every Marshalled List of amendments from Stages 2 and 3;
- every Groupings list from Stages 2 and 3;
- the lead Committee’s “Stage 1 report” (which itself includes reports of other committees involved in the Stage 1 process, relevant committee Minutes and extracts from the Official Report of Stage 1 proceedings);
- the Official Report of the Stage 1 and Stage 3 debates in the Parliament;
- the Official Report of Stage 2 committee consideration;
- the Minutes (or relevant extracts) of relevant Committee meetings and of the Parliament for Stages 1 and 3.

All documents included are re-printed in the original layout and format, but with minor typographical and layout errors corrected. An exception is the groupings of amendments for Stages 2 and 3 (a list of amendments in debating order was included in the original documents to assist members during proceedings but is omitted here as the text of amendments is contained in the relevant marshalled list).

Where documents in the volume include web-links to external sources or to documents not incorporated in this volume, these links have been checked and are correct at the time of publishing this volume. The Scottish Parliament is not responsible for the content of external Internet sites. The links in this volume will not be monitored after publication, and no guarantee can be given that all links will continue to be effective.

Documents in each volume are arranged in the order in which they relate to the passage of the Bill through its various stages, from introduction to passing. The Act itself is not included on the grounds that it is already generally available and is, in any case, not a Parliamentary publication.

Outline of the legislative process

Bills in the Scottish Parliament follow a three-stage process. The fundamentals of the process are laid down by section 36(1) of the Scotland Act 1998, and amplified by Chapter 9 of the Parliament’s Standing Orders. In outline, the process is:

- Introduction, followed by publication of the Bill and its accompanying documents;
- Stage 1: the Bill is first referred to a relevant committee, which produces a report informed by evidence from interested parties, then the Parliament debates the Bill and decides whether to agree to its general principles;
• Stage 2: the Bill returns to a committee for detailed consideration of amendments;
• Stage 3: the Bill is considered by the Parliament, with consideration of further amendments followed by a debate and a decision on whether to pass the Bill.

After a Bill is passed, three law officers and the Secretary of State have a period of four weeks within which they may challenge the Bill under sections 33 and 35 of the Scotland Act respectively. The Bill may then be submitted for Royal Assent, at which point it becomes an Act.

Standing Orders allow for some variations from the above pattern in some cases. For example, Bills may be referred back to a committee during Stage 3 for further Stage 2 consideration. In addition, the procedures vary for certain categories of Bills, such as Committee Bills or Emergency Bills. For some volumes in the series, relevant proceedings prior to introduction (such as pre-legislative scrutiny of a draft Bill) may be included.

The reader who is unfamiliar with Bill procedures, or with the terminology of legislation more generally, is advised to consult in the first instance the Guidance on Public Bills published by the Parliament. That Guidance, and the Standing Orders, are available for sale from Stationery Office bookshops or free of charge on the Parliament’s website (www.scottish.parliament.uk).

The series is produced by the Legislation Team within the Parliament’s Chamber Office. Comments on this volume or on the series as a whole may be sent to the Legislation Team at the Scottish Parliament, Edinburgh EH99 1SP.

Notes on this volume

The Bill to which this volume relates followed the standard 3 stage process described above.

The Finance Committee did not report to the Economy, Energy and Tourism Committee on the Financial Memorandum at Stage 1. Written evidence received by the Finance Committee is, however, included in the Stage 1 Report at Annexe B.

The material included in Annexe D to the Stage 1 Report (Oral and other associated evidence) was published on the web only. This material is incorporated in this volume after the Stage 1 report. Other written evidence to the Economy, Energy and Tourism Committee (which was posted on the web only rather than published as part of the Stage 1 Report) is also included in this volume after the Stage 1 Report.

In addition to making a written response to the Economy, Energy and Tourism Committee’s Stage 1 Report, the Scottish Government made a written response to the Subordinate Legislation Committee on its Stage 1 Report. That response was considered by the Committee as part of its consideration of the Supplementary Delegated Powers Memorandum and so is included in the After Stage 2 section of this volume.
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Land Registration etc. (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to reform and restate the law on the registration of rights to land in the land register; to enable electronic conveyancing and registration of electronic documents in the land register; to provide for the closure of the Register of Sasines in due course; to make provision about the functions of the Keeper of the Registers of Scotland; to allow electronic documents to be used for certain contracts, unilateral obligations and trusts that must be constituted by writing; to provide about the formal validity of electronic documents and for their registration; and for connected purposes.

PART 1

THE LAND REGISTER

The Land Register of Scotland

1 The Land Register of Scotland

(1) There is to continue to be a public register of rights in land in Scotland (which is to continue to be known as the “Land Register of Scotland”).

(2) The register is to continue to be under the management and control of the Keeper of the Registers of Scotland.

(3) The register is to continue to have a seal.

(4) Subject to the provisions of this Act, the register is to be in such form (which may be, or be in part, an electronic form) as the Keeper considers appropriate.

(5) The Keeper must take such steps as appear reasonable to the Keeper to protect the register from—

   (a) interference,
   (b) unauthorised access, and
   (c) damage.

Structure and contents of the register

2 The parts of the register

The Keeper must make up and maintain, as parts of the register—
(a) the title sheet record,
(b) the cadastral map,
(c) the archive record, and
(d) the application record.

Title sheets and the title sheet record

3 Title sheets and the title sheet record

(1) The Keeper must make up and maintain a title sheet for each registered plot of land.
(2) The Keeper may make up and maintain a title sheet for a registered lease.
(3) The title sheet record is the totality of all such title sheets.
(4) A plot of land is an area or areas of land all of which are owned by one person, or one set of persons.
(5) A separate tenement constitutes a plot of land for the purposes of this Act.
(6) Subject to subsections (2) and (7), there is to be only one title sheet for each plot of land.
(7) The Keeper need not make up and maintain a title sheet for a plot of land which is a pertinent of another plot of land (or of two or more other plots of land) but may instead include it in the title sheet of the other plot or plots of land of which it is a pertinent.

4 Title and lease title numbers

(1) The Keeper must assign a title number to—
   (a) the title sheet of each registered plot of land, and
   (b) where a registered lease has a title sheet, to that title sheet.
(2) A title number is an unique identifier consisting of numerals or of letters and numerals.

5 Structure of title sheets

(1) A title sheet is to comprise—
   (a) a property section,
   (b) a proprietorship section,
   (c) a securities section, and
   (d) a burdens section.
(2) A section of a title sheet may be sub-divided if and as the Keeper considers appropriate.

6 The property section of the title sheet

(1) The Keeper must enter in the property section of the title sheet—
   (a) a description—
      (i) of the plot of land (being a description by reference to the cadastral map),
      (ii) of the nature of the proprietor’s right in the plot of land, and
      (iii) if the plot is a separate tenement, of the nature of the tenement,
(b) the particulars of any incorporeal pertinents (including, if there is a burdened property, the particulars of that property in so far as known),
(c) any agreement registered under section 63(2),
(d) any entry required under section 18(2)(a) or paragraph 7(a) of schedule 1,
(e) if the title sheet is a lease title sheet, the particulars of the lease, and
(f) where there is for the area of land another title sheet (as for example for a plot which is a separate tenement), the title number of that other title sheet.

(2) Paragraph (f) of subsection (1) does not apply where the other title sheet is the title sheet of a flat in a flatted building.

7 The proprietorship section of the title sheet

(1) The Keeper must enter in the proprietorship section of the title sheet—
(a) the name and designation of the proprietor, and
(b) in the case of ownership in common, the respective shares of the proprietors.

(2) Paragraph (a) of subsection (1) is subject to section 18(1)(b) and to paragraph 6(b) of schedule 1; and paragraph (b) of that subsection is subject to sections 16(2)(b) and 18(2)(b), to paragraph 7(b) of schedule 1 and to paragraphs 8(b) and 10 of schedule 4.

8 The securities section of the title sheet

(1) The Keeper must enter in the securities section of the title sheet particulars of any heritable security over the right in land to which the title sheet relates (including the name and designation of the creditor in the security).

(2) This section is subject to section 18(3)(b) and to paragraph 8(b) of schedule 1.

9 The burdens section of the title sheet

(1) The Keeper must enter in the burdens section of the title sheet—
(a) where the right in land to which the title sheet relates is encumbered with a title condition—
(i) the terms of the title condition,
(ii) a description of any benefited property (in so far as known to the Keeper), and
(iii) if the title condition is a personal real burden, the name and designation of the person who has title to enforce it,
(b) where there is a long lease, other than a long sub-lease, which has real effect, that fact,
(c) in a case where the title sheet is a lease title sheet, where there is a long sub-lease, other than a long sub-sub-lease, which has real effect, that fact,
(d) in so far as known to the Keeper, any public right of way (by whatever means) over or through the land,
(e) particulars of any path order made under section 22 of the Land Reform (Scotland) Act 2003 (asp 2) (compulsory powers to delineate paths in land in respect of which access rights are exercisable), and

(f) any other encumbrance the inclusion of which in the register is permitted or required, expressly or impliedly, by an enactment and the name and designation of the person who has title to enforce that encumbrance.

(2) In subsection (1)—

“encumbrance” does not include a heritable security,

“long lease” means—

(a) a lease exceeding 20 years, or

(b) a lease which includes provision (however expressed) requiring the landlord to renew the lease at the tenant’s request as a result of which (and without any subsequent agreement express or implied between the landlord and tenant) the total duration could exceed 20 years.

(3) This section is subject to section 18(4) and to paragraph 9 of schedule 1.

10 What is entered or incorporated by reference in a title sheet

(1) The Keeper must, in addition to what is to be entered under sections 6 to 9, enter the matters mentioned in subsection (2) in a title sheet.

(2) The matters are—

(a) any statement made by virtue of any of subsections (3) and (4)(b) of section 73 or subsection (5)(a) of section 74,

(b) particulars of any special destination,

(c) a reference to an entry in the Register of Inhibitions if it is an entry by virtue of which a change to the title sheet might come to be made,

(d) the terms of any caveat warrant for which is granted under section 65(3), and

(e) such other information (if any) as the Keeper considers appropriate.

(3) The Keeper may incorporate by reference in a title sheet—

(a) a document in the archive record, or

(b) a deed in any other register under the management and control of the Keeper or of the Keeper of the Records of Scotland.

(4) The Keeper must not enter or incorporate by reference in a title sheet any rights or obligations except in so far as their entry is authorised by an enactment.

(5) The entry or incorporation by reference in a title sheet of any right or obligation, in so far as not so authorised—

(a) does not constitute notice of that right or obligation, and

(b) is without any other effect.

(6) Subsection (2)(b) is subject to section 18(3)(c) and to paragraph 8(c) of schedule 1.
Part I—The Land Register

The cadastral map

11 The cadastral map

(1) The cadastral map is a map—

(a) showing the totality of registered geospatial data (other than supplementary data in individual title sheets),

(b) showing for each cadastral unit—

(i) the cadastral unit number,

(ii) the boundaries of the unit, and

(iii) the title number of any registered lease relating to the unit, and

(c) otherwise depicting registered rights in such manner as the Keeper considers appropriate.

(2) A cadastral unit which represents a separate tenement must be shown on the map in such a way as will distinguish it as a cadastral unit from other units.

(3) The cadastral map may (but need not) show the boundaries of cadastral units on the vertical plane.

(4) The cadastral map may contain such other information as the Keeper considers appropriate.

(5) The cadastral map must be based upon the base map.

(6) The base map is—

(a) the Ordnance Map,

(b) another system of mapping, being a system which accords with such requirements as the Scottish Ministers may, by order, prescribe, or

(c) a combination of the Ordnance map and such other system.

(7) On the base map being updated, the Keeper must make any changes to the register which are necessary in consequence of the updating.

(8) For the purposes of subsection (1)(a), the Keeper may determine what data is supplementary data.

(9) This section and sections 12 and 13 are without prejudice to section 16.

12 Cadastral units

(1) A cadastral unit is a unit which represents a single registered plot of land.

(2) Subject to subsection (3), the same area of land cannot be represented by more than one cadastral unit.

(3) The Keeper need not represent a plot of land such as is mentioned in section 3(7) as a separate cadastral unit but may instead include it in the cadastral unit representing the plot or plots of land of which it is a pertinent.

(4) The Keeper must assign a cadastral unit number to each cadastral unit.

(5) The cadastral unit number is to be the title number of the plot of land which that unit represents.
13 The cadastral map: further provision

(1) Where a plot of land—
   (a) lies wholly outwith the base map, or
   (b) extends partly outwith the base map,
the Keeper may adopt such means of representing the boundaries on the cadastral map as the Keeper considers appropriate.

(2) The Keeper may—
   (a) combine cadastral units,
   (b) remove a cadastral unit from the map, or
   (c) divide a cadastral unit.

(3) On dividing a cadastral unit under subsection (2)(c), the Keeper may combine any of the resultant parts with a different cadastral unit.

(4) The Keeper must make such changes to the register as are necessary in consequence of anything done under subsections (2) and (3).

The archive record

14 The archive record

(1) The archive record is to consist of—
   (a) copies of all documents submitted to the Keeper,
   (b) copies of all documents which the Keeper is required to include under land register rules, and
   (c) copies of such other documents as the Keeper considers appropriate.

(2) The Keeper must also include in the archive record such information as is required for the purposes of section 100.

(3) But the Keeper need not include in the archive record a copy of—
   (a) any enactment, or
   (b) any document comprised in any other register under the management and control of the Keeper or of the Keeper of the Records of Scotland.

(4) A fact which can be discovered from the archive record is not, by reason only of that circumstance, a fact which a person ought to know.

The application record

15 The application record

The application record is to consist of all—
   (a) applications for registration as are for the time being pending, and
   (b) advance notices as are for the time being extant.
Tenements etc.

16 **Tenements and other flatted buildings**

(1) Where the Keeper considers it appropriate in relation to a flatted building to do so, the Keeper may, instead of representing each registered flat in the building as a separate cadastral unit, represent the building and all the registered flats in it as a single cadastral unit.

(2) Where a flatted building and the registered flats in it are represented as a single cadastral unit—

(a) the cadastral map must show, for that cadastral unit, the title numbers of each registered flat, and

(b) the respective pro indiviso shares in the pertinents of the registered flats need not be entered in the proprietorship section of the title sheet of any of those flats.

(3) But subsections (1) and (2) do not apply in relation to land pertaining to the flatted building which—

(a) extends more than 25 metres from the building in so far as it so extends, or

(b) is further than 25 metres from the building (measuring along a horizontal plane from whatever point of that building is nearest to the land).

(4) In this Act a “flatted building” means—

(a) a tenement, or

(b) any other subdivided building.

(5) A “subdivided building”—

(a) means a building or part of a building, not being a tenement, which comprises two or more related flats, at least two of which—

(i) are, or are designed to be, in separate ownership, and

(ii) are divided from each other vertically, and

(b) includes the solum and any other land pertaining to the building or part of the building.

(6) In determining whether flats comprised in a subdivided building are related, the Keeper must have regard, among other things, to—

(a) the title to the building, and

(b) any real burdens.

(7) In subsection (6), “title to the building” means—

(a) any conveyance, or reservation, of property which affects the subdivided building, any flat in the building or any pertinent of the building or of any such flat, and

(b) the relevant title sheet of the building, any flat in it or any pertinent of the building or of any such flat.

(8) Expressions used in this section and in sections 26 and 29 of the Tenements (Scotland) Act 2004 (asp 11) have the meanings given in that Act.
Shared plots

17 Shared plots

(1) This section applies where a plot of land—

(a) is owned in common by the proprietors of two or more other plots of land by virtue of their ownership of those other plots,

(b) is not owned in common by anyone else.

(2) The Keeper may, if the Keeper considers it appropriate, designate the title sheet of the plot of land to be a “shared plot title sheet”.

(3) In this section and in sections 18 and 19—

(a) references to a “shared plot” are to a plot of land the title sheet of which is designated under subsection (2),

(b) references to the “sharing plots” are to the other plots of land the proprietors of which own the shared plot in common.

(4) Unless the context otherwise requires, any reference in a document to a sharing plot is to be taken to include a reference to the share in the shared plot which pertains to the sharing plot.

(5) Registration has the same effect in relation to a share in a shared plot which pertains to a sharing plot as it has in relation to the sharing plot (except in so far as may otherwise be provided in the deed registered).

18 Shared plot and sharing plot title sheets

(1) The Keeper must enter—

(a) in the property section of the title sheet of each of the sharing plots, the title number of the shared plot title sheet,

(b) in the proprietorship section of the shared plot title sheet, the title numbers of the title sheets of each of the sharing plots.

(2) The Keeper must also enter—

(a) in the property section of the title sheet of each sharing plot, the quantum of the share which the proprietor of that sharing plot has in the shared plot,

(b) in the proprietorship section of the shared plot title sheet, in relation to the information required by section 7(1)(b), the respective share each sharing plot has in the shared plot,

(c) in the securities section of that title sheet, a statement to the effect that the shared plot may be subject to a heritable security registered against a sharing plot,

(d) in the burdens section of that title sheet, a statement to the effect that the shared plot may be subject to some other encumbrance so registered.

(3) The Keeper must not enter in or, if entered, must omit from—

(a) the proprietorship section of the shared plot title sheet, the information that would otherwise be required under section 7(1)(a),

(b) the securities section of that title sheet, the information that would otherwise be required under section 8(1) unless the security is over the shared plot only.
(c) that title sheet, any matter that would otherwise be required under section 10(2)(b).

(4) The Keeper may, if the condition mentioned in subsection (5) is satisfied and the Keeper considers it appropriate, omit from the burdens section of the shared plot title sheet any entry which would otherwise be required under section 9(1).

(5) The condition is that the encumbrance to which the entry would relate is (or falls to be) registered against each of the sharing plots.

19 Conversion of shared plot title sheet to ordinary title sheet

(1) The Keeper may at any time revoke a designation under section 17(2) of a title sheet as a shared plot title sheet.

(2) Where the Keeper revokes a designation, the Keeper must make such changes to the title sheets of the plots of land that were, in relation to the shared plot title sheet, the shared plot and the sharing plots as are consequential upon the revocation.

20 Shared plot title sheets in relation to registered leases

Schedule 1 makes provision for registered leases tenanted in common similar to that made by sections 17 to 19 for plots of land owned in common.

PART 2
REGISTRATION

Applications for registration

21 Application for registration of deed

(1) A person may apply to the Keeper for registration of a registrable deed.

(2) The Keeper must accept an application under subsection (1) to the extent the applicant satisfies the Keeper that, as at the date of application, the general application conditions are met and—

(a) where the application is made in respect of a disposition of, or a notice of title to, an unregistered plot, the conditions set out in section 23 are met,

(b) where section 25 applies, the conditions set out in that section are met,

(c) in any other case, the conditions set out in section 26 are met.

(3) To the extent the applicant does not so satisfy the Keeper, the Keeper must reject the application.

(4) Subsection (2) is subject to section 44(5).

22 General application conditions

(1) The general application conditions are—

(a) the application is such that the Keeper is able to comply, in respect of it, with such duties as the Keeper has under Part 1,

(b) the application does not relate to a souvenir plot,
(c) the application does not fall to be rejected by virtue of section 6 or 9G of the Requirements of Writing (Scotland) Act 1995 (c.7) (registration of document) or of a prohibition in an enactment,

(d) the application is in the form (if any) prescribed by land register rules, and

(e) either—

(i) such fee as is payable for registration is paid, or

(ii) arrangements satisfactory to the Keeper are made for payment of that fee.

(2) In subsection (1)(b), “souvenir plot” means a plot of land which—

(a) is of inconsiderable size and of no practical utility, and

(b) is neither—

(i) a registered plot, nor

(ii) a plot the ownership of which has, at any time, separately been constituted or transferred by a document recorded in the Register of Sasines.

**Conditions of registration: transfer of unregistered plot**

(1) The conditions are that—

(a) the application is made by the grantee of the disposition or as the case may be the person in whose favour is the notice of title,

(b) the deed is valid,

(c) the deed so describes the plot as to enable the Keeper to delineate its boundaries on the cadastral map,

(d) where within the plot there is a lesser area in respect of which a registrable encumbrance is constituted there is included in, or submitted with, the application a plan or description sufficient to enable the Keeper to delineate the boundaries of the lesser area on the cadastral map,

(e) there is included in the application a description of every public right of way (by whatever means) over or through the plot in so far as known to the applicant.

(2) Subsection (1)(c) and (d) do not apply—

(a) if the plot to which the application relates is a flat in a flatted building, and

(b) either—

(i) the flatted building is, by virtue of section 16, represented as a single cadastral unit on the cadastral map, or

(ii) the Keeper has indicated that the flatted building is, by virtue of that section, to be so represented.

(3) Despite subsection (2), subsection (1)(c) and (d) apply in so far as the plot includes a pertinent outwith the flatted building, being a pertinent only of the plot.

(4) Subsection (1)(d) does not apply in relation to an encumbrance which consists of—

(a) a right to lead a pipe, cable, wire or other such enclosed unit over or under land,

(b) a servitude created other than by registration.

(5) In this section, “the deed” means the disposition or as the case may be the notice of title.
24 **Circumstances in which section 25 applies**

(1) Section 25 applies where any of subsections (2) to (7) apply.

(2) This subsection applies where—

(a) the application is in respect of a grant of a lease, and

(b) the subjects of the lease consist of or form part of an unregistered plot of land.

(3) This subsection applies where—

(a) the application is in respect of an assignation of an unregistered lease, and

(b) the subjects of the lease consist of or form part of an unregistered plot of land.

(4) This subsection applies where—

(a) the application is in respect of a sublease granted by a tenant, and

(b) the subjects of the tenant’s lease consist of or form part of an unregistered plot of land.

(5) This subsection applies where—

(a) the application is in respect of a deed registrable by virtue of section 47(4), and

(b) the land to which the deed relates consists of or forms part of an unregistered plot of land.

(6) This subsection applies where—

(a) the application is in respect of a notice of title to a subordinate real right,

(b) the notice of title is registrable by virtue of section 4A (as inserted by section 52(3)) of the Conveyancing (Scotland) Act 1924 (c.27),

(c) the last completed title to the subordinate real right is recorded in the Register of Sasines, and

(d) the land in respect of which the subordinate real right is constituted consists of or forms part of an unregistered plot of land.

(7) This subsection applies where—

(a) the application is in respect of a standard security granted over an unregistered subordinate real right, and

(b) the land in respect of which the subordinate real right is constituted consists of or forms part of an unregistered plot of land.

25 **Conditions of registration: certain deeds relating to unregistered plots**

(1) The conditions are that—

(a) the deed is valid,

(b) the deed so describes the plot as to enable the Keeper to delineate its boundaries on the cadastral map,

(c) where within the plot there is a lesser area in respect of which a registrable encumbrance is constituted there is included in, or submitted with, the application a plan or description sufficient to enable the Keeper to delineate the boundaries of the lesser area on the cadastral map,
(d) there is included in the application a description of every public right of way (by whatever means) over or through the plot in so far as known to the applicant.

(2) Subsection (1)(b) and (c) do not apply—

(a) if the plot to which the deed relates is a flat in a flatted building, and

(b) either—

(i) the flatted building is, by virtue of section 16, represented as a single cadastral unit in the cadastral map, or

(ii) the Keeper has indicated that the flatted building is, by virtue of that section, to be so represented.

(3) Despite subsection (2), subsection (1)(b) and (c) apply in so far as the plot includes a pertinent outwith the flatted building, being a pertinent only of the plot.

(4) Subsection (1)(c) does not apply in relation to an encumbrance which consists of—

(a) a right to lead a pipe, cable, wire or other such enclosed unit over or under land,

(b) a servitude created other than by registration.

(5) In this section and sections 30 and 40 in so far as they apply by virtue of this section, references to the plot are to be read as references to—

(a) where this section applies by virtue of section 24(2), (3) or (4), the area of land which forms the subjects of the lease,

(b) where this section applies by virtue of section 24(5), the area of land to which the deed relates,

(c) where this section applies by virtue of section 24(6) or (7), the area of land in respect of which the subordinate right is constituted.

26 Conditions of registration: deeds relating to registered plots

(1) The conditions are that—

(a) the deed is valid,

(b) the deed relates to a registered plot of land,

(c) the deed narrates the title number of each title sheet to which the application relates, and

(d) the deed, in so far as it relates to part only of a plot of land or of the subjects of a lease, so describes the part as to enable the Keeper to delineate on the cadastral map the boundaries of the part.

(2) Where the title number of the title sheet of a sharing plot is narrated in the deed, subsection (1)(c) does not require the narration of the title number of the title sheet of the shared plot.

(3) Subsection (1)(d) does not apply if—

(a) the part to which the deed relates is a flat in a flatted building, and

(b) either—

(i) the flatted building is, by virtue of section 16, represented as a single cadastral unit in the cadastral map, or
(ii) the Keeper has indicated that the flatted building is, by virtue of that section, to be so depicted.

(4) Despite subsection (3), subsection (1)(d) applies in so far as the part includes a pertinent outwith the flatted building, being a pertinent only of the part.

(5) Subsection (1)(d) does not apply in the case of an application which relates to registration to create as a servitude a right to lead a pipe, cable, wire or other such enclosed unit over or under land.

27 Application for voluntary registration

(1) A person mentioned in subsection (2) may apply for registration of an unregistered plot of land or any part of that plot.

(2) The person is the owner (or, in the case of ownership in common, any of the owners) of the plot.

(3) The Keeper must accept an application under subsection (1) to the extent—

(a) the applicant satisfies the Keeper that, as at the date of the application, the following are met—

(i) the general application conditions, and

(ii) the conditions mentioned in section 28, and

(b) the Keeper is satisfied that it is expedient that the plot (or the part of the plot) should be registered.

(4) To the extent the applicant does not so satisfy the Keeper, the Keeper must reject the application.

(5) Where the application is in respect of a part of a plot of land, references to the plot in section 28 and section 30 in so far as it applies by virtue of this section are to be read as references to the part.

(6) The Scottish Ministers may by order repeal subsection (3)(b).

(7) Before making such an order, the Scottish Ministers must consult the Keeper.

(8) An order under subsection (6) may make different provision for different areas.

28 Conditions of registration: voluntary registration

(1) The conditions are that—

(a) there is submitted with the application a plan or description of the plot sufficient to enable the Keeper to delineate the plot’s boundaries in the cadastral map,

(b) where within the plot there is a lesser area in respect of which a registrable encumbrance is constituted there is included in, or submitted with, the application a plan or description sufficient to enable the Keeper to delineate the boundaries of the lesser area in the cadastral map.

(2) Subsection (1)(a) and (b) does not apply—

(a) if the plot to which the application relates is a flat in a flatted building, and

(b) either—
(i) the flatted building is, by virtue of section 16, represented as a single cadastral unit on the cadastral map, or
(ii) the Keeper has indicated that the flatted building is, by virtue of that section, to be so depicted.

(3) Despite subsection (2), subsection (1)(a) and (b) applies in so far as the plot includes a pertinent outwith the flatted building, being a pertinent only of the plot.

(4) Subsection (1)(b) does not apply in relation to an encumbrance which consists of—
(a) a right to lead a pipe, cable, wire or other such enclosed unit over or under land, or
(b) a servitude created other than by registration.

29 Keeper-induced registration

(1) Other than on application and irrespective of whether the proprietor or any other person consents, the Keeper may register an unregistered plot of land or part of that plot.

(2) Where the Keeper decides under this section to register a part of a plot, references to the plot in section 30 are to be read as references to the part.

30 Completion of registration of plot

(1) This section applies where—
(a) the Keeper accepts—
(i) an application under section 21 in respect of a disposition of, or a notice of title to, an unregistered plot of land,
(ii) an application under section 21 by virtue of it meeting the conditions in section 25, or
(iii) an application under section 27 in respect of a plot of land or a part of a plot, or
(b) the Keeper decides to register a plot of land or a part of a plot under section 29.

(2) The Keeper must—
(a) make up a title sheet for the plot,
(b) make such other changes to the title sheet record as are necessary or expedient,
(c) create a cadastral unit for the plot,
(d) make such other changes to the cadastral map as are necessary or expedient, and
(e) copy into the archive record any document which—
(i) has been submitted to the Keeper or, where this section applies by virtue of subsection (1)(a)(ii) or (1)(b), is reasonably available to the Keeper, and
(ii) is relevant to the accuracy of the register.

(3) Subsection (2)(e) is subject to section 14(3).

(4) Changes under paragraph (b) or (d) of subsection (2) may include—
(a) cancelling a title sheet and cadastral unit, or
(b) making up a new title sheet and creating a new cadastral unit.

(5) In a case where—

(a) this section applies by virtue of subsection (1)(a)(ii) or (1)(b), and

(b) any name or designation to be entered in the new title sheet to be made up cannot, or cannot with reasonable certainty, be determined by the Keeper,

the Keeper may, in place of or as part of that entry, enter a statement that the name or designation is not known or as the case may be is not known with reasonable certainty.

31 Completion of registration of deed

(1) This section applies where the Keeper accepts an application under section 21 other than an application to which section 30 applies.

(2) The Keeper must as soon as reasonably practicable after accepting the application—

(a) make such changes to the title sheet, or each of the title sheets, to which the application relates as are necessary to give effect to the deed,

(b) make such other changes (if any) to the title sheet record as are necessary or expedient,

(c) make such changes (if any) to the cadastral map as are necessary or expedient, and

(d) copy into the archive record—

(i) the deed being given effect to by registration, and

(ii) any other document which has been submitted to the Keeper and is relevant to the accuracy of the register.

(3) Subsection (2)(d)(ii) is subject to section 14(3).

(4) Changes under paragraphs (a) to (c) of subsection (2) may include—

(a) cancelling a title sheet and cadastral unit, or

(b) making up a new title sheet and creating a new cadastral unit.

General provision about applications

32 Recording in application record

(1) On receipt of an application for registration, the Keeper must—

(a) as soon as reasonably practicable, or

(b) if the application record is not open for the making of entries, as soon as reasonably practicable on the application record next opening for that purpose,

enter in the application record details of the application (including the date the entry under this subsection is made).

(2) No such entry need be made however if, on receipt of the application, it is immediately apparent to the Keeper that the application falls to be rejected.
(3) On an application being—
   (a) withdrawn,
   (b) accepted by the Keeper, or
   (c) rejected by the Keeper,
   the Keeper must remove the entry relating to it from the application record.

33 Withdrawal and amendments etc. of application
   (1) While an application for registration is pending, the applicant—
       (a) may withdraw it, but
       (b) except with the consent of the Keeper, may not substitute it or amend it.
   (2) Land register rules may specify circumstances in which consent under subsection (1)(b)
       must be given.

34 Period within which decision must be made
   (1) The Keeper’s decision as to whether to accept or reject an application for registration
       must be made within such period as may be prescribed in land register rules.
   (2) Different periods may be so prescribed for different kinds of application.
   (3) The Keeper must deal with an application without unreasonable delay.

Date of application and registration etc.

35 Date of application
   Any reference in this Act, however expressed, to the date of an application for
   registration is a reference to the date an entry in respect of the application is made in the
   application record under subsection (1) of section 32 (or, but for subsection (2) of that
   section, would fall to be made).

36 Date and time of registration
   (1) Where the Keeper accepts an application for registration, the date of registration is the
       date of the application.
   (2) The time of registration is deemed to be the moment at which, following the application
       being received by the Keeper, the application record next closes.
   (3) The Scottish Ministers may by order—
       (a) amend subsection (2) so as to make different provision as regards time of
           registration, and
       (b) make such other amendments to this Act as are consequential upon that
           amendment.
   (4) Before making such an order, the Scottish Ministers must consult the Keeper.
37  **Power to amend section 6 of the Land Registers (Scotland) Act 1868**

If, under section 36(3)(a), the Scottish Ministers amend this Act, they may, in that order, correspondingly amend section 6 of the Land Registers (Scotland) Act 1868 (c.64) (which provides for registration in the General Register of Sasines) and make such other amendments to that Act as are consequential upon that amendment to that section.

38  **Order in which applications are to be dealt with**

(1) The Keeper must deal with two or more applications for registration in relation to the same land in order of receipt.

(2) In the absence of evidence to the contrary, the order of receipt is to be taken to be the order in which the details of the applications were entered in the application record.

(3) Subsection (1) is subject to subsections (4) to (7).

(4) Subsection (5) applies where—

(a) two applications (“application A” and “application B”) are received on the same date in relation to the same land,

(b) to accept one of the applications would require the Keeper to reject the other,

(c) the deed to which application A purports to give effect is a deed in relation to which a protected period is running, and

(d) the deed to which application B purports to give effect either—

(i) is not such a deed, or

(ii) is such a deed but the protected period relating to the deed to which application A purports to give effect began before the protected period relating to the deed to which application B purports to give effect.

(5) The Keeper must deal with application A before application B.

(6) Subsection (7) applies where—

(a) two applications (“application C” and “application D”) are received on the same date in relation to the same land,

(b) the deed to which one of them (application “C”) purports to give effect is a deed in favour of a person (“X”), and

(c) the deed to which the other (application “D”) purports to give effect is a deed granted by X.

(7) The Keeper must deal with application C before application D.

39  **Notification of acceptance, rejection or withdrawal of application**

(1) On an application for registration being accepted or rejected, the Keeper must notify—

(a) the applicant,

(b) the granter of the deed sought to be registered (if any),
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(c) if notification of receipt of the application was given under section 44(1), those to whom it was given, and
(d) any other person the Keeper considers appropriate.

(2) On an application for registration being withdrawn, the Keeper must notify—

(a) the granter of the deed which had been sought to be registered (if any),
(b) if such notification as is mentioned in subsection (1)(c) was given, those to whom it was given, and
(c) any other person the Keeper considers appropriate.

(3) The Keeper’s duty to notify persons under subsections (1) and (2) only applies in so far as the Keeper considers it reasonably practicable to notify them.

(4) Notification is to be by such means as the Keeper considers appropriate.

(5) Land register rules may make further provision about notification under subsections (1) and (2).

(6) A failure to comply with subsections (1) and (2) or with any rules so made does not affect the competence or validity of the acceptance, rejection or withdrawal in question.

40 Notification to proprietor

(1) This section applies where—

(a) the Keeper accepts an application under section 21 by virtue of it meeting the conditions in section 25, or
(b) the Keeper registers a plot of land under section 29.

(2) The Keeper is to notify—

(a) the proprietor of the plot, and
(b) any other person the Keeper considers appropriate.

(3) The Keeper’s duty to notify persons under subsection (2) only applies in so far as the Keeper considers it reasonably practicable to notify them.

(4) Notification is to be by such means as the Keeper considers appropriate.

(5) Land register rules may make further provision about notification under subsection (2).

(6) A failure to comply with subsection (2) or with any rules so made does not affect the competence or validity—

(a) of the acceptance of the application in question, or
(b) of the registration of the plot of land in question.

41 Notification to Scottish Ministers of certain applications

(1) This section applies where an application under section 21 is rejected on the ground that (or on grounds which include the ground that) the Keeper is not satisfied that the application does not relate to a transfer prohibited—

(a) by section 40(1) of the Land Reform (Scotland) Act 2003 (asp 2) (effect of registration of community interest in land), or
(b) under section 37(5)(e) of that Act (prohibition pending determination as to whether a community interest in land is to be registered).

(2) However, this section does not apply where the only reason for the Keeper not being satisfied as mentioned in subsection (1) is that the application is not accompanied by a declaration required under section 43(2) of that Act (incorporation of certain declarations into deed giving effect to transfer).

(3) The Keeper must—
   (a) notify the Scottish Ministers, and
   (b) provide them with a copy of the application.

Prescriptive claimants etc.

42 Prescriptive claimants

(1) For the purposes of sections 23(1)(b), and 26(1)(a), a disposition is to be treated as being valid despite not being so if the conditions mentioned in subsections (2) to (4) are met.

(2) It appears to the Keeper that the disposition is not valid (or, as regards part of the land to which the application relates, is not valid) for the reason only that the person who granted it had no title to do so.

(3) The applicant satisfies the Keeper—
   (a) that for a continuous period of 7 years immediately preceding the date of application the land to which the application relates (or as the case may be the part in question) has not been possessed by the proprietor or by any person in right of the proprietor, and
   (b) that the land (or part) has been possessed openly, peaceably and without judicial interruption by the disponer or by the applicant for a continuous period of 1 year immediately preceding the date of application (or first by the disponer and then by the applicant for periods which together constitute a continuous period of 1 year immediately preceding that date).

(4) The applicant satisfies the Keeper that the following person has been notified of the application—
   (a) the proprietor,
   (b) if there is no proprietor (or none can be identified), any person who appears to be able to take steps to complete title as proprietor, or
   (c) if there is no proprietor and no such person (or, in either case, none can be identified), the Crown.

(5) For the purposes of section 26(1)(a), a deed is to be treated as being valid despite not being so if—
   (a) the deed is granted by or is directed against a prescriptive claimant, and
   (b) the application would be accepted were the prescriptive claimant’s title valid.

(6) In subsection (5), a “prescriptive claimant” is—
   (a) a person whose name is entered as proprietor in the proprietorship section of a title sheet, on an application being accepted by virtue of subsection (1),
(b) a person whose name is entered as holder of a right, in the appropriate section of a title sheet, the entry in relation to the right being one marked provisional under section 79(3)(a)(i),

(c) any person in right of a person mentioned in paragraph (a) or (b).

5

(7) Land register rules may make further provision about notification under subsection (4).

(8) The Scottish Ministers may, by order, amend paragraph (a) or (b) of subsection (3) so as to substitute for the period for the time being mentioned in the sub-paragraph in question a different period.

(9) Before making such an order, the Scottish Ministers must consult the Keeper.

43 Provisional entries on title sheet

(1) Where the Keeper accepts an application under section 21 by virtue of section 42(1) or (5), the Keeper is to mark any resulting entry in the title sheet as provisional.

(2) The Keeper is to remove the provisional marking from an entry if and when the real right to which the entry relates becomes, under section 1 of the Prescription and Limitation (Scotland) Act 1973 (c.52) (validity of right), exempt from challenge.

(3) While an entry remains provisional—

(a) it does not affect any right held by any person in the land to which the entry relates, and

(b) rights set out in the register are not to be altered or deleted by virtue only of the entry.

44 Notification of prescriptive applications

(1) Before accepting an application under section 21 which is received by virtue of section 42(1), the Keeper must notify—

(a) the proprietor,

(b) if there is no proprietor (or none can be identified), any person who appears to the Keeper able to take steps to complete title as proprietor, or

(c) if there is no proprietor and no such person (or, in either case, none can be identified), the Crown.

(2) The Keeper’s duty to notify persons under subsection (1) only applies in so far as the Keeper considers it reasonably practicable to notify them.

(3) Notification is to be by such means as the Keeper considers appropriate.

(4) A person to whom a notice is given under subsection (1) may object in writing to the application being accepted.

(5) If the Keeper receives such an objection within 60 days of the notice, the Keeper must reject the application.

(6) Land register rules may make further provision about notification under subsection (1).

(7) The Scottish Ministers may, by order, amend subsection (5) so as to substitute for the number of days for the time being mentioned there a different number of days.

(8) Before making such an order, the Scottish Ministers must consult the Keeper.
**Further provision**

45 **Applications relating to compulsory acquisition**

In the application of sections 21, 23, 30 and 47 to a case in which transfer of ownership is by virtue of compulsory acquisition, any reference in those sections to a “disposition” includes a reference to—

(a) a conveyance the form of which is provided for by an enactment,

(b) a notarial instrument, or

(c) a general vesting declaration.

46 **Effect of death or dissolution**

10 (1) The Keeper must reject an application if the applicant dies, or as the case may be is dissolved, before the date of the application.

(2) An application is not incompetent by reason only that the person who granted the deed sought to be registered dies, or as the case may be is dissolved, after the delivery of the deed.

15 **Closure of Register of Sasines etc.**

47 **Closure of Register of Sasines etc.**

(1) The recording of any of the following in the Register of Sasines has no effect—

(a) a disposition,

(b) a lease,

(c) an assignation of a lease,

(d) any other deed in so far as it relates to a registered plot of land or to a registered lease.

(2) The recording, on or after such day as is prescribed, of a standard security in the Register of Sasines has no effect.

(3) The recording, on or after such day as is prescribed, of a deed other than one mentioned in subsection (1) or (2) in the Register of Sasines has no effect.

(4) On and after the day prescribed under subsection (3), any deed the recording of which would, by virtue of that subsection, have no effect is (subject to the provisions of this Act) registrable in the Land Register.

(5) Where by virtue of this section the recording of a deed, disposition, lease, assignation or standard security in the Register of Sasines would have no effect, the Keeper is to reject any application to record it.

(6) Subsection (1)(a) is without prejudice to sections 4 (creation of real burden) and 75 (creation of positive servitude by writing: deed to be registered) of the Title Conditions (Scotland) Act 2003 (asp 9).

(7) Any day prescribed under subsection (2) or (3) is to be a day no earlier than the day subsection (3)(b) of section 27 is repealed by virtue of subsection (6) of that section.

(8) In subsections (2) and (3), “prescribed” means prescribed by the Scottish Ministers by order.
(9) An order under subsection (2) or (3) may make different provision for different areas.

(10) Before making an order under subsection (2) or (3), the Scottish Ministers must consult the Keeper.

PART 3

COMPETENCE AND EFFECT OF REGISTRATION

Registrable deeds

(1) A deed is registrable only if and in so far as its registration is authorised (whether expressly or not) by—

(a) this Act,
(b) an enactment mentioned in subsection (3), or
(c) any other enactment.

(2) Registration of such a deed has the effect provided for (whether expressly or not) by—

(a) this Act,
(b) an enactment mentioned in subsection (3),
(c) any other enactment, or
(d) any rule of law.

(3) The enactments referred to in subsections (1) and (2) are—

(a) the Registration of Leases (Scotland) Act 1857 (c.26),
(b) the Conveyancing (Scotland) Act 1924 (c.27),
(c) the Conveyancing and Feudal Reform (Scotland) Act 1970 (c.35),
(d) the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73).

(4) Registration of an invalid deed confers real effect only to the extent that an enactment so provides.

Specific provisions on competence and effect of registration

Transfer by disposition

(1) A disposition of land may be registered.

(2) Registration of a valid disposition transfers ownership.

(3) An unregistered disposition does not transfer ownership.

(4) Subsections (1) to (3) are subject to—

(a) sections 42 and 82, and
(b) any other enactment or rule of law by or under which ownership of land may pass.

(5) In subsection (1), “land” includes land held on udal title.
50 Proper liferents

(1) A deed creating a proper liferent over land may be—
   (a) registered, or
   (b) recorded in the Register of Sasines.

(2) The proper liferent is not created before the deed is so registered or recorded.

(3) Subsections (1) and (2) are subject to any other enactment or any rule of law by or under which a proper liferent over land may be created.

(4) References in this section to the recording of a deed include references to the recording of a notice of title deducing title through a deed.

51 Registration of, and of transactions and events affecting, leases

(1) The Registration of Leases (Scotland) Act 1857 (c.26) is amended as follows.

(2) After section 20 insert—

“20A Certain transactions or events registrable in the Land Register of Scotland

(1) A deed mentioned in subsection (2) which affects a lease registered in the Land Register of Scotland is registrable in that register.

(2) The deed is one—
   (a) terminating the lease,
   (b) extending the duration of the lease,
   (c) otherwise altering the terms of the lease.

20B Effect of registration in the Land Register of Scotland

(1) Registration in the Land Register of Scotland has the effect of—
   (a) vesting in the person registered as entitled to the lease a real right in and to the lease and in and to any right or pertinent, express or implied, forming part of the lease, subject only to the effect of any matter entered in that register so far as adverse to the entitlement,
   (b) making any registered right or obligation relating to the registered lease a real right or obligation, and
   (c) affecting any registered real right or obligation relating to the registered lease,

in so far as the right or obligation is capable, under any enactment or rule of law, of being vested as a real right, of being made real or (as the case may be) of being affected as a real right.

(2) Registration in the Land Register of Scotland is the only means—
   (a) whereby rights or obligations relating to a registered lease become real rights or obligations, or
   (b) of affecting such real rights or obligations.

(3) Subject to Part 9 of the Land Registration etc. (Scotland) Act 2012 (asp 00) (rights to persons acquiring etc. in good faith), registration of an invalid deed confers no real effect.”
(3) Schedule 2, which contains minor and consequential modifications of the 1857 Act in consequence on this Act, has effect.

52  Completion of title

(1) The Conveyancing (Scotland) Act 1924 (c.27) is amended as follows.

5  (2) In section 4 (completion of title)—

(a) for “by a title which has not been completed by being recorded in the appropriate Register of Sasines, may” substitute “may, if the last recorded title to the right is recorded in the General Register of Sasines,”.

(b) the title of the section becomes “Completion of title: General Register of Sasines”.

10  (3) After section 4 insert—

“4A Completion of title: Land Register

Any person having right either to land or to a heritable security may complete title by registration in the Land Register of a notice of title in or as nearly as may be in the terms of the form in schedule BA to this Act.

4B Further provision as regards completion of title

(1) If it is competent to register a disposition or assignation in the Land Register, it is not competent for the disponee or assignee to complete title in the manner provided for in section 4 of this Act.

(2) In this section and in section 4A of this Act, “Land Register” means the Land Register of Scotland.”.

15  (4) After section 49 insert—

“49A Power of the Scottish Ministers to prescribe forms

(1) The Scottish Ministers may, by order, modify any schedule to this Act.

(2) Such an order may, in particular, substitute for any form, notice, clause, warrant or other deed for the time being set out in such a schedule another such form, notice, clause, warrant or other deed.

(3) An order under this section is subject to the affirmative procedure.”.

(5) After schedule B insert—

“SCHEDULE BA

FORM OF NOTICE OF TITLE: LAND REGISTER

Be it known that A.B. (designation) has right as proprietor to all and whole (description) conform to the last completed title and subsequent writ (or writs), which title and writ (or writs) have been examined by me, Y.Z. (designation), Notary Public (or Law Agent).

[Testing clause.]
LAND REGISTRATION ETC. (SCOTLAND) BILL

PART 3—COMPETENCE AND EFFECT OF REGISTRATION

NOTES TO SCHEDULE BA

Note 1: Where the notice is in respect of a subordinate real right, other than a registered lease having its own title sheet, for “proprietor to” substitute “holder of liferent (or other right, as the case may be) over”.

Note 2: Where the notice is in respect of a registered lease having its own title sheet, for “proprietor to” substitute “tenant of”.

Note 3: If any writ by which A.B. acquired right contains a new title condition, whether burdening or benefiting the property, the condition is to be inserted in full after the description of the property.

Note 4: In the case of a traditional document, subscription of it by the notary public (or law agent) on behalf of the granter will suffice for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes: see the Requirements of Writing (Scotland) Act 1995 (c.7) (which also makes provision as regards the authentication of an electronic document).”.

53 REGISTRATION OF DECREES OF REDUCTION

After section 46 of the Conveyancing (Scotland) Act 1924 (c.27) insert—

“46A Further provision as regards decree of reduction

(1) Where a deed mentioned in subsection (2) is reduced, the decree of reduction—

(a) may be registered in the Land Register of Scotland, and
(b) does not have real effect until so registered.

(2) The deed is one which—

(a) is voidable, and
(b) relates to a plot of land or lease registered in the Land Register of Scotland.

(3) Subsection (1) applies to an arbitral award which—

(a) orders the reduction of a deed mentioned in subsection (2), and
(b) may be enforced in accordance with section 12 of the Arbitration (Scotland) Act 2010 (asp 1),
as it applies to a decree of reduction.”.

54 REGISTRATION OF ORDER FOR RECTIFICATION OF DOCUMENT ETC.

(1) The Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73) is amended as follows.

(2) In section 8 (rectification of defectively expressed documents)—

(a) in subsection (3), after “made to it” insert “and in either case after calling all parties who appear to it to have an interest”,
(b) after that subsection insert—
“(3A) If a document is registered in the Land Register of Scotland in favour of a person acting in good faith then, unless the person consents to rectification of the document, it is not competent to order its rectification under subsection (3) above.”,

(c) in subsection (4), for “section 9(4)” substitute “sections 8A and 9(4)”.

(3) After section 8 insert—

“8A Registration of order for rectification

An order for rectification made under section 8 of this Act in respect of a document which has been registered in the Land Register of Scotland—

(a) may be registered in that register, and

(b) does not have real effect until so registered.”.

(4) In section 9 (provisions supplementary to section 8: protection of other interest)—

(a) in subsection (2)—

(i) for “subsection (3)” substitute “subsections (2A) and (3)”,

(ii) repeal “or on the title sheet of an interest in land registered in the Land Register of Scotland being an interest to which the document relates”;

(b) after that subsection insert—

“(2A) This section does not apply where the document to be rectified is a deed registered in the Land Register of Scotland.”.

(c) in subsection (3)—

(i) in paragraph (a), repeal “or (as the case may be) the title sheet”,

(ii) in paragraph (b), repeal “or on the title sheet”,

(d) subsection (6) is repealed.

PART 4

ADVANCE NOTICES

55 Advance notices

(1) An advance notice is a notice—

(a) stating that a person intends to grant a deed to another person,

(b) stating the name and designation of both persons,

(c) describing the nature of the intended deed (as for example whether it is to be a disposition),

(d) where the intended deed relates to a registered lease or a registered plot of land—

(i) stating the title number of the title sheet to which the deed is to relate,

(ii) where the deed is to relate to a registered lease which does not have a lease title sheet, stating the particulars of the lease, and

(iii) where the deed is to relate to part only of the subjects of the lease, or to part only of the plot, describing the part so as to enable the Keeper to delineate on the cadastral map the boundaries of the part, and
(e) where the intended deed relates to an unregistered lease or unregistered plot of land, describing the lease or, as the case may be, plot.

(2) Subsection (1)(d)(iii) does not apply if—

(a) the part to which the deed relates is a flat in a flatted building, and

(b) either—

(i) the flatted building is, by virtue of section 16, represented as a single cadastral unit on the cadastral map, or

(ii) the Keeper has indicated that the flatted building is, by virtue of that section, to be so depicted.

(3) Despite subsection (2), subsection (1)(d)(iii) applies in so far as the part includes a pertinent outwith the flatted building, being a pertinent only of the part.

(4) The Scottish Ministers may by regulations make provision about the description to be contained in an advance notice by virtue of subsection (1)(e).

56 Application for advance notice

(1) A person falling within subsection (2) may apply to the Keeper for an advance notice in relation to a registrable deed which the person intends to grant.

(2) A person falls within this subsection if—

(a) the person may validly grant the intended deed, or

(b) the person has the consent of such a person to apply.

(3) The Keeper may accept an application under subsection (1) only if—

(a) such fee as is payable in respect of the application is paid, or

(b) arrangements satisfactory to the Keeper are made for payment of that fee.

(4) If the Keeper accepts an application under subsection (1), the Keeper must—

(a) where the intended deed relates to a registered plot of land—

(i) as soon as reasonably practicable or, if the application record is not open for the making of entries, as soon as reasonably practicable on the application record next opening for that purpose, enter an advance notice in the application record, and

(ii) where (and to the extent that) section 55(1)(d)(iii) applies in relation to the notice, delineate the boundaries of the part on the cadastral map,

(b) in any other case, record an advance notice in the Register of Sasines.

57 Period of effect of advance notice

(1) An advance notice has effect for the period of 35 days beginning with the day after the notice is entered in the application record or, as the case may be, recorded in the Register of Sasines.

(2) Subsection (1) is subject to section 60.

(3) The period during which an advance notice has effect is referred to in this Act as the “protected period”.


(4) Subsection (5) applies where two advance notices in relation to the same plot of land or lease are entered into the application record or recorded in the Register of Sasines on the same date.

(5) The protected period in relation to the advance notice which is first to be entered in the application record, or as the case may be recorded in the Register of Sasines, is deemed to begin before the protected period in relation to the other advance notice.

(6) The Scottish Ministers may, by order amend subsection (1) so as to substitute for the period for the time being mentioned there a different period.

(7) Before making such an order, the Scottish Ministers must consult the Keeper.

10 **Effect of advance notice**

(1) Subsections (2) and (3) apply in relation to any two deeds (“deed Y” and “deed Z”) relating to the same plot of land where—

   (a) during a protected period relating to deed Y—

      (i) an application is made for registration of deed Z, and

      (ii) on or after the date of that application, an application is made for registration of deed Y, and

   (b) deed Z either—

      (i) is not a deed in relation to which a protected period is running, or

      (ii) is such a deed, but the protected period relating to deed Y began before the protected period relating to deed Z.

(2) If deed Z is registered before the Keeper comes to make any decision as to whether or not to accept the application for registration of deed Y, that decision is to be taken as if deed Z had not been registered.

(3) If the decision mentioned in subsection (2) is to accept the application—

   (a) deed Y has on registration the same effect as if deed Z had not been registered, and

   (b) the Keeper must amend the register so that it gives effect (if any) to deed Z as if it were registered after deed Y.

(4) A deed to which an advance notice relates, if registered on a date which falls within the protected period, is not subject to—

   (a) an inhibition registered in the Register of Inhibitions against the granter and taking effect before that date but during that period, or

   (b) anything registered or recorded in that register and taking effect, before that date but during that period, as if an inhibition registered against the granter.

(5) This section applies irrespective of whether a deed is voluntary or involuntary.

(6) This section does not apply in relation to—

   (a) a notice registered, or intended or sought to be registered, under—

      (i) section 10(2A) of the Title Conditions (Scotland) Act 2003 (asp 9), or

      (ii) section 12(3) of the Tenements (Scotland) Act 2004 (asp 11), and

   (b) such other deeds as the Scottish Ministers may by order specify.
(7) Before making an order under subsection (6)(b), the Scottish Ministers must consult the Keeper.

59. **Removal of advance notice etc.**

(1) After the protected period in relation to an advance notice has elapsed, the Keeper must, if the notice was entered in the application record—

(a) remove it from there, and

(b) if the notice has not already been entered in the archive record, enter it in that record.

(2) After such period in relation to an advance notice as may be prescribed in land register rules the Keeper must, if the intended deed has not been registered, remove from the cadastral map any delineation effected under section 56(4)(a)(ii).

60. **Discharge of advance notice**

(1) A person who applied for an advance notice may apply to the Keeper for the discharge of that notice.

(2) An application under subsection (1) may be made only during the protected period.

(3) The Keeper may accept an application under subsection (1) only if—

(a) the person to whom the intended deed would be granted consents, and

(b) either—

(i) such fee as is payable in respect of the application is paid, or

(ii) arrangements satisfactory to the Keeper are made for payment of that fee.

(4) If the Keeper accepts the application, the Keeper must—

(a) if the advance notice was entered in the application record, remove it from there,

(b) if the advance notice was recorded in the Register of Sasines, record a notice of discharge in relation to the advance notice.

(5) On the advance notice being removed from the application record or, as the case may be, a notice of discharge being recorded, the advance notice ceases to have effect.

61. **Application of Part to specific deeds**

(1) The Scottish Ministers may by order modify the application of this Part in relation to any deed of a kind specified in the order.

(2) Before making such an order, the Scottish Ministers must consult the Keeper.

**PART 5**

**INACCURACIES IN THE REGISTER**

62. **Meaning of “inaccuracy”**

(1) A title sheet is inaccurate in so far as it—

(a) misstates what the position is in law or in fact,
(b) omits anything required, by or under an enactment, to be included in it,
(c) includes anything the inclusion of which is not expressly or impliedly permitted
by or under an enactment, or
(d) contains, by virtue of section 43(1) or 79(3)(a)(i), an entry marked provisional.

(2) The cadastral map is inaccurate in so far as it—

(a) wrongly depicts or shows what the position is in law or in fact,
(b) omits anything required, by or under an enactment, to be depicted or shown on it,
   or
(c) depicts or shows anything the depiction or showing of which is not expressly or
   impliedly permitted by or under an enactment.

(3) The cadastral map is not inaccurate in so far as it does not depict something correctly by
    reason only of an inexactness in the base map which is within the published accuracy
    tolerances relevant to the scale of map involved.

(4) Neither a title sheet nor the cadastral map is inaccurate by reason only that a deed which
    gave rise to the acquisition, variation or discharge of a real right—
    (a) was voidable and has been reduced, or
    (b) has been rectified under section 8 of the Law Reform (Miscellaneous Provisions)
        (Scotland) Act 1985 (c.73) (rectification of defectively expressed documents).

(5) This section is subject to section 63(3).

63 Shifting boundaries

(1) This section applies where the proprietors of adjacent plots of land affected by alluvion
    agree that their common boundary (or part of it) is not to be so affected.

(2) Such an agreement may, on the joint application of both proprietors, be registered in the
    title sheets of both plots of land.

(3) Where such an agreement is registered, the cadastral map and the title sheets of the plots
    do not become inaccurate as a result of alluvion affecting the boundary (or part of it)
    occurring after registration.

64 Proceedings involving the accuracy of the register

The Keeper is entitled to appear and be heard in any civil proceedings, whether before a
court or tribunal, in which the accuracy of the register is put in question.

Part 6 Caveats

65 Warrant to place a caveat

(1) This section applies to civil proceedings—

   (a) for the reduction of a registered deed on the ground that it is voidable,
   (b) which could result in a judicial determination that the register is inaccurate, or
(c) for an order which, if granted, would be registrable under section 8A of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73) (registration of order for rectification).

(2) A party to the proceedings may, at any time while the proceedings are in dependence, apply to the court for warrant to place a caveat on the title sheet of a plot of land to which the proceedings relate.

(3) The court may, if satisfied as to the matters mentioned in subsection (4), make an order granting the warrant applied for.

(4) The matters are that—

(a) the applicant has a prima facie case on the merits of the proceedings,
(b) were warrant for placing the caveat not granted, there is a real and substantial risk that enforcement of any decree or order in the proceedings granted in favour of the applicant would be defeated or prejudiced by reason of the other party being likely to deal with the plot of land, and
(c) in all the circumstances, including the effect which granting the warrant may have on any person having an interest, it is reasonable to make the order granting it.

(5) The onus is on the applicant to satisfy the court that the order granting the warrant should be made.

66 Duration of caveat

(1) A caveat, warrant for which is granted under section 65(3), expires 12 months after it is placed on the title sheet unless renewed, recalled or discharged before the expiry of that period.

(2) Subsection (1) applies to a caveat renewed under section 67(2) as it applies to a caveat warrant for which is granted under section 65(3).

(3) The Scottish Ministers may, by order, amend subsection (1) so as to substitute for the period for the time being mentioned in the subsection a different period.

(4) Before making such an order, the Scottish Ministers must consult the Keeper.

67 Renewal of caveat

(1) The applicant may apply to the court which granted the warrant to place the caveat for warrant to renew it.

(2) The court may, if satisfied as to the matters mentioned in subsection (3), make an order granting warrant to renew the caveat.

(3) The matters are that—

(a) the applicant has a prima facie case on the merits of the proceedings,
(b) were warrant to renew the caveat not granted, there is a real and substantial risk that enforcement of any decree or order in the proceedings granted in favour of the applicant would be defeated or prejudiced by reason of the other party being likely to deal with the plot of land, and
(c) in all the circumstances, including the effect which renewing the caveat may have on any person having an interest, it is reasonable to make the order renewing it.
The onus is on the applicant to satisfy the court that the order renewing the caveat should be made.

The court may renew a caveat on more than one occasion.

In this section and in sections 68 and 69, “the applicant” means the person who has placed a caveat on the title sheet.

### 68 Restriction of caveat

1. Any person with an interest, other than the applicant, may at any time apply to the court which granted the warrant to place the caveat for an order restricting the caveat.

2. The court may, if satisfied—
   
   (a) as to the matters mentioned in subsection (3), and
   
   (b) that it is reasonable in all the circumstances to do so,

   make an order restricting the caveat.

3. The matters are that—

   (a) the applicant has a prima facie case on the merits of the proceedings,

   (b) there is a real and substantial risk that enforcement of any decree or order in the proceedings granted in favour of the applicant would be defeated or prejudiced by reason of the other party being likely to deal with the plot of land, and

   (c) in all the circumstances, including the effect which granting the warrant to place the caveat may have on any person having an interest, it is reasonable for the caveat to continue to have effect.

4. The onus is on the applicant to satisfy the court that the order restricting the caveat should not be made.

### 69 Recall of caveat

1. Any person with an interest, other than the applicant, may at any time apply to the court which granted the warrant to place the caveat for the caveat to be recalled.

2. The court must, if no longer satisfied as to the matters mentioned in subsection (3), make an order recalling the caveat.

3. The matters are that—

   (a) the applicant has a prima facie case on the merits of the proceedings,

   (b) there is a real and substantial risk that enforcement of any decree or order in the proceedings granted in favour of the applicant would be defeated or prejudiced by reason of the other party being likely to deal with the plot of land, and

   (c) in all the circumstances, including the effect which granting the warrant to place the caveat may have on any person having an interest, it is reasonable for the caveat to continue to have effect.

4. The onus is on the applicant to satisfy the court that the order recalling the caveat should not be made.

### 70 Discharge of caveat

A person—
(a) in whose favour warrant to place a caveat has been granted, or
(b) who has renewed a caveat under section 67(2),
may at any time discharge the caveat.

PART 7

KEEPER’S WARRANTY

Keeper’s warranty

(1) The Keeper, in accepting an application for registration, warrants to the applicant that, as at the time of registration, the title sheet to which the application relates—

(a) is accurate—

(i) in so far as it shows an acquisition, variation or discharge in favour of the applicant, or

(ii) in the case of an application under section 27, in so far as it shows the applicant to be the proprietor or proprietor in common, and

(b) is not inaccurate in so far as there is omitted from it any encumbrance the inclusion of which is permitted or required by or under an enactment.

(2) But the Keeper does not warrant that—

(a) the plot of land to which the application relates is unencumbered by any public right of way,

(b) the land is unencumbered by a path delineated in an order under section 22 of the Land Reform (Scotland) Act 2003 (asp 2) (compulsory powers to delineate paths in land in respect of which access rights are exercisable),

(c) the land is unencumbered by a servitude created other than by registration in accordance with section 75(1) of the Title Conditions (Scotland) Act 2003 (asp 9) (creation of positive servitude by writing: deed to be registered),

(d) a right appearing on the title sheet as a pertinent is of a kind capable of being a valid pertinent,

(e) a pertinent appearing on the title sheet and of a kind extinguishable or variable without registration against the title of the benefited property has not been extinguished, or varied, without registration,

(f) the applicant has by registration acquired a right to mines or minerals,

(g) a registered lease has not been varied or terminated without the variation or termination having been registered,

(h) the title sheet to which the application relates is accurate in so far as it shows an acquisition, variation or discharge more extensive than the deed registered bore to effect, or

(i) alluvion has not had an effect on a boundary.

(3) The benefit of warranty extends to persons to whom the benefit of warrandice by the granter of a deed would extend.
In relation to an application for registration of a deed relating to a title condition, references in subsections (1) and (2) and in section 76 to the applicant are to be read as references to the person benefiting from the deed given effect to.

The Keeper does not warrant as provided for in subsections (1) and (2) where the application for registration is accepted by virtue of section 42.

This section is subject to sections 73 and 74.

**Keeper’s warranty on registration under sections 25 and 29**

(1) The Keeper, on registering a plot of land by virtue of section 25 or under section 29, warrants to the owner that, as at the time of registration, the title sheet of the plot—

(a) is accurate in so far as it shows the owner to be the proprietor or proprietor in common, and

(b) is not inaccurate in so far as there is omitted from it any encumbrance the inclusion of which is permitted or required by or under an enactment.

Subsections (2) (other than paragraph (h)), (3) and (5) of section 71 apply to warranty under this section as they apply to warranty under that section.

References in section 71(2) to—

(a) the application are to be read as references to the registration by virtue of section 25 or under section 29,

(b) to the applicant are to be construed as references to the owner.

This section is subject to sections 73 and 74.

**Extension, limitation or exclusion of warranty**

(1) The Keeper may—

(a) if satisfied (having regard to sufficiency of evidence as to title) that it is appropriate to do so, grant more extensive warranty than is provided for in section 71 or 72, or

(b) if not satisfied as to the validity of the acquisition, variation or discharge mentioned in section 71(1)(a)(i) or that the applicant or owner is the proprietor as mentioned in section 71(1)(a)(ii) or 72(1)(a)—

(i) grant less extensive warranty than is so provided for, or

(ii) exclude warranty.

For the purposes of subsection (1), the Keeper must have regard to any relevant caveat placed on the title sheet by virtue of section 65.

Where warranty is granted or excluded under subsection (1), the Keeper must give effect to the grant or exclusion by entering a statement describing it in the title sheet.

If an entry made in the title sheet on an application being accepted by virtue of section 42 ceases to be provisional, the Keeper may—

(a) grant such warranty as the Keeper (having regard to sufficiency of evidence as to title) considers appropriate, and

(b) give effect to the grant by entering a statement describing it in the title sheet.
Variation of warranty

(1) This section applies where warranty is—
   (a) as provided for in section 71 or 72,
   (b) granted under section 73(1)(a), (b)(i) or (4)(a), or
   (c) excluded under section 73(1)(b)(ii).

(2) The Keeper may, if the Keeper comes to be satisfied (having regard to sufficiency of evidence as to title) that it is appropriate to do so, grant—
   (a) warranty as provided for in section 71,
   (b) less extensive warranty than as so provided, or
   (c) more extensive warranty than as so provided.

(3) The Keeper may not, under subsection (2), grant warranty that is less extensive than the warranty which was originally provided for or granted as mentioned in subsection (1)(a) or (b).

(4) For the purposes of subsection (2), the Keeper must have regard to any relevant caveat placed on the title sheet by virtue of section 65.

(5) Where the Keeper grants warranty or more extensive warranty under subsection (2), the Keeper must—
   (a) unless the warranty granted is warranty only as provided for in section 71, give effect to the grant by entering a statement describing it on the title sheet, and
   (b) remove any statement previously entered under section 73(3) or (4)(b).

Claims under warranty

Claims under Keeper’s warranty

(1) The Keeper must pay compensation for loss incurred as a result of a breach of the Keeper’s warranty.

(2) Liability to pay such compensation arises only if and when the inaccuracy giving rise to the claim for compensation is rectified.

(3) A claimant is not required to exhaust other remedies before making a claim to such compensation.

(4) Payment by the Keeper under this section does not extinguish any rights which the claimant may have against another person in respect of the loss compensated.

(5) But it is a condition of any such payment that the claimant assign any such rights to the Keeper.

Claims under warranty: circumstances where liability excluded

The Keeper has no liability to pay compensation by virtue of section 75(1)—

(a) if the inaccuracy is consequent upon an error in the cadastral map and that error was made in reasonable reliance upon the base map,

(b) if the existence of the inaccuracy was, or ought to have been, known to—
   (i) the applicant, or
(ii) any person acting as solicitor or other legal adviser to the applicant, at the time of registration,

(c) in so far as the inaccuracy is attributable to a failure of—

(i) the applicant, or

(ii) any person acting as solicitor or other legal adviser to the applicant, to comply with the duty owed to the Keeper under section 107,

(d) in so far as the claimant’s loss could have been avoided by the applicant, owner or claimant taking certain measures which it would have been reasonable for the applicant, owner or claimant to take,

(e) in so far as the connection between the claimant’s loss and the inaccuracy is too remote, or

(f) for non-patrimonial loss.

77 Claims under warranty: quantification of compensation

(1) Compensation payable by virtue of section 75(1)—

(a) is, in so far as it is not compensation mentioned in paragraph (b), to be quantified as at the date on which the inaccuracy giving rise to the claim is rectified, and

(b) is to include—

(i) reimbursement of reasonable extra-judicial legal expenses, and

(ii) compensation for any other consequential loss.

(2) Interest on a sum so payable runs from the date mentioned in subsection (3) until the sum in question is paid.

(3) The date is—

(a) where the sum is payable other than by virtue of subsection (1)(b), the date mentioned in subsection (1)(a),

(b) where the sum is payable by virtue of subsection (1)(b)(i), the date on which the claimant paid the sum in question, and

(c) where the sum is payable by virtue of subsection (1)(b)(ii), the date on which the loss was sustained.

(4) Land register rules may make provision as to the rate of interest payable by virtue of subsection (2).

PART 8

RECTIFICATION OF THE REGISTER

Rectification

78 Rectification of the register

(1) This section applies where the Keeper becomes aware of a manifest inaccuracy in a title sheet or in the cadastral map.
(2) The Keeper must rectify the inaccuracy if what is needed to do so is manifest.

(3) Where what is so needed is not manifest, the Keeper must enter a note identifying the inaccuracy in the title sheet or, as the case may be, in the cadastral map.

(4) Where the Keeper rectifies an inaccuracy, the Keeper must—

(a) include in the archive record a copy of any document which discloses, or contributes to disclosing, the inaccuracy, and

(b) give notice of the rectification to any person who appears to the Keeper to be affected by it materially.

(5) Land register rules may make provision about—

(a) the persons to be notified by the Keeper, and

(b) the method by which such notice is to be given.

(6) A failure to comply with subsection (4) or with any rules so made does not affect the validity of a rectification under subsection (2).

79 Rectification where registration provisional etc.

(1) This section applies where it appears to the Keeper that rectification of an inaccuracy would interrupt a period of possession—

(a) which is current, and

(b) which, if uninterrupted, would, under section 1(1) or 2(1) of the Prescription and Limitation (Scotland) Act 1973 (c.52) (sections which provide for positive prescription), affect a real right.

(2) If the inaccuracy is in an entry marked provisional by virtue of section 43, the Keeper—

(a) may rectify the register if all those affected consent,

(b) where there is no such consent, must not rectify the register before the existence of the inaccuracy is judicially determined.

(3) In any other case, the Keeper—

(a) must—

(i) mark the relevant entry in the title sheet provisional,

(ii) enter in the appropriate section of the title sheet the name and designation of the true holder of the right affected by the inaccuracy (if any such person can be identified),

(b) may rectify the register if all those affected consent,

(c) where there is no such consent, must not rectify the register before the existence of the inaccuracy is judicially determined.

Compensation in consequence of rectification

80 Rectification: compensation for certain expenses and losses

(1) The Keeper must pay compensation for—

(a) reimbursement of reasonable extra-judicial legal expenses incurred by a person in securing rectification of the register, and
(b) any loss sustained by the person in consequence of the inaccuracy rectified.

(2) A claimant is not required to exhaust other remedies before making a claim to such compensation.

(3) Payment by the Keeper under this section does not extinguish any rights which the claimant may have against another person in respect of the loss compensated.

(4) But it is a condition of any such payment that the claimant assigns any such rights to the Keeper.

(5) Interest on a sum payable under this section runs from the date mentioned in subsection (6) until the sum in question is paid.

(6) The date is—

(a) where the sum is payable by virtue of subsection (1)(a), the date on which the claimant paid the sum in question,

(b) where the sum is payable by virtue of subsection (1)(b), the date on which the loss was sustained.

(7) Land register rules may make provision as to the rate of interest payable by virtue of subsection (5).

81 Rectification: circumstances where liability excluded

The Keeper has no liability to pay compensation under section 80—

(a) if the inaccuracy is caused other than by a change made by the Keeper to a title sheet or the cadastral map,

(b) if the inaccuracy is consequent on an error in the cadastral map and that error was made in reasonable reliance on the base map,

(c) in so far as the inaccuracy is in an entry made on an application being accepted by virtue of section 42(1) or under section 42(5),

(d) in so far as the inaccuracy is caused by some act or omission on the part of the claimant,

(e) in so far as the claimant’s loss could have been avoided by the claimant taking certain measures which it would have been reasonable for the claimant to take,

(f) in so far as the connection between the claimant’s loss and the inaccuracy is too remote, or

(g) for non-patrimonial loss.

PART 9

RIGHTS OF PERSONS ACQUIRING ETC. IN GOOD FAITH

Ownership

82 Acquisition from disponer without valid title

(1) This section applies where a person (“A”), who is not the proprietor of a registered plot of land but—

(a) is entered in the proprietorship section of the title sheet as proprietor, and
(b) is in possession of the land, purports to dispone the land.

(2) The disponee (“B”) acquires ownership of the land provided that the conditions in subsection (3) are met.

(3) The conditions are that—

(a) the land has been in the possession, openly, peaceably and without judicial interruption—

(i) of A for a continuous period of at least 1 year, or

(ii) of A and then of B for periods which together constitute such a period,

(b) at no time during that period did the Keeper become aware that the register was inaccurate as a result of A (or B) not being the proprietor,

(c) B is in good faith,

(d) the disposition would have conferred ownership on B had A been proprietor when the land was disponed,

(e) at no time during the period mentioned in paragraph (a)—

(i) was the title sheet subject, by virtue of section 65, to a caveat relevant to the acquisition by B,

(ii) did the title sheet contain a statement under section 30(5), and

(f) the Keeper warrants (or is to be taken to warrant) A’s title.

(4) The date on which ownership is acquired by virtue of subsection (2) is—

(a) where subsection (5) applies, the date on which the disposition is registered,

(b) where subsection (6) applies, the date on which the period of possession mentioned in that subsection expires.

(5) This subsection applies where, as at the date of registration, the land has been in the possession, openly, peaceably and without judicial interruption—

(a) of A for a continuous period of at least 1 year, or

(b) of A and then of B for periods which together constitute such a period.

(6) This subsection applies where there is a continuous period of possession such as is mentioned in subsection (5) but that period, though it commences before registration on the application of B, does not expire until a date later than the date of registration.

83 **Acquisition from representative of disponer without valid title**

(1) Section 82 also applies where a person (“P”), who is not entered in the proprietorship section of the title sheet as proprietor but who would have power to dispone the land—

(a) were A the proprietor, or

(b) (where A has died) had A been the proprietor, purports to dispone it.

(2) For the purposes of section 82, possession of the plot of land by P is to be treated as if it were possession of the land by A.
Acquisition from assigner without valid title

(1) This section applies where a person (“A”), who is not the tenant under a registered lease but—

(a) is shown in the title sheet as tenant, and
(b) is in possession of the subjects of the lease,

purports to assign the lease.

(2) The assignee (“B”) acquires the lease provided that the conditions in subsection (3) are met.

(3) The conditions are that—

(a) the subjects of the lease have been in the possession, openly, peaceably and without judicial interruption—

(i) of A for a continuous period of at least 1 year, or
(ii) of A and then of B for periods which together constitute such a period,

(b) at no time during that period did the Keeper become aware that the register was inaccurate as a result of A (or B) not being the tenant,

(c) B is in good faith,

(d) the lease is extant,

(e) B would have acquired the lease had A been tenant when the lease was assigned,

(f) at no time during the period mentioned in paragraph (a) was the title sheet subject, by virtue of section 65, to a caveat relevant to the acquisition by B, and

(g) the Keeper warrants (or is to be taken to warrant) A’s title.

(4) The date on which the lease is acquired by virtue of subsection (2) is—

(a) where subsection (5) applies, the date on which the deed of assignation is registered,

(b) where subsection (6) applies, the date on which the period of possession mentioned in that subsection expires.

(5) This subsection applies where, as at the date of registration, the subjects of the lease have been in the possession, openly, peaceably and without judicial interruption—

(a) of A for a continuous period of at least 1 year, or

(b) of A and then of B for periods which together constitute such a period.

(6) This subsection applies where there is a continuous period of possession such as is mentioned in subsection (5) but that period, though it commences before registration on the application of B, does not expire until a date later than the date of registration.

Acquisition from representative of assigner without valid title

(1) Section 84 also applies where a person (“P”), who is not entered in the title sheet as tenant but who would have power to assign the lease—

(a) were A the tenant, or

(b) (where A has died) had A been the tenant,
purports to assign it.

(2) For the purposes of section 84, possession of the subjects of the lease by P is to be treated as if it were possession of the subjects by A.

Servitudes

86 Grant of servitude by person not proprietor

(1) This section applies where a person (“A”), who is not the proprietor of a registered plot of land but—

(a) is entered in the proprietorship section of the title sheet as proprietor, and
(b) is in possession of the land,

purports to create a servitude, with the land as the burdened property.

(2) The servitude is created provided that the conditions mentioned in subsection (3) are met.

(3) The conditions are that—

(a) the land has been in the possession of A, openly, peaceably and without judicial interruption, for a continuous period of at least 1 year,
(b) at no time during that period did the Keeper become aware that the register was inaccurate as a result of A not being the proprietor,
(c) the proprietor of what is to be the benefited property is in good faith,
(d) at no time during the period mentioned in paragraph (a) was the title sheet subject, by virtue of section 65, to a caveat relevant to the creation of the servitude, and
(e) the Keeper warrants (or is to be taken to warrant) A’s title.

(4) The date on which the servitude is created by virtue of subsection (2) is—

(a) where subsection (5) applies, the date of registration,
(b) where subsection (6) applies, the date on which the period mentioned in that subsection expires.

(5) This subsection applies where, as at the date of registration, the land has been in the possession of A, openly, peaceably and without judicial interruption, for a continuous period of at least 1 year.

(6) This subsection applies where there is a continuous period of possession such as is mentioned in subsection (5) but that period, though it commences before registration, does not expire until a date later than the date of registration.

(7) This section is subject to section 75 of the Title Conditions (Scotland) Act 2003 (asp 9) (creation of positive servitude by writing: deed to be registered).

Extinction of encumbrances etc.

87 Extinction of encumbrance when land disponed

(1) Where the conditions mentioned in subsection (2) are met, a person (“A”) who acquires ownership of land on registration or on a later date by virtue of section 82(4)(b)—

(a) takes the land free of an encumbrance which is not entered in the title sheet as at the date on which A acquires ownership of the land, and
(b) any such encumbrance is extinguished.

(2) The conditions are that, as at the date on which ownership is acquired—
(a) A is in good faith, and
(b) the title sheet is not, by virtue of section 65, subject to a caveat relevant to such
acquisition by A.

(3) Subsection (1) does not apply to an heritable security which is not entered in the
securities section of a shared plot title sheet by virtue of section 18(3)(b).

(4) “Encumbrance” in subsection (1) does not include—
(a) a public right of way,
(b) a path delineated in an order under section 22 of the Land Reform (Scotland) Act
2003 (asp 2) (compulsory powers to delineate paths in land in respect of which
access rights are exercisable),
(c) a servitude created other than under section 75(1) of the Title Conditions
(Scotland) Act 2003 (asp 9),
(d) a lease, or
(e) an encumbrance the creation of which does not require registration of the
constitutive deed.

88 Extinction of encumbrance when lease assigned

(1) Where the conditions mentioned in subsection (2) are met, a person (“A”) who acquires
a registered lease on registration or on a later date by virtue of section 84(4)(b)—
(a) takes that lease free of an encumbrance—
(i) of a kind mentioned in subsection (4), and
(ii) which is not entered in the title sheet as at the date on which A acquires the
registered lease, and
(b) any such encumbrance is extinguished.

(2) The conditions are that, as at the date on which the lease is acquired—
(a) A is in good faith, and
(b) the title sheet is not, by virtue of section 65, subject to a caveat relevant to such
acquisition by A.

(3) Subsection (1) does not apply to an heritable security which is not entered in the
securities section of a shared lease title sheet by virtue of paragraph 8(b) of schedule 1.

(4) The encumbrances are—
(a) a heritable security over the lease,
(b) a title condition such as is mentioned in paragraph (d) or (e) of the definition of
“title condition” in section 122(1) of the Title Conditions (Scotland) Act 2003
(asp 9).

89 Extinction of floating charge when land disponed

A person who, in good faith, acquires ownership of land from another person (“A”),
takes the land free of any floating charge which was granted by a predecessor in title of
A.
Compensation in consequence of this Part

90 Compensation for loss incurred in consequence of this Part

(1) The Keeper must pay compensation for loss incurred by a person mentioned in subsection (2).

(2) The person is one who—
   (a) is deprived of a right by virtue of this Part, or
   (b) is the proprietor of a property burdened by a servitude created by virtue of section 86.

(3) A claimant is not required to exhaust other remedies before making a claim to such compensation.

(4) Payment by the Keeper under this section does not extinguish any rights which the claimant may have against another person in respect of the loss compensated.

(5) But it is a condition of any such payment that the claimant assigns any such rights to the Keeper.

(6) The Keeper has no liability to pay compensation—
   (a) in so far as the claimant’s loss could have been avoided by the claimant taking certain measures which it would have been reasonable for the claimant to take,
   (b) in so far as the claimant’s loss is too remote, or
   (c) for non-patrimonial loss.

91 Quantification of compensation

(1) Compensation payable by virtue of section 90(1)—
   (a) is, in so far as it is not compensation mentioned in paragraph (b), to be quantified as at the date on which the claimant lost the right or, as the case may be, on which the servitude was created, and
   (b) is to include—
      (i) reimbursement of reasonable extra-judicial legal expenses, and
      (ii) compensation for any other consequential loss.

(2) Interest on a sum so payable runs from the date mentioned in subsection (3) until the sum in question is paid.

(3) The date is—
   (a) where the sum is payable other than by virtue of subsection (1)(b), the date mentioned in subsection (1)(a),
   (b) where the sum is payable by virtue of subsection (1)(b)(i), the date on which the claimant paid the sum in question, and
   (c) where the sum is payable by virtue of subsection (1)(b)(ii), the date on which the loss was sustained.

(4) Land register rules may make provision as to the rate of interest payable by virtue of subsection (2).
PART 10

ELECTRONIC DOCUMENTS, ELECTRONIC CONVEYANCING AND ELECTRONIC REGISTRATION

Electronic documents

Where requirement for writing satisfied by electronic document

(1) The Requirements of Writing (Scotland) Act 1995 (c.7) (the “1995 Act”) is amended as follows.

(2) In section 1 (writing required for certain contracts, obligations, trusts, conveyances and wills)—

(a) in subsection (2)—

(i) for “subsections (2A) and” substitute “subsection”,

(ii) after “written document” insert “which is a traditional document”,

(iii) after “section 2” insert “or an electronic document complying with section 9B”,

(iv) after paragraph (b) insert—

“(ba) the constitution of an agreement under section 63(1) of the Land Registration etc. (Scotland) Act 2012 (asp 00),”,

(b) in subsection (3)—

(i) for “subsections (2)(a) or (2A)” substitute “subsection (2)(a)”,

(ii) repeal “written”,

(iii) for “an electronic document complying with section 2A,” substitute “section 9B”,

(c) in subsection (5), for “subsections (2)(a) or (2A)” substitute “subsection (2)(a)”.

(3) The provisions of section 1 as amended by subsection (2) become Part 1 of the Act.

(4) The title of Part 1 is “When writing is required”.

Electronic documents

(1) The 1995 Act is further amended as follows.

(2) After section 9 insert—

“PART 3

ELECTRONIC DOCUMENTS

Application of Part 3

This Part applies to documents which, rather than being written on paper, parchment or some similar tangible surface are created in electronic form (“electronic documents”).

Validity of electronic documents

(1) No electronic document required by section 1(2) is valid in respect of the formalities of execution unless—
(a) it is authenticated by the granter, or if there is more than one granter by each granter, in accordance with subsection (2), and
(b) it meets such other requirements (if any) as may be prescribed by the Scottish Ministers in regulations.

(2) An electronic document is authenticated by a person if the electronic signature of that person—

(a) is incorporated into, or logically associated with, the electronic document,
(b) was created by the person by whom it purports to have been created, and
(c) is of such type, and satisfies such requirements (if any), as may be prescribed by the Scottish Ministers in regulations.

(3) A contract mentioned in section 1(2)(a) may be regarded as constituted or varied (as the case may be) if—

(a) the offer is contained in one or more electronic documents,
(b) the acceptance is contained in another electronic document or in other such documents, and
(c) each of the documents is authenticated by its granter or granters.

(4) Where a person grants an electronic document in more than one capacity, authentication by the person of the document, in accordance with subsection (3), is sufficient to bind the person in all such capacities.

(5) Nothing in this section prevents an electronic document which has not been authenticated by the granter or granters of it from being used as evidence in relation to any right or obligation to which the document relates.

(6) Regulations under subsection (1)(b) or (2)(c) are subject to the negative procedure.

9C Presumption as to authentication of electronic documents

(1) Where—

(a) an electronic document bears to have been authenticated by the granter,
(b) nothing in the document or in the authentication indicates that it was not so authenticated, and
(c) the conditions set out in subsection (2) are satisfied,

the document is to be presumed to have been authenticated by the granter.

(2) The conditions are that the electronic signature incorporated into, or logically associated with, the document—

(a) is of such type and satisfies such requirements as may be prescribed by the Scottish Ministers in regulations, and
(b) (either or both)—

(i) is used in such circumstances as may be so prescribed,
(ii) bears to be certified,
and that if the electronic signature bears to be certified (and does not conform with paragraph (b)(i)) the certification is of such type and satisfies such requirements as may be so prescribed.

(3) Regulations under subsection (2) are subject to the negative procedure.

9D Presumptions as to granter’s authentication etc. when established in court proceedings

(1) Where—
(a) an electronic document bears to have been authenticated by a granter of it, and
(b) there is no presumption under section 9C that the document has been authenticated by that granter,
the court must, on an application being made to it by any person who has an interest in the document, if satisfied that the document was authenticated by that granter, grant decree to that effect.

(2) Where—
(a) an electronic document bears to have been authenticated by a granter of it, and
(b) there is no presumption by virtue of section 9E(1) as to the time, date or place of authentication,
the court must, on an application being made to it by any person who has an interest in the document, if satisfied as to that time, date or place, grant decree to that effect.

(3) On an application under subsection (1) or (2), evidence is, unless the court otherwise directs, to be given by affidavit.

(4) An application under subsection (1) or (2) may be made either as a summary application or as incidental to, and in the course of, other proceedings.

(5) The effect of a decree—
(a) under subsection (1), is to establish a presumption that the document has been authenticated by the granter concerned, or
(b) under subsection (2), is to establish a presumption that the statement in the decree as to time, date or place is correct.

(6) In this section, “the court” means—
(a) in the case of a summary application—
(i) the sheriff in whose sheriffdom the applicant resides, or
(ii) if the applicant does not reside in Scotland, the sheriff at Edinburgh, or
(b) in the case of an application made in the course of other proceedings, the court before which those proceedings are pending.
Further provision by Scottish Ministers about electronic documents

(1) The Scottish Ministers may, in regulations, make provision as to the effectiveness or formal validity of, or presumptions to be made with regard to—

(a) any alteration made, whether before or after authentication, to an electronic document,

(b) the authentication, by or on behalf of the granter, of such a document,

(c) the authentication, by or on behalf of a person with a disability, of such a document, or

(d) any annexation to such a document,

(including, without prejudice to the generality of this subsection, presumptions to be made with regard to the time, date and place of authentication of such a document).

(2) Regulations under subsection (1) may make such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient for the purposes of, or in consequence of the regulations.

(3) Subject to subsection (4), regulations under subsection (1) are subject to the negative procedure.

(4) Regulations which add to, replace or omit any part of an Act (including this Act) are subject to the affirmative procedure.

Delivery of electronic documents

(1) An electronic document may be delivered electronically or by such other means as are reasonably practicable.

(2) But such a document must be in a form, and such delivery must be by a means—

(a) the intended recipient has agreed to accept, or

(b) which it is reasonable in all the circumstances for the intended recipient to accept.

Registration and recording of electronic documents

(1) Subject to subsection (6), it is not competent—

(a) to record an electronic document in the Register of Sasines,

(b) to register such a document in the Land Register of Scotland,

(c) to register such a document for execution or preservation in the Books of Council and Session, or

(d) to record or register such a document in any other register under the management and control of the Keeper of the Registers of Scotland,

unless both subsection (2) and subsection (3) apply in relation to the document.
Part 10—Electronic documents, electronic conveyancing, and electronic registration

(2) This subsection applies where—

(a) the document is presumed under section 9C or 9D or by virtue of section 9E(1) to have been authenticated by the granter, or

(b) if there is more than one granter, the document is presumed by virtue of any of those provisions to have been authenticated by at least one of the granters.

(3) This subsection applies where—

(a) the document,

(b) the electronic signature authenticating it, and

(c) if the document bears to be certified, the certification,

are in such form and of such type as are prescribed by the Scottish Ministers in regulations.

(4) Before making regulations under subsection (3), the Scottish Ministers must consult with—

(a) the Keeper of the Registers of Scotland,

(b) the Keeper of the Records of Scotland, and

(c) the Lord President of the Court of Session.

(5) Regulations under subsection (3)—

(a) may make different provision for different cases or classes of case, and

(b) are subject to the negative procedure.

(6) Subsection (1) above does not apply in relation to—

(a) a document’s—

(i) being recorded in the Register of Sasines,

(ii) being registered in the Land Register of Scotland or in the Books of Council and Session, or

(iii) being recorded or registered in any other register under the management and control of the Keeper of the Registers of Scotland,

if an enactment requires or expressly permits such recording or registration notwithstanding that the document is not presumed to have been authenticated by the granter or by at least one of the granters,

(b) the recording of a court decree in the Register of Sasines or the registering of such a decree in the Land Register of Scotland,

(c) the registering in the Books of Council and Session of—

(i) a document registration of which is directed by the Court of Session,

(ii) a document the formal validity of which is governed by a law other than Scots law, provided that the Keeper of the Registers of Scotland is satisfied that the document is formally valid according to that other law,
(iii) a court decree granted under section 9D, or by virtue of section 9E(1), of this Act in relation to a document already registered in the Books of Council and Session, or

(d) the registration of a court decree in a separate register maintained for that purpose.

(7) An electronic document may be registered for preservation in the Books of Council and Session without a clause of consent to registration.”.

94 Amendment of Requirements of Writing (Scotland) Act 1995
Schedule 3, which contains modifications of the 1995 Act consequential on sections 92 and 93, has effect.

Electronic conveyancing

95 Automated registration
(1) The Keeper may, by means of a computer system under the Keeper’s management and control, enable—

(a) the creation of electronic documents,

(b) the electronic generation and communication of applications for registration in the register, and

(c) automated registration in the register.

(2) Only a person authorised by the Keeper, whether directly or indirectly, may use the system mentioned in subsection (1) to make applications for registration.

(3) The Scottish Ministers may, by regulations, make provision about the system mentioned in subsection (1) including—

(a) the kinds of deeds which may be authorised for use in the system,

(b) the persons who may be authorised to use the system,

(c) the suspension or revocation of a person’s authorisation under subsection (2),

(d) the method of appeal against any such suspension or revocation,

(e) the imposition of obligations on persons using the system, and

(f) the creation of deemed warranties (whether in favour of the Keeper or of other users) by persons using the system.

(4) Before making such regulations, the Scottish Ministers must consult the Keeper.

Electronic recording and registration

96 Power to enable electronic registration
(1) The Scottish Ministers may, by regulations, make provision to enable the recording or registration of electronic documents in any register under the management and control of the Keeper.

(2) Regulations under subsection (1) may, in particular, make provision—

(a) regulating the making up and keeping of any such register,
(b) regulating the procedure to be followed by any person applying for recording or registration in any such register,

(c) regulating the procedure to be followed by the Keeper in relation to—

(i) any such application, and

(ii) the recording or registration of electronic documents to which such an application relates,

(d) that the Scottish Ministers consider necessary or expedient to enable recording or registration of electronic documents in any such register.

(3) Regulations under subsection (1) may modify any enactment.

(4) Before making regulations under subsection (1), the Scottish Ministers must consult—

(a) the Keeper,

(b) the Keeper of the Records of Scotland, and

(c) the Lord President of the Court of Session.

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**PART 11**

**MISCELLANEOUS AND GENERAL**

**Deduction of title**

97 Deduction of title

(1) Where a person applies to register a deed mentioned in subsection (2), the deed need not deduce title.

(2) The deed is one validly granted by the unregistered holder of—

(a) land, or

(b) a real right in land,

to which the deed relates.

**Notes on register**

98 Note of date on which entry in register is made

When an entry is made in the register there is to be included in that entry the date on which it is made.

**Appeals**

99 Appeals

(1) An appeal may be made to the Lands Tribunal for Scotland, on a question of fact or on a point of law, against any decision of the Keeper under this Act.

(2) Subsection (1) is without prejudice to any other right of recourse, whether under an enactment or under a rule of law.

(3) Where a person successfully appeals against a decision of the Keeper to reject an application for registration, the application is not revived.
Extracts and certified copies

100 Extracts and certified copies: general

(1) A person may apply to the Keeper for an extract—
   (a) of, or of any part of, a title sheet,
   (b) of any part of the cadastral map, or
   (c) of, or of any part of, a document in the archive record.

(2) A person may apply to the Keeper for a certified copy—
   (a) of an application or advance notice in the application record,
   (b) of, or of any part of, any other document in that record.

(3) The Keeper must issue the extract or, as the case may be the certified copy, if—
   (a) such fee as is payable for issuing it is paid, or
   (b) arrangements satisfactory to the Keeper are made for payment of that fee.

(4) If, on application under subsection (1)(a) or (b), the applicant requests an extract in relation to a title sheet or the cadastral map as at a specific date, the Keeper need comply with the request only to the extent that it is reasonably practicable to do so.

(5) An extract of a part of the cadastral map issued under subsection (3)—
   (a) must include the base map so far as relating to that part either—
      (i) as at the date on which the extract is issued, or
      (ii) if the Keeper considers it appropriate to do so, as at some earlier date, and
   (b) must specify the base map date opted for under paragraph (a).

(6) The Keeper may authenticate the extract or, as the case may be the certified copy, as the Keeper considers appropriate.

(7) The Keeper may issue the extract, or as the case may be the certified copy, as an electronic document if (and only if) the applicant requests that it be issued in that form.

101 Evidential status of extract or certified copy

(1) An extract or certified copy issued under subsection (3) of section 100 in relation to an application under subsection (1)(a) or (b) or (2)(a) of that section is to be accepted for all purposes as sufficient evidence of the contents—
   (a) of the original, and
   (b) of any matter relating to the original which appears on the extract or copy.

(2) An extract or certified copy issued under subsection (3) of that section in relation to an application under subsection (1)(c) or (2)(b) of that section is to be accepted for all purposes as sufficient evidence of the contents—
   (a) of the document as submitted to the Keeper, and
   (b) of any matter relating to the document as so submitted which appears on the extract or copy.
102 Liability of Keeper in respect of extracts, information and lost documents etc.

(1) A person is entitled to be compensated by the Keeper in respect of loss suffered as a consequence of—

(a) the issue of an extract or certified copy under section 100 that is not a true extract, or as the case may be a true copy,

(b) the provision (in writing or in such other manner as provision is made for in an order under section 103(1)(a)) of other information as to the contents of the register that is incorrect,

(c) a document being lost, damaged or destroyed while lodged with the Keeper.

(2) The Keeper has no liability under subsection (1)—

(a) in so far as the claimant’s loss could have been avoided by the applicant or claimant taking certain measures which it would have been reasonable for the applicant or claimant to take,

(b) in so far as a claimant’s loss is too remote, or

(c) for non-patrimonial loss.

103 Information and access

(1) The Scottish Ministers may, by order, make further provision as regards—

(a) information to be made available by the Keeper and the manner in which it is to be made available,

(b) access to any register under the management and control of the Keeper.

(2) In subsection (1)(a), “information” includes information in the form of extracts and certified copies.

104 Provision of services by the Keeper

(1) The Keeper may provide consultancy, advisory or other commercial services.

(2) Those services need not relate to the law and practice of registration.

(3) The terms on which those services are provided (including the fees charged for provision of them) are to be such as may be agreed between the Keeper and those provided with them.

(4) If the Keeper considers it expedient to do so in connection with the provision of any of those services, the Keeper may (either or both)—

(a) form, or participate in the forming of, a body corporate or other entity,

(b) purchase, or invest in, a body corporate or other entity.

(5) This section does not affect any other power or duty of the Keeper.

105 Performance of Keeper’s functions during vacancy in office etc.

(1) This section applies where—
(a) there is a vacancy in the office of the Keeper or the Keeper is incapable by reason of ill health of performing the Keeper’s functions, and

(b) no person has been authorised by the Scottish Ministers, under section 1(6) of the Public Registers and Records (Scotland) Act 1948 (c.57), to perform the functions of the Keeper.

(2) A member of the Keeper’s staff may perform the Keeper’s functions.

(3) Any function performed by a member of the Keeper’s staff by virtue of subsection (2) is to be treated as if it had been performed by the Keeper.

**Fees**

(1) The Scottish Ministers may, by order—

(a) provide for the fees payable in relation to—

(i) registering, recording or entering in any register under the management and control of the Keeper,

(ii) access to such a register,

(iii) information made available by the Keeper,

(b) provide for the method of paying any such fees, and

(c) authorise the Keeper to determine, in such circumstances and subject to such limitations and conditions as may be specified in the order, any such fees.

(2) An order under this section may make different provision for different cases or for different classes of case.

(3) Before making an order under this section, the Scottish Ministers must consult the Keeper about, among other things—

(a) the expenses incurred by the Keeper in relation to administering and improving the systems of—

(i) registering, recording or entering in any register under the management and control of the Keeper,

(ii) providing access to any such register, and

(iii) making information available,

(b) in the case of the register, the expenses incurred by the Keeper in bringing all titles to land into it,

(c) the desirability of encouraging registering, recording and entering in any register under the management and control of the Keeper.

(4) In subsections (1)(a)(iii) and (3)(a)(iii), “information”—

(a) includes information in the form of extracts and certified copies,

(b) does not include information provided by virtue of section 104.
Duty to take reasonable care

107 Duties of certain persons

(1) A person mentioned in subsection (2) must take reasonable care to ensure that the Keeper does not inadvertently make the register inaccurate as a result of a change made in consequence of the grant mentioned in that subsection.

(2) The persons are—
   (a) a person granting a deed intended to be registered,
   (b) a person who, in connection with the grant, acts as a solicitor or other legal adviser to the granter.

(3) A person mentioned in subsection (4) must take reasonable care to ensure that the Keeper does not inadvertently make the register inaccurate as a result of a change made in consequence of the application mentioned in that subsection.

(4) The persons are—
   (a) a person making an application for registration,
   (b) a person who, in connection with the application, acts as a solicitor or other legal adviser to the applicant.

(5) The Keeper is entitled to be compensated by a person in breach of the duty under subsection (1) or (3) for any loss suffered as a consequence of that breach.

(6) But a person has no liability under subsection (5) in so far as—
   (a) the Keeper’s loss could have been avoided by the Keeper taking certain measures which it would have been reasonable for the Keeper to take, or
   (b) the Keeper’s loss is too remote.

Offence

108 Offence relating to applications for registration

(1) A person mentioned in subsection (2) commits an offence if the person—
   (a) makes a materially false or misleading statement in relation to an application for registration knowing that, or being reckless as to whether, the statement is false or misleading, or
   (b) intentionally fails to disclose material information in relation to such an application or is reckless as to whether all material information is disclosed.

(2) The persons are—
   (a) a person making an application for registration, or
   (b) a person who, in connection with such an application, acts as solicitor or other legal adviser to the applicant.

(3) It is a defence for a person charged with an offence under subsection (1) (the “accused”) that the accused took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(4) The defence is established if the accused—
   (a) acted in reliance on information supplied by another person,
(b) did not know and had no reason to suppose that—
   (i) the information was false or misleading, or
   (ii) all material information had not been disclosed, and

c) took all such steps as could reasonably be taken to ensure that no offence would be committed.

(5) Subsection (4) does not exclude other ways of establishing the defence mentioned in subsection (3).

(6) An accused may not rely on a defence involving the allegation that the commission of the offence was due to reliance on information supplied by another person unless—

(a) the accused has complied with subsection (7), or
(b) the court grants leave.

(7) The accused must serve on the prosecutor a notice giving such information identifying or assisting in the identification of the other person as is in the accused’s possession—

(a) at least 7 clear days before the hearing, and
(b) if the accused has previously appeared before a court in connection with the alleged offence, within 1 month of the first such appearance.

(8) A person guilty of an offence under subsection (1) is liable—

(a) on summary conviction, to imprisonment for a period not exceeding 12 months, to a fine not exceeding the statutory maximum, or to both,
(b) on conviction on indictment, to imprisonment for a period not exceeding 2 years, to a fine, or to both.

**General provisions**

109 **Interpretation**

(1) In this Act, unless the context otherwise requires—

“1995 Act” means the Requirements of Writing (Scotland) Act 1995 (c.7),

“advance notice” has the meaning given by section 55(1),

“application for registration” means an application under section 21 or 27,

“application record” has the meaning given by section 15,

“archive record” has the meaning given by section 14(1),

“the base map” has the meaning given by section 11(6),

“benefited property” has the meaning given by section 122(1) of the Title Conditions (Scotland) Act 2003 (asp 9),

“burdened property” has the meaning given by section 122(1) of the Title Conditions (Scotland) Act 2003 (asp 9),

“cadastral map” has the meaning given by section 11(1),

“cadastral unit” has the meaning given by section 12,

“date of application” (in relation to an application for registration) has the meaning given by section 35,
“date of registration” has the meaning given by 36(1),
“deed” means a document (and includes a decree which is registrable under an enactment),
“designation” includes—
(a) where the person designated is not a natural person—
(i) the legal system under which the person is incorporated or otherwise established,
(ii) if a number has been allocated to the person under section 1066 of the Companies Act 2006 (c.46), that number, and
(iii) any other identifier (whether or not a number) peculiar to the person,
(b) if the person designated has a right in land in a special capacity, a description of that capacity,
“the designated day” has the meaning given by section 118,
“enactment” includes—
(a) an enactment comprised in, or in an instrument made under, this Act, and
(b) a local and personal or private Act,
“existing title sheet” means a title sheet which is in existence immediately before the commencement of the designated day,
“flat” has the meaning given by section 29(1) of the Tenements (Scotland) Act 2004 (asp 11),
“flatted building” has the meaning given by section 16(4),
“heritable creditor” means the holder of a heritable security,
“heritable security” means—
(a) a standard security, or
(b) any other right in security over heritable property provided that it is not a right in security created as a floating charge,
“the Keeper” means the Keeper of the Registers of Scotland,
“land” includes—
(a) buildings and other structures,
(b) the seabed of the territorial sea of the United Kingdom adjacent to Scotland (including land within the ebb and flow of the tide at ordinary spring tides), and
(c) other land covered with water,
“land register rules” means rules made under section 111(1),
“lease” includes sub-lease,
“lease title sheet” means a title sheet for a registered lease,
“personal real burden” has the meaning given by section 122(1) of the Title Conditions (Scotland) Act 2003 (asp 9),
“plot of land” has the meaning given by section 3(4) and (5),
“possession” includes civil possession (analogous expressions being construed accordingly),
“proprietor” means a person who has a valid completed title as proprietor to a plot of land,
“protected period” has the meaning given by section 57(3),
“the register” means the Land Register of Scotland,
“registrable deed” is to be construed in accordance with section 48,
“sharing plot” and “shared plot” are to be construed in accordance with section 17(3),
“tenement” has the meaning given by section 26 of the Tenements (Scotland) Act 2004 (asp 11),
“title condition” has the meaning given by section 122(1) of the Title Conditions (Scotland) Act 2003 (asp 9),
“title sheet record” has the meaning given by section 3(3).

(2) A deed on which an application under section 21 is based is “valid” for the purposes of this Act if—
(a) by the registration applied for a right would be acquired, varied or extinguished, or
(b) the deed is certificatory of an acquisition, variation or extinction which has taken place.

(3) In relation to a lease title sheet, any reference in this Act—
(a) to a proprietor is (except in section 63) to be read as a reference to the tenant,
(b) to a proprietorship section is to be construed as a reference to a tenancy section, and
(c) to ownership in common is to be construed as a reference to tenancy in common.

(4) The Scottish Ministers may, by order, amend paragraph (b) of the definition of “designation” in subsection (1).

(5) Before making such an order, the Scottish Ministers must consult the Keeper.

References to “registering” etc. in the Land Register of Scotland

(1) In this Act (other than subsection (2)), unless the context otherwise requires—
(a) any reference to “registration” is to registration in the register, and
(b) analogous expressions are to be construed accordingly.

(2) Unless the context otherwise requires—
(a) any reference, however expressed, in any enactment to “registering” a document in the register, is to be construed as including a reference to giving effect to that document in accordance either with section 30 or with section 31, and
(b) analogous expressions are to be construed accordingly.
111 Land register rules

(1) The Scottish Ministers may, by regulations, make land register rules—
   (a) regulating the making up and keeping of the register,
   (b) regulating the procedure in relation to applications for registration,
   (c) prescribing forms to be used in relation to the register,
   (d) as to when the application record is open for the making of entries,
   (e) requiring the Keeper to enter in the title sheet record such information as may be specified in the rules or authorising or requiring the Keeper to enter in that record such rights or obligations as may be so specified,
   (f) relating to any other matter which this Act provides may or must be provided for by land register rules, or
   (g) concerning other matters and seeming to them to be necessary or expedient in order to give full effect to the purposes of this Act.

(2) Before making land register rules, the Scottish Ministers must consult the Keeper.

112 Subordinate legislation

(1) Any power conferred by this Act on the Scottish Ministers to make orders or regulations may be exercised to make different provision for different cases or descriptions of case or for different purposes.

(2) Orders and regulations under the following sections are subject to the negative procedure—
   (a) section 11(6)(b),
   (b) section 27(6),
   (c) section 44(7),
   (d) section 58(6)(b),
   (e) section 61(1),
   (f) subject to subsection (4)(a), section 96(1),
   (g) section 111(1),
   (h) subject to subsection (4)(b), section 113(1).

(3) Orders and regulations under the following provisions are subject to the affirmative procedure—
   (a) section 36(3),
   (b) section 42(8),
   (c) section 47(2) or (3),
   (d) section 55(4),
   (e) section 57(6),
   (f) section 66(3),
   (g) section 95(3),
   (h) section 103(1),
Part II—Miscellaneous and general

113 Ancillary provision

(1) The Scottish Ministers may, by order, make such incidental, supplementary, consequential, transitory, transitional or saving provision as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, any provision made by or under this Act.

(2) An order under subsection (1) may modify any enactment (including this Act).

114 Transitional provisions

Schedule 4, which contains transitional provisions, has effect.

115 Minor and consequential modifications

Schedule 5, which contains minor amendments and repeals, and amendments and repeals consequential upon the provisions of this Act, has effect.

116 Saving provisions

(1) The amendments to the Prescription and Limitation (Scotland) Act 1973 (c.52) made by paragraph 18(2) and (4) of schedule 5 do not apply in relation to a continuous period which has expired before the designated day.

(2) Despite the repeal, by paragraph 19(5) of schedule 5, of section 28(1) of the Land Registration (Scotland) Act 1979 (c.33), that section continues to have effect for the purposes of sections 15(4), 16, 20 to 22A and 29 of and schedules 1 and 3 to the 1979 Act.

117 Crown application

(1) No contravention by the Crown of section 108 makes the Crown criminally liable.

(2) But the Court of Session may, on the application of the Keeper or any person authorised by the Keeper, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Despite subsection (1), section 108 applies to persons in the public service of the Crown as it applies to other persons.

118 The designated day

The Scottish Ministers may, for the purposes of this Act, by order, designate a day (“the designated day”), being a day which falls not less than 6 months after the order is made.
119  **Commencement**

(1) The following sections come into force on the day after Royal Assent—

(a) section 109,
(b) section 110,
(c) section 112,
(d) section 113,
(e) section 118,
(f) this section, and
(g) section 120.

(2) The following provisions of this Act come into force on the designated day—

(a) Parts 1 to 9 and schedules 1 and 2,
(b) sections 97 to 103,
(c) section 107,
(d) section 108,
(e) section 111,
(f) section 114 and schedule 4,
(g) section 115 and schedule 5,
(h) section 116, and
(i) section 117.

(3) The other provisions of this Act come into force on such day as the Scottish Ministers may, by order, appoint.

120  **Short title**

The short title of this Act is the Land Registration etc. (Scotland) Act 2012.
SCHEDULE 1
(introduced by section 20)

REGISTERED LEASES TENANTED IN COMMON

Shared leases

1 This schedule applies where—
   (a) an area of land—
       (i) is tenanted in common by the tenants of two or more registered leases by
           virtue of their tenancy under those leases,
       (ii) is not tenanted in common by anyone else,
   (b) those registered leases have lease title sheets.

2 The Keeper may, if the Keeper considers it appropriate—
   (a) where the area tenanted in common does not have a lease title sheet, make up such
       a title sheet and designate it as a “shared lease title sheet”,
   (b) where that area is the subjects of a registered lease, make up (if necessary) a lease
       title sheet and designate it as a shared lease title sheet.

3 In the following provisions of this schedule—
   (a) references to a “shared lease” are to a lease the title sheet of which is designated
       under paragraph 2,
   (b) references to the “sharing leases” are to the other leases the tenants of which are
       tenants in common of the shared lease.

4 Unless the context otherwise requires, any reference in a document to a sharing lease is
   to be taken to include a reference to the share in the shared lease which pertains to the
   sharing lease.

5 Registration has the same effect in relation to a share in a shared lease which pertains to
   a sharing lease as it has in relation to the sharing lease (except in so far as may otherwise
   be provided in the deed registered).

Shared lease and sharing lease title sheets

6 The Keeper must enter—
   (a) in the property section of the title sheet of each of the sharing leases the title
       number of the shared lease title sheet,
   (b) in the proprietorship section of the shared lease title sheet, the title numbers of the
       title sheets of each sharing lease.

7 The Keeper must also enter—
   (a) in the property section of the title sheet of each sharing lease, the quantum of the
       share which the tenant of that sharing lease has in the shared lease,
   (b) in the proprietorship section of that title sheet, in relation to the information
       required by section 7(1)(b), the respective share each sharing lease has in the
       shared lease,
(c) in the securities section of the shared lease title sheet, a statement to the effect that
the shared lease may be subject to a heritable security registered against a sharing
lease,

(d) in the burdens section of that title sheet, a statement to the effect that the shared
lease may be subject to some other encumbrance so registered.

8 The Keeper must not enter in or, if entered, must omit from—

(a) the proprietorship section of the shared lease title sheet, the information that
would otherwise be required under section 7(1)(a),

(b) the securities section of that title sheet, the information that would otherwise be
required under section 8(1) unless the security is over the shared lease only,

(c) that title sheet, any matter that would otherwise be required under section
10(2)(b).

9 The Keeper may, if the condition mentioned in paragraph 10 is satisfied and the Keeper
considers it appropriate, omit from the burdens section of the shared lease title sheet any
entry which would otherwise be required under section 9(1).

10 The condition is that the encumbrance to which the entry would relate is (or falls to be)
registered against each of the sharing leases.

Conversion of shared lease title sheet to ordinary lease title sheet

11 The Keeper may at any time revoke a designation under paragraph 2 of a lease title sheet
as a shared lease title sheet.

12 Where the Keeper revokes a designation, the Keeper must make such changes to the title
sheets of the leases that were, in relation to the shared lease title sheet, the shared lease
and the sharing leases as are consequential upon the revocation.

SCHEDULE 2
(introduced by section 51)

AMENDMENT OF REGISTRATION OF LEASES (SCOTLAND) ACT 1857

1 The Registration of Leases (Scotland) Act 1857 (c.26) is amended as follows.

2 In section 1 (long leases, and assignations thereof, registrable in Register of Sasines)—

(a) before first “record” insert “register in the Land Register of Scotland or as the
case may be”.

(b) for second “record” to “thereof” substitute “register or record assignations and
translations of such leases”,

(c) the existing provisions as so amended become subsection (1),

(d) after that subsection insert—

“(2) In subsection (1) above, the expression “lands and heritages in Scotland” is,
without prejudice to its generality, to be construed as including the seabed of
the territorial sea of the United Kingdom adjacent to Scotland.”.

3 In the title of section 1 as so amended, for “registerable” substitute “registrable in Land
Register of Scotland or Register of Sasines”.

68
In section 2 (recorded leases effectual against singular successors in the lands let)—

(a) after “duly” insert “registered or”,

(b) in the proviso, after first “of” insert “, and subject to section 20C of,”.

In the title of section 2 as so amended, for “Recorded” substitute “Registered and recorded”.

In section 3 (assignations of recorded leases)—

(a) in subsection (1)—

(i) after first “been” insert “registered or”,

(ii) before second “recorded” insert “registered or”,

(iii) after “Schedule” insert “(ZA.) or, as the case may be,,”,

(iv) before “recording” insert “registering or”,

(b) in subsection (2)—

(i) repeal “recording of such assignation or the”,

(ii) after first “interest” insert “or the registration of such assignation under the Land Registration etc. (Scotland) Act 2012 (asp 00) or the recording of such assignation”,

(iii) for “and it” to the end substitute “and, as the case may be, the grantee’s interest or the lease had been so registered or the lease had been duly recorded.”,

(c) in subsection (2C), repeal—

(i) “, notwithstanding section 3(4) of the Land Registration (Scotland) Act 1979 (c.33) (creation of real right or obligation on date of registration etc.),”,

(ii) “of an interest in land under”.

In the title of section 3 as so amended, before “recorded” insert “registered or”.

In section 10 (adjudgers to complete right by recording abbreviate)—

(a) after first “lease” insert “registered or recorded”,

(b) before “recording” insert “registering or”,

(c) before second “recorded” insert “registered or”.

In section 12 (preferences regulated by date of recording transfer)—

(a) after first “assignations” insert “of any such lease registered or recorded as aforesaid”,

(b) before second “recorded” insert “registered or”,

(c) before “recording” insert “registering or”.

In the title of section 12 as so amended, before “recording” insert “registering or”.

In section 13 (renunciations and discharges to be recorded)—

(a) after first “aforesaid” insert “registered or”,

(b) for “(G.)” substitute “(ZG.) (or (G.))”.
Land Registration etc. (Scotland) Bill

Schedule 2—Amendment of Registration of Leases (Scotland) Act 1857

(c) after “duly” insert “register or”.

12 In the title of section 13 as so amended, before “recorded” insert “registered or”.

13 In section 14 (entry of decree of reduction)—

(a) after “renunciation” insert “registered or as the case may be”,

(b) after “duly” insert “register or”.

5 In section 15 (mode of registering etc.)—

(a) the existing provisions become subsection (1),

(b) after that subsection insert—

“(2) References in subsection (1) above to registration are not to be construed as including references to registration in the Land Register of Scotland.”.

10 In section 16 (registration equivalent to possession), after subsection (2) insert—

“(3) References in subsections (1) and (2) above to registration are not to be construed as including references to registration in the Land Register of Scotland.”.

15 After section 20B (as inserted by section 51) insert—

“20C Disapplication of Leases Act 1449

The Leases Act 1449 (c.6) does not apply to a lease registrable under this Act and granted on or after the date on which—

(a) the land to which the lease relates, or any part of that land, became land within an operational area (that is, within an area in respect of which the provisions of the Land Registration (Scotland) Act 1979 (c.33) had come into operation), or

(b) section 51 of the Land Registration etc. (Scotland) Act 2012 (asp 00) (amendment of Registration of Leases (Scotland) Act 1857 (c.26)) comes into force.

20D Long fishing leases

This Act applies to a contract within the meaning of section 66 of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 (asp 15) (application of Leases Act 1449) as it does to a lease described in section 1 of this Act provided that the contract in question—

(a) is for a period exceeding 20 years, or

(b) includes an obligation such as is described in section 17 of this Act.

20E The expression “the register”

Except where the context otherwise requires, in this Act—

(a) the expression “the register” is to be construed as including a reference to the Land Register of Scotland, and

(b) analogous expressions are to be construed accordingly.”.
17 Before schedule (A.) insert—

“SCHEDULE (ZA.)

FORM OF ASSIGNATION OF LEASE REGISTERED IN THE LAND REGISTER OF SCOTLAND

I, A.B., [designation] in consideration of the sum now paid to me, [or otherwise, as the case may be,] assign to C.D. [designation] a lease registered in the Land Register of Scotland under title number [number] [but (where the lease is assigned in part only) in so far only as regards the following portion of the subjects leased; viz. (specify particularly the portion),] with entry as at (term of entry). And [where sub-lease] I assign the rents from [term]; and I grant warrandice; and I bind myself to free and relieve the said C.D. of all rents and burdens due to the landlord or others at and prior to the term of entry in respect of said lease; and I consent to registration for preservation and execution.

[Testing clause.†]

†Note.—In the case of a traditional document, subscription of it by the granter will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes: see the Requirements of Writing (Scotland) Act 1995 (c.7) (which also makes provision as regards the authentication of an electronic document).”.

18 In each of schedules (A.) (form of assignation of lease), (G.) (renunciation of lease) and (H.) (form of discharge of bond and assignation in security), in the note relating to subscription of the document in question—

(a) for “Subscription of the document by the granter of it” substitute “In the case of a traditional document, subscription of it by the granter”,

(b) after “1995” insert “, which also makes provision as regards the authentication of an electronic document”.

19 In the title of schedule (A.), at the end insert “recorded in Register of Sasines”.

20 Schedule (B.) (form of bond and assignation in security) and the note to that schedule are repealed.

21 Schedule (D.) (form of translation of assignation in security) and the note to that schedule are repealed.

22 Before schedule (G.) insert—

“SCHEDULE (ZG.)

RENUNCIATION OF LEASE REGISTERED IN THE LAND REGISTER OF SCOTLAND

I, A.B. [designation] renounce as from the term of [term] in favour of C.D. [or as the case may be] a lease granted by the said C.D. [or as the case may be] and registered in the Land Register of Scotland under title number [number].

[Testing clause.†]

†Note.—In the case of a traditional document, subscription of it by the granter will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes: see the Requirements of
Writing (Scotland) Act 1995 (c.7) (which also makes provision as regards the authentication of an electronic document).”.

23 In the title of schedule (G.), at the end insert “recorded in the Register of Sasines”.

SCHEDULE 3
(introduced by section 94)

AMENDMENT OF REQUIREMENTS OF WRITING (SCOTLAND) ACT 1995

1 The 1995 Act is amended as follows.

2 After section 1 insert—

“PART 2

TRADITIONAL DOCUMENTS

1A Application of Part 2

This Part of this Act applies to documents written on paper, parchment or some similar tangible surface (“traditional documents”).”.

3 In section 2 (type of writing required for formal validity of certain documents)—

(a) in subsection (1), after “No” insert “traditional”,

(b) in subsection (2)—

(i) for “documents” in both places substitute “traditional documents”,

(ii) for first “document” substitute “traditional document”,

(iii) after “each” substitute “such”,

(c) in subsection (3), for first “document” substitute “traditional document”.

4 In the title of section 2, after “certain” insert “traditional”.

5 Sections 2A, 2B and 2C are repealed.

6 In section 3 (presumption as to granter’s subscription or date or place of subscription)—

(a) in subsection (1)(a), for “document” substitute “traditional document”,

(b) in subsection (2), for “testamentary document consists” substitute “traditional document is a testamentary document consisting”,

(c) in subsection (4), for first “document” substitute “traditional document”,

(d) in subsection (9), for “document” substitute “traditional document”,

(e) in subsection (10)(a), for “testamentary document bears” substitute “traditional document is a testamentary document bearing”.

7 Section 3A is repealed.

8 In section 4 (presumption as to granter’s subscription or date or place of subscription when established in court proceedings)—

(a) in subsection (1), for first “document” substitute “traditional document”,

(b) in subsection (2), for first “document” substitute “traditional document”.

9 In section 5 (alterations to documents: formal validity and presumptions)—
In the title of section 5, for “documents” substitute “traditional documents”.

In section 6 (registration of documents)—

(a) in subsection (1), repeal “and section 6A of this Act”,
(b) in subsection (1)(a), for “document” substitute “traditional document”,
(c) in subsection (1)(b), for “document” substitute “traditional document”,
(d) in subsection (4), for “document” substitute “traditional document”.

In the title of section 6, for “documents” substitute “traditional documents”.

Section 6A is repealed.

In section 7 (subscription and signing)—

(a) in subsection (1), for first “document” substitute “traditional document”,
(b) in subsection (2)—
   (i) for first “document” substitute “traditional document”,
   (ii) for second “a document” substitute “such a document”,
(c) in subsection (4), for first “document” substitute “traditional document”,
(d) in subsection (5)—
   (i) for first “document” substitute “traditional document”,
   (ii) for second “a document” substitute “such a document”,
(e) in subsection (5), for “documents” substitute “traditional documents”.

In section 8 (annexations to documents)—

(a) in subsection (1), for first “document” substitute “traditional document”,
(b) in subsection (4), for first “document” substitute “traditional document”,
(c) in subsection (5), for first “document” substitute “traditional document”.

In the title of section 8, for “documents” substitute “traditional documents”.

In section 9 (subscription on behalf of blind granter or granter unable to write)—

(a) for first “document” substitute “traditional document”,
(b) in subsection (5)—
   (i) in paragraph (a), for “document” substitute “traditional document”,
   (ii) in paragraph (b), for first “document” substitute “traditional document as mentioned in section 5(1)”.

Section 11 is repealed.

In section 12 (interpretation)—
(a) in subsection (1)—

(i) repeal the definition of “ARTL System”,

(ii) after the definition of “authorised” insert—

“‘certification’, in relation to an electronic signature incorporated into or logically associated with an electronic document, means confirming in a statement that—

(a) the electronic signature,

(b) a means of producing, communicating or verifying that signature, or

c) a procedure applied to that signature,

is, either alone or combined with other factors, a valid means of establishing the authenticity of the electronic document, its integrity or both its authenticity and its integrity (it being immaterial, in construing this definition, whether the statement is made before or after the authentication of an electronic document to which the statement relates).”,

(iii) repeal the definition of “dealing”,

(iv) repeal the definition of “digital signature”,

(v) in the definition of “document”, after first “includes” insert “, in the case of a traditional document.”,

(vi) repeal the definition of “electronic communication”,

(vii) for the definition of “electronic document” substitute—

“electronic document” has the meaning given by section 9A,

“electronic signature” means so much of anything in electronic form as—

(a) is incorporated into, or logically associated with, an electronic document, and

(b) purports to be so incorporated or associated for the purpose of being used in establishing the authenticity of the electronic document, its integrity or both its authenticity and its integrity.”,

(viii) repeal the definitions of “signature-creation data” and “signature-creation device”,

(ix) at the end insert—

“‘traditional document’ has the meaning given by section 1A.”,

(b) after subsection (3) insert—

“(4) In relation to an electronic document—

(a) references to authenticity—

(i) are references to whether the document has been electronically signed by a particular person, and

(ii) may include references to whether the document is accurately timed or dated, and

...
(b) references to integrity are references as to whether there has been any tampering with, or other modification of, the document.”.

20 The provisions of sections 10 to 15 as amended by this schedule become Part 4 of the Act.

21 The title of Part 4 is “General provisions”.

22 In schedule 1 (alterations made to documents after subscription)—

(a) in paragraph 1(1)(a), for first “document” substitute “traditional document”,

(b) in paragraph 2—

(i) in sub-paragraph (1), for first “document” substitute “traditional document”,

(ii) in sub-paragraph (2), for first “document” substitute “traditional document”.

23 In the title to schedule 1, for “document” substitute “traditional document”.

24 In schedule 2 (subscription and signing: special cases)—

(a) in paragraph 1, for first “document” substitute “traditional document”,

(b) in paragraph 2(1), for first “document” substitute “traditional document”,

(c) in paragraph 3—

(i) in sub-paragraph (1), for first “document” substitute “traditional document”,

(ii) in sub-paragraph (4), for “document” substitute “traditional document”,

(iii) in sub-paragraph (5)(a), in paragraph (a) of the first subsection set out in substitution for section 3(1), for first “document” substitute “traditional document”,

(iv) in sub-paragraph (6)(a), in paragraph (a) of the sub-paragraph set out in substitution for paragraph 1(1) of schedule 1, for “document” substitute “traditional document”,

(d) in paragraph 3A—

(i) in sub-paragraph (1), for first “document” substitute “traditional document”,

(ii) in sub-paragraph (4), for “document” substitute “traditional document”,

(iii) in sub-paragraph (5)(a), in paragraph (a) of the first subsection set out in substitution for section 3(1), for “document” substitute “traditional document”,

(iv) in sub-paragraph (6)(a), in paragraph (a) of the first sub-paragraph set out in substitution for paragraph 1(1) of schedule 1, for “document” substitute “traditional document”,

(e) in paragraph 4—

(i) in sub-paragraph (1), for first “document” substitute “traditional document”,

(ii) in sub-paragraph (4), for “document” substitute “traditional document”,

25
(iii) in sub-paragraph (5), in paragraph (a) of the first subsection set out in substitution for section 3(1), for “document” substitute “traditional document”,

(iv) in sub-paragraph (7), in paragraph (a) of the first sub-paragraph set out in substitution for paragraph 1(1) of schedule 1, for “document” substitute “traditional document”,

(f) in paragraph 5—

(i) in sub-paragraph (2), for first “document” substitute “traditional document”,

(ii) in sub-paragraph (4), for “document” substitute “traditional document”,

(iii) in sub-paragraph (5), in paragraph (a) of the first subsection set out in substitution for section 3(1), for first “document” substitute “traditional document”,

(iv) in sub-paragraph (7), in paragraph (a) of the first sub-paragraph set out in substitution for paragraph 1(1) of schedule 1, for “document” substitute “traditional document”,

(g) in paragraph 6—

(i) in sub-paragraph (1), for first “document” substitute “traditional document”,

(ii) in sub-paragraph (5), for “document” substitute “traditional document”,

(iii) in sub-paragraph (6), in paragraph (a) of the first subsection set out in substitution for section 3(1), for first “document” substitute “traditional document”,

(iv) in sub-paragraph (7), in paragraph (a) of the first sub-paragraph set out in substitution for paragraph 1(1) of schedule 1, for first “document” substitute “traditional document”. 

In schedule 3 (modifications of the Act in relation to subscription or signing by relevant person under section 9 of the Act)—

(a) in paragraph 2, in paragraph (a) of the subsection set out in substitution for section 3(1), for “document” substitute “traditional document”,

(b) in paragraph 4, in the subsection set out in substitution for section 3(4), for first “document” substitute “traditional document”,

(c) in paragraph 7, in paragraph (a) of the subsection set out in substitution for section 4(1), for “document” substitute “traditional document”,

(d) in paragraph 9, in sub-paragraph (a) of the paragraph set out in substitution for paragraph 1(1) of schedule 1, for first “document” substitute “traditional document”,

(e) in paragraph 14, in sub-paragraph (a) of the paragraph set out in substitution for paragraph 2(1) of schedule 1, for first “document” substitute “traditional document”.

In paragraph 1 of schedule 4 (minor and consequential amendments)—

(a) in sub-paragraph (1), after “section 6(2)” insert “or 9F(2)”, and
(b) in sub-paragraph (2), for “or subscribed” substitute “, subscribed or authenticated”.

SCHEDULE 4
(introduced by section 114)

TRANSITIONAL PROVISIONS

Existing title sheets

1. On the designated day an existing title sheet becomes part of the title sheet record.

2. An existing title sheet which becomes, under paragraph 1, part of the title sheet record, may be amended by the Keeper so as—

   (a) to conform with a requirement of, or imposed by virtue of, this Act, or

   (b) to reflect something permitted by, or by virtue of, this Act.

3. An amendment under paragraph 2 may be made on the designated day or at such later date as the Keeper considers appropriate.

4. An existing title sheet as respects an interest of ownership becomes under paragraph 1 a title sheet as respects a plot of land; and the Keeper, on or as soon as practicable after the designated day, must create a cadastral unit for that plot.

5. An existing title sheet as respects an interest of tenancy becomes under paragraph 1 a lease title sheet.

6. Section 12(2) does not apply to a cadastral unit created under paragraph 4.

Common areas: general

7. If, by reason of being owned in common, the selfsame area of land is, immediately before the designated day, included in two or more existing title sheets the Keeper may, if the Keeper considers it appropriate, make up a title sheet for that area and create a cadastral unit for it.

8. Where a title sheet is created by virtue of paragraph 7—

   (a) the Keeper is to make such changes to the other title sheets mentioned in that paragraph and to the cadastral map as are consequential upon its being so constituted, and

   (b) the respective shares of the proprietors of the area of land need only be entered in the title sheet if they were entered in the existing title sheets.

Common areas: developments begun before designated day

9. If, by reason of being owned in common, the selfsame area of land (in this paragraph and in paragraph 11 referred to as “area A”) is, immediately before the designated day, included in two or more existing title sheets and on or after that day title sheets (in this paragraph and in paragraph 10 referred to as the “new title sheets”) are to be constituted for plots of land the proprietors of which will (qua proprietors of those plots) be comprised within those who own area A in common, area A may, by reason of being owned in common, be included in the new title sheets.
10 Where the respective shares of the proprietors were not entered in the existing title sheets they need not be entered in the new title sheets.

11 The Keeper may at any time create a separate title sheet for area A.

Archive record

12 The Keeper must include in the archive record—

(a) all copies of documents upon which the terms of the existing title sheets are founded,

(b) all copies of documents which relate to past states of title sheets and title plans, and

(c) such other information, in whatever form, as so relates,

in so far as those copy documents, and as the case may be that other information, is held by the Keeper immediately before the designated day.

Pending applications

13 Nothing in this Act, other than provision made by or by virtue of section 34, affects an application under section 4 (applications for registration) of the Land Registration (Scotland) Act 1979 (c.33) (the “1979 Act”) provided that the date of receipt of the application is before the designated day.

14 An application by virtue of section 9(1) of the 1979 Act (rectification of the register) falls if it has not been determined by the Keeper as at the designated day.

Claims under the 1979 Act

15 Where, immediately before the designated day, a person has an entitlement to claim indemnity under section 12(1) of the 1979 Act (indemnity in respect of loss) but either—

(a) no such claim has been made, or

(b) any such claim as has been made is as yet undetermined,

nothing in this Act affects the entitlement or claim.

16 Nothing in this Act affects any entitlement to reimbursement under subsection (1) of section 13 of the 1979 Act (reimbursement of certain expenditure) or any claim made by virtue of that subsection.

Bijural inaccuracies

17 If there is in the register, immediately before the designated day, an inaccuracy which the Keeper has power to rectify under section 9 of the 1979 Act (rectification of the register) then, as from that day—

(a) any person whose rights in land would have been affected by such rectification has such rights (if any) in the land as that person would have if the power had been exercised, and

(b) the register is inaccurate in so far as it does not show those rights as so affected.
For the purpose of determining whether the Keeper has the power mentioned in paragraphs 17 and 22, the person registered as proprietor of the land is to be presumed to be in possession unless the contrary is shown.

Where, by virtue of paragraph 17—

(a) a right is lost, compensation is payable under Part 7 as if warranty had been granted under section 71 in accepting an application by the person in whom the right was vested, or

(b) an encumbrance is revived, compensation is so payable as if such warranty had been granted in respect of an omission of the encumbrance.

Except that—

(a) compensation is not so payable in so far as, had the Keeper rectified the inaccuracy before the designated day, either a right to indemnity under section 12 of the 1979 Act (indemnity in respect of loss) was excluded by virtue of subsection (2) of that section or there would, by virtue of subsection (3) of that section, have been no entitlement to such indemnity,

(b) any compensation so payable is to be reduced to the extent that, had the Keeper rectified the inaccuracy before the designated day, the amount of any indemnity would have been reduced by virtue of section 13(4) of that Act (reduction proportionate to the extent to which a claimant has contributed, by fraudulent or careless act or omission, to loss), and

(c) in construing Part 7 for the purposes of paragraph 19, paragraphs (b) and (c) of section 76 are to be disregarded.

Section 75(4) and (5) applies in relation to a payment made by virtue of paragraph 19(a) as that section applies in relation to any other payment under Part 7.

If there is in the register, immediately before the designated day, an inaccuracy which the Keeper does not have power to rectify under section 9 of the 1979 Act, then on that day it ceases to be an inaccuracy.

Where, by virtue of paragraph 22, a person suffers loss which, had it been suffered by virtue of paragraph (b) of section 12(1) of the 1979 Act, would (after allowing for the effect of subsections (2) and (3) of that section) have given rise before the designated day to an entitlement under that section, the person is entitled to claim compensation, by virtue of this paragraph, from the Keeper in respect of that loss.

Sections 90(3) to (6) and 91 apply in respect of a claim by virtue of paragraph 23 as they apply in respect of a claim by virtue of section 90(1), but with the modification that, for paragraph (a) of section 91(1), there is substituted—

“(a) is, in so far as it is not compensation mentioned in paragraph (b), to be quantified as at the date on which the register became inaccurate.”.

Depiction of tenement etc.

Section 16(3) does not apply if any of the flats comprised in the flatted building mentioned in that subsection—

(a) is recorded in the Register of Sasines, or

(b) is registered by virtue of an application accepted under section 4 of the 1979 Act.
SCHEDULE 5

(introduced by section 115)

MINOR AND CONSEQUENTIAL MODIFICATIONS

Lands Clauses Consolidation (Scotland) Act 1845 (c.19)

1 In the Lands Clauses Consolidation (Scotland) Act 1845, in the note to schedule (A.) (form of conveyance)—
   (a) for “Subscription of the document by the granter of it” substitute “In the case of a traditional document, subscription of it by the granter”,
   (b) after “1995” insert “, which also makes provision as regards the authentication of an electronic document”.

Commissioners Clauses Act 1847 (c.16)

2 (1) The Commissioners Clauses Act 1847 is amended as follows.
   (2) In section 59(2) (conveyance of lands by commissioners)—
       (a) in paragraph (a)—
           (i) for “in accordance with section 7 of, and paragraph 5 of Schedule 2 to,” substitute “or authenticated in accordance with”,
           (ii) for “subscribed in accordance with the said section 7” substitute “so subscribed or authenticated”,
           (iii) for “, followed by infeftment duly recorded” substitute “or authenticated, duly registered in the Land Register of Scotland”,
       (b) in paragraph (b), for “word “subscribed”” substitute “the words “subscribed or authenticated””.
   (3) In section 75(2)(c) (form of mortgage)—
       (a) in sub-paragraph (i), repeal “section 7 of, and paragraph 5 of Schedule 2 to,”,
       (b) in sub-paragraph (ii), for “section 7” substitute “Act”.

Ordnance Board Transfer Act 1855 (c.117)

3 In section 5(2) of the Ordnance Board Transfer Act 1855 (description in conveyances etc.), after “subscribing” insert “, or as the case may be authenticating.”.

Transmission of Moveable Property (Scotland) Act 1862 (c.85)

4 In the Transmission of Moveable Property (Scotland) Act 1862, in the note to each of schedules A (form for assignation of bond or conveyance) and B (form of bond or conveyance)—
   (a) for “Subscription of the document by the granter of it” substitute “In the case of a traditional document, subscription of it by the granter”,
   (b) after “1995” insert “, which also makes provision as regards the authentication of an electronic document”.
Land Registration etc. (Scotland) Bill
Schedule 5—Minor and consequential modifications

Land Registers (Scotland) Act 1868 (c.64)

5  (1) The Land Registers (Scotland) Act 1868 is amended as follows.
    (2) Sections 13, 19 and 25 are repealed.

Titles to Land Consolidation (Scotland) Act 1868 (c.101)

5  (1) The Titles to Land Consolidation (Scotland) Act 1868 is amended as follows.
    (2) In section 159 (litigiosity not to begin before date of registration of notice of
        summons)—
        (a) the existing provisions become subsection (1),
        (b) after that subsection insert—
            “(2) A notice registered under subsection (1) on or after the date on which section
            65 of the Land Registration etc. (Scotland) Act 2012 (asp 00) (warrant to place
            a caveat) comes into force shall not have any effect in rendering litigious any
            land a title sheet for which is comprised in the Land Register of Scotland or in
            placing in bad faith any person acquiring such land.”.
    (3) In section 159A (registration of notice of summons of action of reduction)—
        (a) in each of subsections (2)(b) and (3)(b), repeal “register in the Land Register of
            Scotland or, as the case may be,”,
        (b) after subsection (3) insert—
            “(4) This section does not apply in relation to lands for which there is a title sheet in
            the Land Register of Scotland.”.
    (4) In schedule B, in form No. 1 (formal clauses of a disposition of land etc.), in the note
        relating to subscription of the document in question—
        (a) for “Subscription of the document by the granter of it” substitute “In the case of a
            traditional document, subscription of it by the granter”,
        (b) after “1995” insert “, which also makes provision as regards the authentication of
            an electronic document”.

Conveyancing (Scotland) Act 1874 (c.94)

7  (1) The Conveyancing (Scotland) Act 1874 is amended as follows.
    (2) In schedule M (form of assignation of right of relief etc.), in the note—
        (a) for “Subscription of the document by the granter of it” substitute “In the case of a
            traditional document, subscription of it by the granter”,
        (b) after “1995” insert “, which also makes provision as regards the authentication of
            an electronic document”.

Trusts (Scotland) Act 1921 (c.58)

8  (1) The Trusts (Scotland) Act 1921 is amended as follows.
    (2) In schedule A (form of minute of resignation), in the note—
(a) for “Subscription of the document by the grantor of it” substitute “In the case of a traditional document, subscription of it by the grantor”,
(b) after “1995” insert “, which also makes provision as regards the authentication of an electronic document”.

(3) In schedule B (form of deed of assumption), in the note—
(a) for “Subscription of the document by the granter or granters of it” substitute “In the case of a traditional document, subscription of it by the granter or granters”,
(b) after “1995” insert “, which also makes provision as regards the authentication of an electronic document”.

Conveyancing (Scotland) Act 1924 (c.27)

9 (1) The Conveyancing (Scotland) Act 1924 is amended as follows.
(2) In section 2(5) (interpretation), after “registrable” insert “in the Land Register of Scotland or”.
(3) In section 3 (disposition etc.), for “manner” substitute “such manner as was (immediately before the repeal of the note)”.
(4) In section 44 (General Register of Inhibitions and Register of Adjudications to be combined; limitation of effect of entries therein), after subsection (2) insert—
“(2A) A notice registered under subsection (2)(a)(i) of this section on or after the date on which section 65 of the Land Registration etc. (Scotland) Act 2012 (asp 00) (warrant to place a caveat) comes into force shall not have any effect in rendering—
(a) any land or lease for which there is a title sheet in the Land Register of Scotland, or
(b) any heritable security the particulars of which are entered in a title sheet in that register,
litigious or in placing in bad faith any person acquiring such land, lease or heritable security.”.
(5) In schedule B (notice of title), in note 8—
(a) for “Subscription of the document” substitute “In the case of a traditional document, subscription of it”,
(b) after “1995” insert “, which also makes provision as regards the authentication of an electronic document”.
(6) The title of schedule B becomes—
“FORMS OF NOTICE OF TITLE: REGISTER OF SASINES”.

Burgh Registers (Scotland) Act 1926 (c.50)

10 The Burgh Registers (Scotland) Act 1926 is repealed.

Public Registers and Records (Scotland) Act 1948 (c.57)

11 Section 4 of the Public Registers and Records (Scotland) Act 1948 is repealed.
Land Drainage (Scotland) Act 1958 (c.24)

12 In section 18(1) of the Land Drainage (Scotland) Act 1958 (interpretation), in the definition of “long lease”, after “being,” insert “registered in the Land Register of Scotland or”.

Harbours Act 1964 (c.40)

13 In section 57(1) of the Harbours Act 1964 (interpretation), in the definition of “long lease”, after “being,” insert “registered in the Land Register of Scotland or”.

Succession (Scotland) Act 1964 (c.41)

14 In section 21A(a) of the Succession (Scotland) Act 1964 (evidence as to testamentary documents in commissary proceedings), for “or 4” substitute “or 9D”.

Industrial and Provident Societies Act 1965 (c.12)

15 (1) The Industrial and Provident Societies Act 1965 is amended as follows.

(2) In section 29D(1) (execution of documents: Scotland), after “subscribed” insert “(or, in the case of an electronic document, authenticated)”.

(3) In section 29G(2)(a) (authorisation of use of official seal), after “subscribed” insert “or authenticated”.

(4) In schedule 3 (form of receipt on mortgage, heritable security etc.), in Part 2, in the note to each of forms C, D and E—

(a) for “Subscription of the document by the granter of it” substitute “In the case of a traditional document, subscription of it by the granter”,

(b) after “1995” insert “, which also makes provision as regards the authentication of an electronic document”.

(5) In schedule 4 (forms of bond for officers of society), in Part 2, in the note to form C—

(a) for “Subscription of the document” substitute “In the case of a traditional document, subscription of it”,

(b) after “1995” insert “, which also makes provision as regards the authentication of an electronic document”.

Gas Act 1965 (c.36)

16 In section 28(1) of the Gas Act 1965 (interpretation of Part 2 of the Act), in the definition of “long lease” for the purposes of the definition of “owner”, after “being,” insert “registered in the Land Register of Scotland or”.

Conveyancing and Feudal Reform (Scotland) Act 1970 (c.35)

17 (1) The Conveyancing and Feudal Reform (Scotland) Act 1970 is amended as follows.

(2) In section 9 (the standard security)—

(a) in subsection (2), after first “to” insert “grant and register in the Land Register of Scotland or to”,
(b) in subsection (4)—
   (i) after “duly” insert “registered or”,
   (ii) after “clear” insert “the Land Register of Scotland or”,
(c) in subsection (8), both—
   (i) in paragraph (a), after second “being” insert “registered in the Land
       Register of Scotland or”,
   (ii) in paragraph (b), after “be” insert “registered in the Land Register of
       Scotland or”.

(3) In section 10(4) (import of forms of, and certain clauses in, standard security), after “duly” insert “registered or”.

(4) In section 11(1) (effect of recorded standard security, and incorporation of standard security), after “duly” insert “registered or”.

(5) In the title of section 11 as so amended, after first “of” insert “registered or”.

(6) In section 12 (standard security may be granted by person uninfeft)—
   (a) for subsection (1) substitute—
       “(1) Notwithstanding any rule of law, a standard security may be granted over land
       or a real right in land by a person whose title thereto has not been completed by
       being duly registered or recorded.

       (1A) If the deed expressing the security is to be recorded in the Register of Sasines,
       the grantor must, in that deed, deduce his title to the land or real right from the
       person who appears in the Register of Sasines as having the last recorded title
       thereto.”,
   (b) in subsection (2)—
       (i) for “such a deed being” substitute “a deed expressing the security being
           registered or”.
       (ii) repeal “to which he has deduced title therein”,
       (iii) after “last” insert “registered or”.

(7) In section 13 (ranking of standard securities)—
   (a) in subsection (1)—
       (i) after “duly” insert “registered or”,
       (ii) after “so” insert “registered or”,
   (b) in subsection (2)(a)—
       (i) after “duly” insert “registered or”,
       (ii) after “subsequent” insert “registration or”,
       (iii) after third “the” insert “Land Register of Scotland or”,
   (c) after subsection (3) insert—
       “(4) An agreement as to the ranking among themselves of two or more standard
           securities which are granted over the same land or the same real right in land
           may be registered in the Land Register of Scotland.”.
(8) In section 14(1) (assignation of standard security), after “duly”, in both places, insert “registered or”.

(9) In section 15 (restriction of standard security)—
   (a) in subsection (1), after “duly”, in both places, insert “registered or”;
   (b) in subsection (2), after “duly” insert “registered or”.

(10) In section 16 (variation of standard security)—
    (a) in subsection (1), after “duly”, in both places, insert “registered or”,
    (b) in subsection (2)—
        (i) after “duly” insert “registered or”,
        (ii) after “so” insert “registered or”,
        (iii) after “be” insert “registered in the Land Register of Scotland or”,
    (c) in subsection (4)—
        (i) after first “is” insert “registered or”,
        (ii) after “an” insert “unregistered or”.

(11) In section 17 (discharge of standard security), after “duly”, in both places, insert “registered or”.

(12) In section 18(3) (redemption of standard security), after “duly” insert “registered or”.

(13) In section 19 (calling-up of standard security)—
    (a) in subsection (2)—
        (i) after “last”, in both places, insert “registered or”,
        (ii) after first “appearing” insert “in the Land Register of Scotland or”,
        (iii) after “record” insert “of the Register of Sasines”,
        (iv) before “Register” insert “Land Register of Scotland or”,
    (b) in subsection (3), after the word “last”, in both places, insert “registered or”.

(14) In section 26 (disposition by creditor on sale)—
    (a) in subsection (1), after “duly” insert “registered or”,
    (b) in subsection (2), after second “the” insert “registration or”.

(15) In section 27(1)(c) (application of proceeds of sale), after “duly” insert “registered or”.

(16) In section 28 (foreclosure)—
    (a) in subsection (5)—
        (i) after “duly” insert “registered or”,
        (ii) for “section 15 of the Land Registration (Scotland) Act 1979” substitute “the Land Registration etc. (Scotland) Act 2012 (asp 00)”,
        (iii) after “warrant” insert “for registering the extract of the decree in the Land Register of Scotland or”;
    (b) in subsection (6)—
        (i) after “duly”, in both places, insert “registered or”,

(ii) in paragraph (a), after “date” insert “of the registration or”,
(c) in subsection (7), after “due” insert “registration or”.

(17) In section 30(1) (interpretation of Part 2)—

(a) for the definition of “duly recorded” substitute—

“‘duly registered or recorded’ means registered in the Land Register of Scotland or recorded in the Register of Sasines;”,
(b) after the definition of “real right in land” insert—

“‘recorded’ means recorded in the Register of Sasines;”;
(c) after the definition of “Register of Sasines” insert—

“‘registered’ means registered in the Land Register of Scotland;”.

(18) In section 53(4) (interpretation of Act other than Part 2), for the definition of “duly recorded” substitute—

“‘duly registered or recorded’ means registered in the Land Register of Scotland or recorded in the Register of Sasines;”.

(19) In the notes to schedule 2 (forms of standard security)—

(a) in note 2, after first “subjects” insert “and the deed is to be recorded in the Register of Sasines”,
(b) in note 3, after first “security” insert “to be recorded in the Register of Sasines”,
(c) in note 4, after second “be” insert “registered in the Land Register of Scotland or”,
(d) in note 8—

(i) for “Subscription of the document by the granter of it” substitute “In the case of a traditional document, subscription of it by the granter”,
(ii) after “1995” insert “, which also makes provision as regards the authentication of an electronic document”.

(20) In paragraph 12 of schedule 3 (the standard conditions)—

(a) before “recorded” insert “registered or”,
(b) before “recording” insert “registration or”.

(21) In schedule 4 (forms of deeds of assignation, restriction etc.) in each of forms A, C, D, E and F, for “recorded in the register for……on…..” substitute “registered in the Land Register of Scotland on…..over title number…..(or recorded in the Register for……on…….)”.

(22) In the notes to schedule 4—

(a) in note 1—

(i) after first “title” insert “and the deed is to be recorded in the Register of Sasines”,
(ii) before fourth “recorded” insert “registered or”,
(b) in note 3—

(i) after first “by” insert “registration of the security in the Land Register of Scotland or”,

In schedule 5 (procedures as to redemption)—

(a) in form A, for “recorded in the register for……on…..” substitute “registered in the Land Register of Scotland on…..over title number…..(or recorded in the Register for……on…….)”,

(b) in form D (nos. 1 and 2), for “recorded in the register for……on…..” substitute “registered in the Land Register of Scotland on…..over title number…..(or recorded in the Register for……on…….)”,

(c) in each of the notes to form D—

(i) for “Subscription of the document by the granter of it” substitute “In the case of a traditional document, subscription of it by the granter”,

(ii) after “1995” insert “, which also makes provision as regards the authentication of an electronic document”.

(24) In schedule 6 (procedures as to calling-up and default), in each of forms A and B, for “recorded in the register for……on…..” substitute “registered in the Land Register of Scotland on…..over title number…..(or recorded in the Register for……on…….)”.

(25) In schedule 9 (discharge of heritable security constituted by ex facie absolute conveyance), in note 4—

(a) for “Subscription of the document by the granter of it” substitute “In the case of a traditional document, subscription of it by the granter”,

(b) after “1995” insert “, which also makes provision as regards the authentication of an electronic document”.

Prescription and Limitation (Scotland) Act 1973 (c.52)

18 (1) The Prescription and Limitation (Scotland) Act 1973 is amended as follows.

(2) In section 1 of the Prescription and Limitation (Scotland) Act 1973 (c.52) (validity of right), for subsection (1)(b) substitute—

“(b) the registration of a deed which is sufficient in respect of its terms to constitute in favour of that person a real right in—

(i) that land; or
(ii) land of a description habile to include that land.”.

(3) In section 2 (special cases)—
   (a) in subsection (1)(b), for “recorded or not” substitute “or not registered or recorded”;
   (b) in subsection (2)(b), after “been” insert “registered or”, and
   (c) in subsection (3), for “section 3(3) of the Land Registration (Scotland) Act 1979 (c.33)” substitute “section 20B or 20C of the Registration of Leases (Scotland) Act 1857 (c.26)”.

(4) In section 5 (further provision supplementary to sections 1, 2 and 3 of the Prescription and Limitation (Scotland) Act 1973), after subsection (1) insert—
   “(1A) Any reference in those sections to a real right’s being exempt from challenge as from the expiration of some continuous period is to be construed, if the real right of the possessor was void immediately before that expiration, as including reference to acquisition of the real right by the possessor.”.

(5) In section 15(1) (interpretation of Part 1 of the Act), at end insert “and to the registering of a deed are to the registering thereof in the Land Register of Scotland”.

(6) In paragraph 1 of schedule 1 (obligations affected by prescriptive periods of 5 years under section 6 of that Act), after sub-paragraph (ac) insert—
   “(ad) to any obligation of the Keeper of the Registers of Scotland to pay compensation by virtue of section 80 of the Land Registration etc. (Scotland) Act 2012 (asp 00);
   (ae) to any obligation to pay compensation by virtue of section 107 of that Act;”.

(7) In paragraph 2 of that schedule (obligations which, notwithstanding paragraph 1 of the schedule, are not affected by prescriptive periods of 5 years under section 6 of that Act), in sub-paragraph (e)—
   (a) for “or (ac)” substitute “, (ac), (ad), or (ae)”;
   (b) after “servitude)” insert “and any obligation of the Keeper of the Registers of Scotland to pay compensation by virtue of section 75 or 90 of the Land Registration etc. (Scotland) Act 2012 (asp 00)”.

(8) In schedule 3 (rights and obligations which are imprescriptible for certain purposes of that Act) after sub-paragraph (h) insert—
   “(i) any obligation of the Keeper of the Registers of Scotland to rectify an inaccuracy in the Land Register of Scotland”.

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**Land Registration (Scotland) Act 1979 (c.33)**

19 (1) The Land Registration (Scotland) Act 1979 is amended as follows.

(2) Sections 1 to 14 are repealed.

(3) In section 15 (simplification of deeds relating to registered interests)—
   (a) subsections (1) to (3) are repealed,
   (b) in subsection (4)—
(i) for “registered interest in land” substitute “plot of land or lease registered in the Land Register of Scotland”,

(ii) for “that interest” substitute “the plot or lease”.

(4) Section 19 is repealed.

(5) Sections 23 to 28 are repealed.

(6) In section 29(3) (references to recording to include references to registering), paragraph (b) is repealed.

(7) Section 30 is repealed.

(8) Schedule 2 is repealed.

(9) In schedule 3 (enactments not affected by section 29(2))—

(a) paragraphs 3, 4, 10, 12 and 13 are repealed,

(b) in paragraph 5, for paragraphs (a) to (c) substitute “The Whole Act.”,

(c) in paragraph 6—

(i) for paragraph (d) substitute—

“(d) Section 12.

(da) Section 14.”,

(ii) paragraph (e) is repealed,

(d) in paragraph 7, paragraphs (a), (c) to (f), (i) and (j)) are repealed,

(e) in paragraph 8, paragraph (b) is repealed,

(f) in paragraph 11—

(i) in paragraph (a), repeal “and note 2 to Schedule K”,

(ii) paragraphs (d) and (e) are repealed,

(iii) in paragraph (f), for “24(3)” to the end substitute “24(2) and (3) and that part of subsection (5) from the words “provided that” to the end”,

(iv) for paragraph (g) substitute—

“(ga) Section 46”,

(v) after paragraph (i) insert—

“(j) Schedule J”,

(g) in paragraph 16, for paragraphs (a) and (b) substitute “The Whole Act.”.

(10) Schedule 4 is repealed.

Education (Scotland) Act 1980 (c.44)

20 In section 16(2) of the Education (Scotland) Act 1980 (transference of denominational schools to education authorities)—

(a) for paragraphs (a) and (b) substitute “by registration in the Land Register of Scotland of an ordinary disposition or other deed of conveyance by the persons vested with the title”, and
(b) for “the recording of the deed of conveyance or, as the case may be,” substitute “such”.

**Water (Scotland) Act 1980 (c.45)**

21 (1) The Water (Scotland) Act 1980 is amended as follows.

(2) In section 58(5) (termination of right to supply of water on special terms), for “record” to the end substitute “—

(a) register in the Land Register of Scotland any agreement entered into, or order made, under the foregoing provisions of this section terminating an obligation to which this section applies if the obligation was itself registered in the Land Register, or

(b) record in the Register of Sasines any such agreement or order if the obligation was itself recorded in the Register of Sasines.”.

(3) In section 68(2) (agreements as to drainage), for “recorded in the appropriate” substitute “registered in the Land Register of Scotland or recorded in the”.

(4) Section 109(5) is repealed.

**Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c.59)**

22 In section 13(8) of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (transfer of tenancy), in the definition of “long lease”, for “section 28(1) of the Land Registration (Scotland) Act 1979” substitute “section 9(2) of the Land Registration etc. (Scotland) Act 2012 (asp 00)”.

**Civil Aviation Act 1982 (c.16)**

23 In section 55 of the Civil Aviation Act 1982 (c.16) (registration of orders etc. under Part 2 of the Act)—

(a) in subsection (2), repeal “in the Land Register of Scotland”,

(b) in subsection (3), for second “as” to “interest” substitute “, and on being registered shall be enforceable against any person having or subsequently acquiring any right”, and

(c) for subsection (4) substitute—

“(4) References in—

(a) subsection (2) above to registering a grant or agreement, or

(b) subsection (3) above to registering an instrument,

are to registering it in the Land Register of Scotland or, as the case may be, to recording it in the Register of Sasines.”.

**Litter Act 1983 (c.35)**

24 In section 8 of the Litter Act 1983 (provisions supplementary to section 7 of the Act)—

(a) in subsection (3)—

(i) repeal “Subject to subsection (4) below,”,
(ii) for the words from “be registered” to “so registered” substitute “—

(a) if the land is registered in the Land Register of Scotland, be registered in
that register, and

(b) in any other case, be recorded in the Register of Sasines,

and if the agreement is so registered or recorded it”, and

(b) subsection (4) is repealed.

Health and Social Services and Social Security Adjudications Act 1983 (c.41)

25 In section 23(1) of the Health and Social Services and Social Security Adjudications Act 1983 (arrears of contributions secured over interest in land in Scotland), for “Land Registration (Scotland) Act 1979” substitute “Land Registration etc. (Scotland) Act 2012”.

Telecommunications Act 1984 (c.12)

26 In schedule 4 of the Telecommunications Act 1984 (minor and consequential amendments), paragraph 71 is repealed.

Matrimonial and Family Proceedings Act 1984 (c.42)

27 In schedule 1 of the Matrimonial and Family Proceedings Act 1984 (minor and consequential amendments), paragraph 28 is repealed.

Bankruptcy (Scotland) Act 1985 (c.66)

28 (1) The Bankruptcy (Scotland) Act 1985 is amended as follows.

20 (2) In section 5 (sequestration of estate of a living or deceased debtor), in subsection (4AA)(1)(a)(ii), for “28(1) of the Land Registration (Scotland) Act 1979 (c.33)” substitute “9(2) of the Land Registration etc. (Scotland) Act 2012 (asp 00))”.

(3) In schedule 7 (consequential amendments), paragraph 15 is repealed.

Housing Associations Act 1985 (c.69)

29 In section 68(6) of the Housing Associations Act 1985 (loans by Public Works Loan Commissioners: Scotland), after “lease” insert “registered or”.

Law Reform (Miscellaneous Provisions)(Scotland) Act 1985 (c.73)

30 In section 8 of the Law Reform (Miscellaneous Provisions)(Scotland) Act 1985 (rectification of defectively expressed documents)—

(a) in subsection (7), at end insert “except that this subsection is subject to subsection (8A) below.”, and

(b) after subsection (8) insert—

“(8A) A notice under subsection (7) above registered on or after the date on which section 65 of the Land Registration etc. (Scotland) Act 2012 (asp 00) (warrant to place a caveat) comes into force shall not have any effect in rendering
litigious any land for which there is a title sheet in the Land Register of Scotland or in placing in bad faith any person acquiring such land.”.

Electricity Act 1989 (c.2)

31 In schedule 16 to the Electricity Act 1989 (minor and consequential amendments), paragraph 23 is repealed.

Property Misdescriptions Act 1991 (c.29)

32 In section 1 of the Property Misdescriptions Act 1991 (offence of property misdescription)—

(a) in subsection (6)(b), for “an “interest” to the end substitute “any right in or over land (“right in or over land” including ownership and any heritable security or servitude but excluding any lease which is not a long lease).”;

(b) after subsection (6) insert—

“(6A) In subsection (6)(b), “long lease” has the meaning given by section 9(2) of the Land Registration etc. (Scotland) Act 2012 (asp 00).”.

Agricultural Holdings (Scotland) Act 1991 (c.55)

33 In section 75(1) of the Agricultural Holdings (Scotland) Act 1991 (power of tenant and landlord to obtain charge on holding), after “recorded” insert “or registered”.

Coal Industry Act 1994 (c.21)

34 In the Coal Industry Act 1994, in schedule 9 (minor and consequential amendments), paragraph 20 is repealed.

Land Registers (Scotland) Act 1995 (c.14)

35 In section 1 of the Land Registers (Scotland) Act 1995 (prepayment of recording and registration fees)—

(a) in subsection (1), for “payment” to the end substitute “—

(a) such fee as is payable in that respect by virtue of section 106 of the Land Registration etc. (Scotland) Act 2012 (asp 00) is paid, or

(b) arrangements satisfactory to the Keeper are made for payment of that fee.”;

(b) subsection (3) is repealed.

Petroleum Act 1998 (c.17)

36 In section 5(9) of the Petroleum Act 1998 (existing licences), after “subscribed” insert “or authenticated”.

Public Finance and Accountability (Scotland) Act 2000 (asp 1)

37 In section 9(1) of the Public Finance and Accountability (Scotland) Act 2000 (Keeper of the Registers of Scotland: financial arrangements), for “section 25 of the Land Registrers (Scotland) Act 1868 (c.64)” substitute “section 106 of the Land Registration etc. (Scotland) Act 2012 (asp 00)”.

Adults with Incapacity (Scotland) Act 2000 (asp 4)

38 (1) The Adults with Incapacity (Scotland) Act 2000 is amended as follows.

(2) In section 56(7) (registration of intervention order relating to heritable property, for “the updated Land Certificate or an office copy thereof” substitute “an extract of the updated title sheet”.

(3) In section 61(7) (registration of guardianship order relating to heritable property), for “the updated Land Certificate or an office copy thereof” substitute “an extract of the updated title sheet”.

Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5)

39 (1) The Abolition of Feudal Tenure etc. (Scotland) Act 2000 is amended as follows.

(2) Section 4 is repealed.

(3) In section 18A(8)(b) (personal pre-emption burdens and personal redemption burdens), for “15(3) of the Land Registration (Scotland) Act 1979 (c.33)” substitute “97 of the Land Registration etc. (Scotland) Act 2012 (asp 00)”.

(4) Section 46 is repealed.

(5) In section 63(2) (baronies and other dignities and offices), for “an interest in land for the purposes of the Land Registration (Scotland) Act 1979 (c.33) or a right as respects which a deed can be” substitute “a right as respects which a deed can be registered in the Land Register of Scotland or”.

(6) Section 65 is repealed.

(7) In section 65A (sporting rights), subsection (12) is repealed.

(8) In section 73 (feudal terms in enactments and documents: construction after abolition of feudal system)—

(a) in subsection (1)—

(i) repeal “or” immediately after paragraph (c), and

(ii) after paragraph (d) insert “or

(e) in an extract or certified copy issued under section 100 of the Land Registration etc. (Scotland) Act 2012 (asp 00),”;

(b) in subsection (2)(b), for “subsection (1)(d)” substitute “paragraph (d) of, or extract or certified copy such as is mentioned in paragraph (e) of, subsection (1)”.

(9) In schedule 11 (form of assignation, discharge or restriction of reserved right to claim compensation), repeal “section 3 of”.
Standards in Scotland’s Schools etc. Act 2000 (asp 6)

In section 58(1) of the Standards in Scotland’s Schools etc. Act 2000 (interpretation), in the definition of “land”, for “interests in land (within the meaning of the Land Registration (Scotland) Act 1979 (c.33)” substitute “rights registered in the Land Register of Scotland”.

National Parks (Scotland) Act 2000 (asp 10)

In section 15 of the National Parks (Scotland) Act 2000 (management agreements)—

(a) in subsection (1), for “an interest” substitute “a right”, 
(b) for subsection (5) substitute—

“(5) A management agreement which affects a right in land which is—

(a) a right registered in the Land Register of Scotland, may be registered in that register,

(b) a right registrable (but not registered) in that register, may be recorded in the Register of Sasines.”, and

(c) subsection (10) is repealed.

Housing (Scotland) Act 2001 (asp 10)

In the Housing (Scotland) Act 2001—

(c) in section 23(1)(b) (tenant’s right to written tenancy agreement and information), after “subscribed” insert “or authenticated”,

(d) in section 24(3) (restriction on variation of tenancy), after “subscribed” insert “or authenticated”.

Title Conditions (Scotland) Act 2003 (asp 9)

(1) The Title Conditions (Scotland) Act 2003 is amended as follows.

(2) In section 4 (creation of real burdens), in subsection (1), repeal “, notwithstanding section 3(4) of the 1979 Act (creation of real right or obligation on date of registration etc.),”.

(3) In section 41(b) (deed granted by holder of conservation burden without completing title), for “15(3) of the 1979 Act” substitute “97 of the Land Registration etc. (Scotland) Act 2012 (asp 00)”.

(4) Sections 51 and 58 are repealed.

(5) In section 60 (grant of deed where title not completed: requirements)—

(a) in subsection (1), for “15(3) of the 1979 Act” substitute “97 of the Land Registration etc. (Scotland) Act 2012 (asp 00)”, and

(b) in subsection (2), repeal “or with section 15(3) of the 1979 Act”.

(6) In section 71 (development management scheme), in subsection (1), repeal “, notwithstanding section 3(4) of the 1979 Act (creation of real right or obligation on date of registration etc.)”.
(7) In section 73 (disapplication of development management schemes), in subsection (1)(b), repeal “notwithstanding section 3(4) of the 1979 Act (creation of real right or obligation on date of registration etc.).”.

(8) In section 75 (creation of positive servitudes by writing: deed to be registered), in subsection (2), repeal “notwithstanding section 3(4) of the 1979 Act (creation of real right or obligation on date of registration etc.).”.

(9) In section 84(2) (extinction following offer to sell), after “section 2” insert “or 9B”.

(10) In section 119 (savings and transitional provisions etc.), subsection (2) is repealed.

(11) In section 122 (interpretation)—

(a) in subsection (1)—

(i) in the definition of “constitutive deed”, after “is” insert “, subject to subsection (4) below,”,

(ii) in the definition of “title condition”, in paragraph (e)(i), for “assignation of” substitute “assignations of registered or”, and

(b) after subsection (3) insert—

“(4) If title is completed in the manner provided for in section 4 or 4A of the Conveyancing (Scotland) Act 1924 (c.27) (completion of title) and a midcouple relevant to the title sets out the terms of a title condition (or of a prospective title condition), then for the purposes of this Act the midcouple and notice of title are together the constitutive deed of the title condition.”.

Civil Partnership Act 2004 (c.33)

In section 112(9) of the Civil Partnership Act 2004 (transfer of tenancy), in the definition of “long lease”, for “28(1) of the Land Registration (Scotland) Act 1979 (c.33)” substitute “9(2) of the Land Registration etc. (Scotland) Act 2012 (asp 00)”.

Stirling-Alloa-Kincardine Railway and Linked Improvements Act 2004 (asp 10)

In section 16 of the Stirling-Alloa-Kincardine Railway and Linked Improvements Act 2004 (rights in roads or public places), for subsection (3) substitute—

“(3) The powers conferred by this section constitute a real right.”.

Tenements (Scotland) Act 2004 (asp 11)

(1) The Tenements (Scotland) Act 2004 is amended as follows.

(2) In section 1(2)(b) (determination of boundaries and pertinents)—

(a) repeal “an interest in”, and

(b) for “title sheet of that interest” substitute “relevant title sheet”.

(3) In paragraph 1(6) of schedule 3 (sale under section 22(3) or 23(1) of the Act), for paragraph (a) substitute—

“(a) where the flat or former flat has been registered in the Land Register of Scotland, the description refers to the number of the title sheet;”.

(4) In section 75 (creation of positive servitudes by writing: deed to be registered), in subsection (2), repeal “notwithstanding section 3(4) of the 1979 Act (creation of real right or obligation on date of registration etc.).”.

(5) In section 73 (disapplication of development management schemes), in subsection (1)(b), repeal “notwithstanding section 3(4) of the 1979 Act (creation of real right or obligation on date of registration etc.).”.

(6) In section 84(2) (extinction following offer to sell), after “section 2” insert “or 9B”.

(7) In section 119 (savings and transitional provisions etc.), subsection (2) is repealed.

(8) In section 122 (interpretation)—

(a) in subsection (1)—

(i) in the definition of “constitutive deed”, after “is” insert “, subject to subsection (4) below,”,

(ii) in the definition of “title condition”, in paragraph (e)(i), for “assignation of” substitute “assignations of registered or”, and

(b) after subsection (3) insert—

“(4) If title is completed in the manner provided for in section 4 or 4A of the Conveyancing (Scotland) Act 1924 (c.27) (completion of title) and a midcouple relevant to the title sets out the terms of a title condition (or of a prospective title condition), then for the purposes of this Act the midcouple and notice of title are together the constitutive deed of the title condition.”.

Civil Partnership Act 2004 (c.33)

In section 112(9) of the Civil Partnership Act 2004 (transfer of tenancy), in the definition of “long lease”, for “28(1) of the Land Registration (Scotland) Act 1979 (c.33)” substitute “9(2) of the Land Registration etc. (Scotland) Act 2012 (asp 00)”.

Stirling-Alloa-Kincardine Railway and Linked Improvements Act 2004 (asp 10)

In section 16 of the Stirling-Alloa-Kincardine Railway and Linked Improvements Act 2004 (rights in roads or public places), for subsection (3) substitute—

“(3) The powers conferred by this section constitute a real right.”.

Tenements (Scotland) Act 2004 (asp 11)

(1) The Tenements (Scotland) Act 2004 is amended as follows.

(2) In section 1(2)(b) (determination of boundaries and pertinents)—

(a) repeal “an interest in”, and

(b) for “title sheet of that interest” substitute “relevant title sheet”.

(3) In paragraph 1(6) of schedule 3 (sale under section 22(3) or 23(1) of the Act), for paragraph (a) substitute—

“(a) where the flat or former flat has been registered in the Land Register of Scotland, the description refers to the number of the title sheet;”.

(4) In section 75 (creation of positive servitudes by writing: deed to be registered), in subsection (2), repeal “notwithstanding section 3(4) of the 1979 Act (creation of real right or obligation on date of registration etc.).”.

(5) In section 73 (disapplication of development management schemes), in subsection (1)(b), repeal “notwithstanding section 3(4) of the 1979 Act (creation of real right or obligation on date of registration etc.).”.

(6) In section 84(2) (extinction following offer to sell), after “section 2” insert “or 9B”.

(7) In section 119 (savings and transitional provisions etc.), subsection (2) is repealed.

(8) In section 122 (interpretation)—

(a) in subsection (1)—

(i) in the definition of “constitutive deed”, after “is” insert “, subject to subsection (4) below,”,

(ii) in the definition of “title condition”, in paragraph (e)(i), for “assignation of” substitute “assignations of registered or”, and

(b) after subsection (3) insert—

“(4) If title is completed in the manner provided for in section 4 or 4A of the Conveyancing (Scotland) Act 1924 (c.27) (completion of title) and a midcouple relevant to the title sets out the terms of a title condition (or of a prospective title condition), then for the purposes of this Act the midcouple and notice of title are together the constitutive deed of the title condition.”.
47 In section 25 of the Edinburgh Tram (Line Two) Act 2006 (rights under or over roads), for subsection (5) substitute—

“(5) The powers conferred by this section constitute a real right.”.

48 In section 25 of the Edinburgh Tram (Line One) Act 2006 (rights under or over roads), for subsection (5) substitute—

“(5) The powers conferred by this section constitute a real right.”.

49 In section 16 of the Waverley Railway (Scotland) Act 2006 (rights in roads or public places), for subsection (3) substitute—

“(3) The powers conferred by this section constitute a real right.”.

50 (1) The Companies Act 2006 is amended as follows.

(2) In section 48(3) (execution of documents by companies), after “subscribed” insert “(or, in the case of an electronic document, authenticated)”.

(3) In section 49(4)(b), after “subscribed” insert “or authenticated”.

(4) In section 1022(6)(b) (protection of persons holding under a lease), for “Land Registration (Scotland) Act 1979 (c.33)” substitute “Land Registration etc. (Scotland) Act 2012 (asp 00)”.

51 In section 15 of the Glasgow Airport Rail Link Act 2007 (rights in roads), for subsection (3) substitute—

“(3) The powers conferred by this section constitute a real right.”.

52 (1) The Bankruptcy and Diligence etc. (Scotland) Act 2007 is amended as follows.

(2) In section 85 (restriction on priority of ranking of certain securities), in new section 13A (to be inserted in the Conveyancing and Feudal Reform (Scotland) Act 1970 (c.35)), in subsection (1)(a), after “duly” insert “registered or”.

(3) In section 128(1) (interpretation of chapter 2 of Part 4), in the definition of “long lease”, for “28(1) of the Land Registration (Scotland) Act 1979 (c.33)” substitute “9(2) of the Land Registration etc. (Scotland) Act 2012 (asp 00)”.

53 (1) The Edinburgh Airport Rail Link Act 2007 is amended as follows.
(2) In section 9(1) (registration of vested land), for “section 4 of the Land Registration (Scotland) Act 1979 (c.33)” substitute “Part 2 of the Land Registration etc. (Scotland) Act 2012 (asp 00)”.  

(3) In section 20 (rights in roads or public places), for subsection (6) substitute—

“(6) The powers conferred by this section constitute a real right.”.

Airdrie-Bathgate Railway and Linked Improvements Act 2007 (asp 19)

54 (1) The Airdrie-Bathgate Railway and Linked Improvements Act 2007 is amended as follows.

(2) In section 9(1) (registration of vested land), for “section 4 of the Land Registration (Scotland) Act 1979 (c.33)” substitute “Part 2 of the Land Registration etc. (Scotland) Act 2012 (asp 00)”.  

(3) In section 20 (rights in roads or public places), for subsection (6) substitute—

“(6) The powers conferred by this section constitute a real right.”.

Energy Act 2008 (c.32)

55 In section 77(7) of the Energy Act 2008 (model clauses of petroleum licences), after “subscribed” insert “or authenticated”.
Land Registration etc. (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to reform and restate the law on the registration of rights to land in the land register; to enable electronic conveyancing and registration of electronic documents in the land register; to provide for the closure of the Register of Sasines in due course; to make provision about the functions of the Keeper of the Registers of Scotland; to allow electronic documents to be used for certain contracts, unilateral obligations and trusts that must be constituted by writing; to provide about the formal validity of electronic documents and for their registration; and for connected purposes.

Introduced by: John Swinney
On: 1 December 2011
Bill type: Executive Bill
These documents relate to the Land Registration etc. (Scotland) Bill (SP Bill 6) as introduced in the Scottish Parliament on 1 December 2011

LAND REGISTRATION ETC. (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Land Registration etc. (Scotland) Bill introduced in the Scottish Parliament on 1 December 2011:
   - Explanatory Notes;
   - a Financial Memorandum;
   - a Scottish Government Statement on legislative competence; and
   - the Presiding Officer’s Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 6–PM.
EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. Therefore, where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

4. The Land Registration etc. (Scotland) Bill makes provision for land registration in Scotland and provides a new legislative basis for the Land Register. The Bill also increases the number of events that will trigger the transfer of property from the existing General Register of Sasines to the Land Register. This will ensure the eventual completion of the Land Register. The Bill makes provision for applications for voluntary registration of titles in the Land Register and a power for the Keeper of the Registers of Scotland (who manages and controls the Land Register) to register a title without an application (a “Keeper-induced” registration). The Bill seeks to re-align registration law with property law by, for example, adjusting the circumstances in which a person can recover their property rather than only receive compensation under the state guarantee of title from the Keeper of the Registers.

5. In addition to these matters affecting the Land Register, the Bill introduces a system of “advance notices” for conveyancing transactions. The period between delivery and registration of a deed disponing an interest in land is the period in which the grantee of the deed (normally the purchaser) is at risk. The two main risks that a purchaser in a conveyancing transaction is exposed to are (1) the insolvency of the granter of the deed (the seller), and (2) that a competing deed will be registered before that deed. This risk is currently underwritten by insurance. Finally, the Bill introduces amendments to the Requirements of Writing (Scotland) Act 1995, which will allow Scottish Ministers to make subordinate legislation enabling electronic conveyancing and electronic registration.

6. In 2002, the Keeper, with the agreement of Scottish Ministers, invited the Scottish Law Commission ("the SLC") to review the law of land registration in Scotland. The SLC issued three discussion papers. The first was a Discussion Paper entitled Land Registration: Void and Voidable Titles (Scots Law Com DP No 125, 2004), the second was a Discussion Paper on Land Registration: Registration, Rectification and Indemnity (Scot Law Com DP No 128, 2005) and the third was a Discussion Paper on Land Registration: Miscellaneous Issues (Scot Law Com DP No 130, 2005). The SLC project culminated in the publication of its Final Report on Land Registration (Scot Law Com No 222), including a draft Land Registration (Scotland) Bill, in February 2010. The SLC report and draft Bill provides useful explanatory background. However, there are a number of differences of detail between the Bill as introduced and the SLC draft Bill.
OVERVIEW OF THE BILL

7. The Bill as a whole continues and improves the system for land registration in Scotland. It replaces much of the Land Registration (Scotland) Act 1979.

8. Part 1 of the Bill provides the new structure of the Land Register of Scotland.

9. Part 2 of the Bill provides for the process of registration in the Land Register, including the processes for the additional “triggers” for first registration of titles. A “first registration” is the processing of an application relating to land which is not on the Land Register, the completion of which results in a land registered title. These additional triggers will facilitate the eventual completion of the Land Register.

10. Part 3 of the Bill provides for which documents may be registered in the Land Register and makes provision about the competence and effect of registration.

11. Part 4 of the Bill makes provision for advance notices.

12. Part 5 of the Bill makes provision about inaccuracy in the Land Register. This is closely linked to Part 8 below.

13. Part 6 of the Bill makes provision about caveats in the Land Register.

14. Part 7 of the Bill makes provision for state guarantee of title under the Keeper’s warranty.

15. Part 8 of the Bill is closely linked to Part 5 on inaccuracy of the Register. It provides for when and how the Land Register is to be rectified to correct inaccuracy.


17. Part 10 of the Bill makes provision about electronic documents (including electronic conveyancing) and electronic registration.

18. Part 11 of the Bill makes general and miscellaneous provision, including a power of Scottish Ministers to set fees for processing applications and a power to make the Land Register rules.

19. Schedule 1 to the Bill relates to registered leases tenanted in common.

20. Schedule 2 to the Bill contains amendments to the Registration of Leases (Scotland) Act 1857.

22. Schedule 4 to the Bill contains savings and transitional provision.

23. Schedule 5 to the Bill contains minor and consequential modifications.

PART 1: THE LAND REGISTER

Overview of Part 1

24. Part 1 of the Bill provides for the continuation of the Land Register and sets out what the component parts of the register are. It also makes provision for how the Land Register is to deal with common areas, both within tenements and in other places where property is shared (such as gardens and driveways).

The Land Register of Scotland

Section 1: The Land Register of Scotland

25. The section sets out the underlying legal basis for the Land Register in Scotland. Subsection (1) makes plain that the register is a public register of rights in land. The equivalent 1979 Act provided for the Land Register to be a register of interests in land. This is not a substantive change, merely a change of emphasis.

26. Subsection (4) gives the Keeper of the Registers authority and flexibility as to the form of the Land Register. In particular, it allows the Land Register to be in electronic form.

27. Subsection (5) makes it clear that it is the Keeper’s responsibility to ensure that the Land Register is sufficiently protected, due to the significant implications that would result from problems with it.

Structure and contents of the register

Section 2: The parts of the register

28. This section provides for the constituent parts of the Land Register. The details relating to each part are provided for in the following sections. It is noteworthy that the formal parts of the Land Register are expanded to include the cadastral map, the archive record and the application record. These parts of the Land Register previously existed on an administrative basis only. Section 6 of the Land Registration (Scotland) Act 1979 made provision with regards to title sheets, but did not mention the title sheet record.

Title sheets and the title sheet record

Section 3: Title sheets and the title sheet record

29. Subsections (1) and (6) together establish a key principle that each registered plot of land has a title sheet and there is only one title sheet for each plot. This is however subject to exceptions in subsections (2) and (7)
30. Subsection (4) defines “plot of land” as an area or areas of land all of which are owned by one person or jointly by more than one person. A separate tenement, such as mineral rights, or a flat in a tenement building, is a plot of land for these purposes under subsection (5).

31. Subsection (2) allows the Keeper to continue the current practice of creating a title sheet for a registered lease. This means there may be more than one title sheet for a plot of land where all or part of the plot is leased. Lease title sheets are subsidiary to title sheets made up under subsection (1) of this section.

32. In the case of the exception for pertinents, subsection (7) allows exclusive pertinents (such as gardens, garages and bin-stores) to be included in the same title sheet as the main part of the land being registered. Where a pertinent is in common ownership, a shared plot title sheet may be created instead (see sections 17 to 20).

Section 4: Title and lease title numbers

33. This section is self-explanatory.

Section 5: Structure of title sheets

34. Subsection (1) of this section provides for the sections of a title sheet. This replicates the sections of the title sheets as they appear in existing title sheets. Statutory provision with regards to title sheets was made in section 6 of the Land Registration (Scotland) Act 1979 and in the Land Registration (Scotland) Rules 2006.

35. Subsection (2) contains a power of the Keeper to sub-divide sections of the title sheet, which would enable, for example, the proprietorship section of a title sheet to be divided to reflect the provisional ownership of a prescriptive claimant (see section 42) in one part and the underlying ownership of another person in the other part.

Section 6: The property section of the title sheet

36. This section sets out what has to be included in the property section of the title sheet. It is commonly known as the “A section”. The property section sets out what the registered property is. Subsection (1)(a)(i) requires the description of the plot of land to be a description by reference to the cadastral map. This reflects the importance of the cadastral map in the Land Register under the Bill in showing the registered boundaries of plots of land.

37. Subsection (1)(b) requires the particulars of incorporeal pertinents (such as servitudes) to be entered onto the property section.

38. Subsection (1)(c) requires alluvion agreements (made under section 63) to be entered on the property section.
39. Where the title sheet is for a sharing plot (see sections 17 to 19) or a sharing lease (see section 20 and schedule 1), subsection (1)(d) requires the property section of the title sheet to specify what the share in the shared plot or shared lease area is.

40. Subsection (1)(f) requires in the case of title sheets that relate to the same area of land (such as where both an ordinary title sheet and lease title sheet or salmon fishing title sheet exists), that the property section of each title sheet provide a cross-reference to any other title sheet.

Section 7: The proprietorship section of the title sheet

41. This section of the title sheet will set out who owns the property described in the property section and their respective shares (for common ownership). This section is commonly known as the “B” section.

42. For the purposes of subsection (1)(a), the “designation” of the proprietor is defined in section 109(1).

43. Subsection (2) provides for exceptions to these requirements in the case of shared plot and shared lease area title sheets (see section 17 and schedule 1), and for title sheets which show areas in common which were already included in two or more title sheets before the designated day. Also relevant to the effect of subsection (2) is:

- Where the title sheet is a shared plot or shared lease area title sheet, the plot numbers of the sharing plot are to be entered to make the link. The quantum of the shares (i.e. the share of the whole) in the shared plots must be entered (see section 18(2)(a) and paragraph 7(a) of schedule 1);

- For title sheets created before the commencement of the Bill, where (1) common areas were entered on more than one title sheet and the Keeper makes a shared plot or shared lease area title sheet, and (2) the quantum of shares were not entered on the existing title sheets, the respective shares of the common owner don’t have to be entered on the new shared plot or shared lease area title sheet (see paragraph 9 of schedule 4).

- Where the title sheet is for a flat in a tenement or other single flatted building and the Keeper has mapped the tenement (or flatted building) as provided for in section 16, the Keeper need not enter the respective shares (such as the common close).

Section 8: The securities section of the title sheet

44. Subsection (1) sets out the information that the Keeper must enter in the securities section of a title sheet. It is commonly known as the “C” or charges section.

45. Subsection (2) makes reference to provisions on shared plot and shared lease title sheets which make specific provision about the securities section of those title sheets.
Section 9: The burdens section of the title sheet

46. Subsection (1) sets out the information that the Keeper must enter in the burdens section of a title sheet in respect of the property. It is commonly known as the “D” section.

47. Certain burdens (such as short leases i.e. those lasting 20 years or less) are not capable of registration and so will not appear in the burdens section.

48. Subsection (3) allows the Keeper to omit burdens from a shared plot title sheet (or a shared lease area title sheet) where the burden is disclosed in the title sheets of each of the sharing plots anyway.

Section 10: What is entered or incorporated by reference in a title sheet

49. Subsection (2) sets out the additional matters that the Keeper must enter on a title sheet and includes a general duty to include such information as the Keeper considers appropriate. This might be used, for example, to enter statements on a title sheet about the existence of a real burden subsisting by virtue of any of sections 52 to 56 of the Title Conditions (Scotland) Act 2003 (various implied rights of enforcement) or section 60 of the Abolition of Feudal Tenure etc. (Scotland) Act 2000 (preserved right of Crown to maritime burdens).

50. Subsections (4) and (5) make it clear that the information entered cannot contain any rights or obligations not authorised by law, and if rights or obligations are so entered, their entry has no effect. Therefore, should a right and obligation appear on a title sheet when it is not authorised by law, or the entry relates to a right or obligation, which is merely a personal right, their entry is of no effect and does not constitute notification of the right to any party searching the Land Register.

51. Subsection (3) allows the Keeper to incorporate into the title sheet additional documents by reference. This includes documents in the archive record, such as supplementary plans or deeds registered in other registers the Keeper manages and controls (such as deeds in the General Registers of Sasines, the Register of Inhibitions or the Books of Council and Session).

52. Subsections (2)(b) and (6) mean that while particulars of special destinations can be entered on title sheets generally, they cannot be entered on shared plot title sheets or shared lease title sheets.

The cadastral map

Section 11: The cadastral map

53. This section provides detail on the content of the cadastral map. The cadastral map is a map of registered land rights in Scotland. Its constituent parts are cadastral units (see section 12).

54. Subsection (1) of section 11 provides that the entry on the cadastral map for a cadastral unit is a data set that will show the boundaries of the cadastral unit. The description of the
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property as set out in the property section of the title sheet will make reference to the cadastral unit number.

55. Subsection (3) permits, but does not compel, three-dimensional mapping.

56. Subsections (5) and (6) make provision for the base map, on which the cadastral map is to be based. The default base map is to be the Ordnance Map maintained by the Ordnance Survey. The Keeper may use a different system of mapping the base map if appropriate in the future (it may be appropriate to do so for areas of the seabed where there is no entry on the Ordnance Map).

57. Subsection (7) allows the Keeper to make consequential changes to the Land Register when the base map is updated. In practice, this means that where the Ordnance Map is improved, the boundaries of cadastral units can be adjusted as long as the adjustment falls within the tolerances of the base map.

58. Subsection (9) is a marker to note that there is an exception to the general rules on mapping in the cadastral map in section 16 for tenements and other flatted buildings.

Section 12: Cadastral units

59. This section provides that each numbered cadastral unit represents a registered plot of land.

60. Subsection (3) provides for an exception that a pertinent can be included in the same cadastral unit as the land to which it pertains.

61. The consequence of subsection (2) is that entries on the cadastral map, other than entries for separate tenements, and in transitional cases, cannot overlap.

Section 13: The cadastral map: further provision

62. Section 11(6) allows the Keeper to use a different system of mapping as the base map (or for part of the base map) for the cadastral map if appropriate. Section 13(1) recognises that the Ordnance Map does not extend to the seabed. The combination of section 11(6) and subsection (1) allows the Keeper to map seabed titles (such as long leases for renewable energy projects) as the Keeper thinks fit. In practice, this will allow seabed titles to be represented on the cadastral map either by a dataset of co-ordinates or by mapping on a system of mapping other than the Ordnance Map.

63. Subsections (2) to (4) contain important powers for the Keeper to manage the cadastral map by dividing, removing and combining cadastral units. On doing so, the Keeper would be required by the combination of sections 3 and 12 to rationalise the title sheets that correspond to the cadastral units, and subject to transitional arrangements.
The archive record

Section 14: The archive record

64. This section provides for the archive record to be the repository of documents supporting the accuracy of the Land Register.

65. Under subsection (3), the archive record need not include copies of legislation (which is otherwise publicly available), documents contained in other registers that are controlled by the Keeper of the Registers of Scotland, or documents stored by the Keeper of the Records of Scotland.

66. Subsection (4) ensures that although the archive record becomes a constituent part of the register, parties relying on the title sheet record are not considered to have constructive knowledge of its content. This preserves the so-called "curtain principle" of not having to look behind the face of the register.

The application record

Section 15: The application record

67. This section makes provision about the application record. The application record is essentially the Keeper’s "in tray" of pending applications the Keeper is to consider. Advance notices (see Part 4) for registered plots of land will be entered in the application record.

Tenements etc.

Section 16: Tenements and other flatted buildings

68. Titles to tenement flats are particularly difficult to map. Typically, tenement properties are conveyed by reference to a verbal description of the individual flat. They are seldom mapped. Subsection (1) allows the Keeper to continue to use the approach of depicting a tenement as a site of single extent on the cadastral map. The power is also extended to single-storey building with internal divisions, where the same issue applies. In practice, this means the cadastral unit for each plot of land in the tenement is the whole tenement (although each flat will have its own title sheet).

69. Subsection (2)(b) makes provision for how pertinents of the flats in tenements are to be treated.

70. Subsection (3) creates a rule that disapplies subsections (1) and (2) in respect of land pertaining to the tenement or flatted building that is further than 25 metres from the "flatted building" as defined in subsection (4). Where a shared pertinent is not further than 25 metres from the tenement building, the Keeper is allowed to include the pertinent in the site of single extent. Where a shared pertinent extends further than 25 metres from the tenement building, a shared plot title sheet will require to be created for the pertinent (see section 17). Where a pertinent is an exclusive pertinent to one flat in the tenement, that pertinent will be able to be included as a discontiguous site on the cadastral map with the same cadastral unit as the tenement building whether or not it extends beyond 25 metres from the building.
Shared plots

Section 17: Shared plots

71. This section and the following three sections provide for a scheme to define common areas and give them standalone title sheets. These common areas, such as driveways, shared gardens, amenity areas and bin stores often currently appear in more than one title sheet, meaning that when viewing the cadastral map it is unclear who the owners of the area of land are.

72. Subsection (2) gives a power to the Keeper to make up a shared plot title sheet. There is no duty to do so.

73. Subsection (3) provides for the relationship between a “shared plot” and a “sharing plot”.

74. Subsection (5) makes special provision that, unless the deed provides otherwise, a deed affecting a sharing plot will similarly affect the relevant share in the shared plot. Subsection (4) makes this reference apply to all other documents (the most important of which is missives).

Section 18: Shared plot and sharing plot title sheets

75. Subsections (1) to (3) set out what is to be included and what is not to be included in a shared plot title sheet and a sharing plot title sheet. Subsection (1) in particular shows the biggest difference between a shared and sharing plot title sheet and an ordinary title sheet. It provides that the sharing plot title sheet will include the title number of the shared plot title sheet in the property section and that the title number of the sharing plot title sheet will appear in the proprietorship section of the shared plot title sheet. This means that where a sharing plot is sold, no change is required to the shared plot title sheet. This is because the sale of the sharing plot will result in a change to the property section of that title sheet but its title number will remain the same.

Section 19: Conversion of shared plot title sheet to ordinary title sheet

76. This section provides that a shared plot title sheet can be converted into an ordinary title sheet. This might happen if one of the sharing plot owners buys up the other owners’ interests in the shared plot.

Section 20: Shared plot title sheets in relation to registered leases

77. This section introduces schedule 1 to the Bill, which makes equivalent provision for shared lease area title sheets. These title sheets correspond to shared plot title sheets but relate to shared lease interests rather than shared ownership interests.

PART 2: REGISTRATION

Overview of Part 2

78. Part 2 of the Bill provides for the process of registration in the Land Register.
79. This Part also makes provision for the three elements that will ensure the eventual realisation of a completed Land Register. These are the additional “triggers” for first registration of titles, voluntary registration and Keeper-induced registration. A “first registration” is the processing of an application relating to land which is not already on the Land Register, the completion of which results in a land registered title.

80. There is no explicit reference in the Bill to the additional triggers for first registration. Instead, the effect comes from the general effect of the Bill and the closure of the General Register of Sasines to the recording of various deeds as provided for in section 47. The first closure step provided for in section 47 is the closure of the General Register of Sasines to transfer deeds. The consequence is that if someone wishes to transact with property registered in the General Register of Sasines and therefore to transfer ownership rights, the only way this can be done is by registering the disposition transferring ownership in the Land Register.

Applications for registration

Section 21: Application for registration of deed

81. This section provides the basic assumptions about applications for registration in the Land Register: that a person can apply for registration of a registrable deed; and that if the application complies with the applicable conditions, the Keeper must accept the application. Provision is also made that if the application does not comply with the applicable conditions, the Keeper has to reject the application.

82. Subsection (4) provides that where an owner of land objects under section 44(5) to their land being subject to a prescriptive claim (see sections 42 to 44 for prescriptive claimants, who do not own the property they are seeking to register), and who does so within 60 days of notice of the prescriptive claim, the application by the prescriptive claimant falls to be rejected.

Section 22: General application conditions

83. This section sets out the general conditions with which all applications have to comply. Section 4 of the Land Registration (Scotland) Act 1979 made only minimal provision for applications for registration.

84. Subsection (1)(a) is a requirement that the application allows the Keeper to comply with the Keeper’s duties under Part 1. The main duties in question are:

- the duties under sections 6 to 9 to enter what those sections provide for into the relevant sections of a title sheet; and

- the duty in section 14(1) to include copies of relevant documents in the archive record in relation to the application.

85. Subsections (1)(b) and (2) prevent any application that relates to a so-called “souvenir plot” (that is, a plot that is very small and of no practical use to anyone) from being accepted.
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86. The effect of subsection (1)(c) is that where subordinate legislation (made under section 9G of the Requirements of Writing (Scotland) Act 1995 as inserted by section 93) sets out requirements as to the type of document and level of authentication required for registration of an electronic document, an application for registration has to comply with the terms of the relevant subordinate legislation to be accepted. Traditional documents are required to comply with the rules already in section 6 of the 1995 Act.

87. Subsection (1)(d) provides that an application must comply with requirements as to form that are specified in the Land Register rules (see section 111).

Section 23: Conditions of registration: transfer of unregistered plot

88. This section provides the special conditions for what is known as an application for “first registration”. A first registration is where an unregistered property is taken into the Land Register for the first time. By virtue of the closure of the General Register of Sasines to the recording of deeds relating to registered land under section 47(1) and the closure of the Register of Sasines to dispositions under 47(2), first registration will be induced not only when there is a transaction for value (which is the existing law, replaced by the Bill), but for all transfers.

89. Subsection (1) provides for the additional conditions that apply to a first registration. Subsection (1)(c) requires the application to include information to enable the Keeper make an accurate entry on the cadastral map in relation to the cadastral unit created as a consequence of an accepted application.

90. Subsection (2) provides an exception to these conditions for flats in tenements where the Keeper chooses, under section 16, to represent the tenement as a site of single extent.

91. Subsection (3) is an exception to the exception in subsection (2) and requires any exclusive pertinent of the plot of land, such as a coal cellar or parking space pertaining to one of the flats, to be sufficiently described (because the pertinent would still need to be mapped by the Keeper).

92. Subsection (4) clarifies that the applicant is not required to provide a plan or description of certain servitudes affecting the plot such as pipeline servitudes (subsection (4)(a)) or servitudes created other than by registration, e.g. by prescription (subsection 4(b)).

Sections 24 and 25: Conditions of registration: certain deeds relating to unregistered plots

93. These sections make provision for the circumstances in which, as a consequence of an application for registration of a subordinate real right (such as an assignation of an unregistered lease), a first registration of the underlying land must take place. There will be additional applications of these types by virtue of the closure of the General Register of Sasines under section 47.

94. Section 24 sets out the type of applications in relation to which the conditions in section 25 apply on first registration of the underlying unregistered land. They are:
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- on an application for registration of a lease over the land;
- on an application for registration of an assignation of a lease over the land;
- on an application for registration of a sublease over the land;
- on an application for registration of a standard security over the land;
- on an application for registration of a notice of title to a subordinate real right in relation to the land; and
- on an application for registration of a standard security over an unregistered, subordinate real right in relation to the land.

Section 25 sets out the additional conditions for the registration of the deeds referred to in section 24.

**Section 26: Conditions of registration: deeds relating to registered plots**

This section provides special provisions for applications relating to plots of land already registered in the Land Register. The main types of such application are a transfer of the whole of a plot (commonly known as a “dealing with whole”), a transfer of part of a plot (known as a “transfer of part”) and the registration of a standard security (usually a mortgage). Transfers of part are most commonly associated with new-build developments. This section applies to all deeds that relate to registered plots of land.

Subsection (1)(d) provides a special rule for transfers of part, that the part of the plot which is being transferred has to be sufficiently described to allow the Keeper to accurately map the boundaries of the new plot in the cadastral map. Subsection (3) provides that this mapping rule does not apply to tenements mapped as a site of single extent under section 16. Subsection (4) provides however that exclusive pertinents of plots do still need to be mapped. This is the same arrangement as in section 23 for first registration.

**Registration without deed**

**Section 27: Application for voluntary registration**

This section provides the scheme for applications for voluntary registration of plots of land or parts of plots to be registered. This is a form of first registration. However, since the applicant will already own the land, there will be no transfer of rights as a result of an accepted application.

Subsection (3)(b) gives the Keeper a power to decline to accept an application on the ground of expediency. This broadly replicates the provision in section 2(1)(b) of the Land Registration (Scotland) Act 1979. Subsection (6) allows Scottish Ministers to remove that power by order.
Section 28: Conditions of registration: voluntary registration

100. This section provides the special provisions for voluntary registration applications. These are similar to the conditions in section 25.

Section 29: Keeper-induced registration

101. This section gives the Keeper the ability to register land without application and without the consent of the owner of that land. Registration under this section would not affect the property title of the owner of the property but the Keeper can grant warranty over the land under section 71.

Completion of registration

Section 30: Completion of registration of plot

102. This section draws together the duties of the Keeper in relation to registration on acceptance of an application for first registration, voluntary registration or in relation to a Keeper-induced registration. Subsection (2) lists the practical duties the Keeper must perform to complete registration of a plot of land in the Land Register for the first time.

Section 31: Completion of registration of deed

103. This section provides the duties of the Keeper on acceptance of an application for registration of a deed by virtue of section 26. These provisions are not applicable to cases in which the plot of land has to be registered too. The most common instances of registrations under this section will be transfers of the whole of a plot, a transfer of part of a plot and registrations of a standard security.

General provision about applications

Section 32: Recording in application record

104. Subsection (1) recognises that the Land Register closes at the end of each business day and that where applications for registration are made after the register has closed for the day, the effective date of application will be the next day that the application record opens.

Section 33: Withdrawal and amendments etc. of application

105. This section provides for the so-called “one-shot principle”, that an application cannot be supplemented or substituted after the date of application unless the Keeper consents. Detailed provision can be made in the Land Register rules for that consent.

Section 34: Period within which decision must be made

106. This section allows Scottish Ministers to set turn-around times for the Keeper to deal with applications in the Land Register rules.
**Date of application and registration etc.**

**Section 35: Date of application**

107. This section provides that the formal date of application is always the date of the entry in the application record in respect of the application (whether or not the application was made earlier). This section ties in with section 32.

**Section 36: Date and time of registration**

108. This section provides that the formal date of registration is always backdated to the end of the date of application under section 35. The Scottish Ministers can make different provision by order.

**Section 37: Power to amend section 6 of the Land Registers (Scotland) Act 1868**

109. This section is self-explanatory.

**Applications in relation to the same land**

**Section 38: Order in which applications are to be dealt with**

110. This section is self-explanatory and makes detailed provision for the scenario in which competing applications are received by the Keeper. Subsection (2) clarifies that the order of receipt is to be taken to be the order details of the applications are entered in the application record. The provisions in sections 57 (Period of effect of advance notice) and section 58 (Effect of advance notice) are also relevant to this section.

**Notification**

**Section 39: Notification of acceptance, rejection or withdrawal of application**

111. Subsection (1) requires the Keeper, on acceptance or rejection of an application, to notify at least the applicant and any granter of a deed to be registered.

112. Subsection (2) requires the Keeper, on an application for registration being withdrawn, to notify certain parties.

113. Subsection (3) provides that the duty on the Keeper in subsections (1) and (2) does not need to be carried out when it is not reasonably practicable to do so.

**Section 40: Notification to proprietor**

114. This section provides for notification to the proprietor in two cases. First, where there is an application for a first registration of a plot of land under sections 21 and 25 as a result of an application for registration of a subordinate real right on the land. The second case is where the Keeper has performed a Keeper-induced registration under section 29. In both cases, the owner of the land may be unaware that the plot of land has been registered in the Land Register.
115. Subsection (3) provides that the duty on the Keeper in subsections (1) and (2) does not need to be carried out when it is not reasonably practicable to do so.

Section 41: Notification to Scottish Ministers of certain applications

116. This section requires the Keeper to notify the Scottish Ministers when an application for registration is rejected on the grounds that it relates to a transfer that is prohibited by the Land Reform (Scotland) Act 2003 in relation to community interests in land.

Prescriptive claimants etc.

Overview of sections 42 to 44: prescriptive claimants

117. Sections 42 to 44 provide for the process whereby a person can apply for title to land to be constituted by prescription. The process for this is for an application to be made for registration of what is known as an *a non domino* disposition in relation to the area of land. The sections provide for the process by which a “prescriptive claimant” can apply to the Keeper to obtain a provisional title in the Land Register. The 10-year prescriptive period provided for by section 1(1) of the Prescription and Limitation (Scotland) Act 1973 can begin to run. If the 10-year period elapses without interruption (for example, such interruption could be by virtue of a challenge from the true owner of the land), the prescriptive claimant can apply to the Keeper under the rectification provisions in Part 8 to become the registered proprietor of the land.

Section 42: Prescriptive claimants

118. Subsection (1) provides that for the purposes of becoming a prescriptive claimant, the disposition granted in favour of the prescriptive claimant can be treated as valid so that the conditions of registration in sections 23 and 26 can be met.

119. Subsection (2) clarifies that this section is applicable to a disposition that is not granted by the person with the title to the subjects being granted.

120. Subsection (3) provides the first limb of the requirements for a person to become a prescriptive claimant. The land that is sought to be acquired must have been abandoned by the true owner for the previous seven years (paragraph (a)) and possessed by the disponer or the prescriptive claimant for one year (paragraph (b)). The prescriptive claimant will require to submit relevant evidence to the Keeper to satisfy these requirements. Subsection (8) allows Scottish Ministers to substitute different time periods for those in subsection (3)(a) and (b).

121. Subsection (4) provides the second limb of the requirements. To make a valid application, the applicant must satisfy the Keeper that they have taken reasonable steps to trace the true owner of the land, or any party able to complete title as true owner and that they have been notified. Where no-one appears to own the land, sub-paragraph (c) requires the applicant to notify the Crown as ultimate heir to land in Scotland. Subsection (7) contains a power to make further provision in Land Register rules regarding notification to various parties. This will allow the Land Register rules to make further provision with regards to the detail of the notification, how it is to be done and the information it should contain.
122. Subsection (5) is relevant to a title that has been provisionally registered in favour of a prescriptive claimant. It clarifies that a prescriptive claimant is able to dispone such a title.

Section 43: Provisional entries on title sheet

123. This section provides that while a person is a prescriptive claimant, entries relating to the rights they would acquire were the prescriptive period to run successfully are to be marked as provisional. This section deals with both first registrations and dealings with whole of registered plots where there is already a prescriptive claimant.

124. Subsection (2) provides that when the requirements in section 1 of Prescription and Limitation (Scotland) Act 1973 have been met, the person’s title is no longer provisional as they have become the true owner of the land in question. The provisional marking will be removed upon a rectification under Part 8.

125. Subsection (3) ensures that provisional markings on title sheets confer no real property rights.

126. Where a prescriptive claimant’s name is entered on the proprietorship section of a title sheet and the Keeper knows who the underlying owner of the land is, the Keeper can, by virtue of section 10(2)(e), enter the underlying owner’s name as well as the prescriptive claimant’s.

Section 44: Notification of prescriptive applications

127. This section provides for further notification to the underlying true owner of property in advance of the acceptance of an application to become a prescriptive claimant. This extends the procedure in section 14 of the Land Registration (Scotland) Act 1979 that provided for the Keeper to notify the Crown Estate Commissioners of applications of foreshore subjects. Subsection (1) requires the underlying owner (who may be the Crown) to be notified by the Keeper. Such notification only requires to be done in the instance when there is not already a prescriptive claim to the title in question.

128. Subsection (2) provides that the duty on the Keeper in subsection (1) does not need to be carried out when it is not reasonably practicable to do so.

129. Subsections (4) and (5) ensure the underlying owner is given 60 days to veto an application for a person to become a prescriptive claimant over their land.

Further provision

Section 45: Applications relating to compulsory acquisition

130. This section makes provision for conveyances as provided for by enactment, notarial instruments and general vesting declarations to be treated as dispositions for the purposes of sections 21, 23, 30 and 47.
Section 46: Effect of death or dissolution

131. This section provides that an application falls to be rejected if the applicant dies (or if a legal person such as a company is dissolved) before the application date under section 35, but can be accepted if the applicant dies or is dissolved while the Keeper’s decision as to whether to accept or reject the application is pending.

Section 47: Closure of Register of Sasines etc.

132. This section provides for the phased closure of the General Register of Sasines.

133. Subsection (1)(a) provides that the recording of a disposition in the General Register of Sasines will cease to be effective. In practice, this will mean that in order for ownership to transfer, the disposition will require to be registered in the Land Register. Subsection (1)(a) is subject to the special case of title conditions. It may be necessary to record a disposition in the General Register of Sasines to meet the requirement of "dual registration" as provided for in section 4 of the Title Conditions (Scotland) Act 2003 (the 2003 Act) in respect of real burdens or in section 75 of the 2003 Act in respect of servitudes. This special case is set out in subsection (6). Subsection (1)(d) provides that once a plot of land is registered in the Land Register, nothing in relation to that land can be recorded in the General Register of Sasines.

134. Subsections 1(b) and (c) provide that leases, (“lease” is defined as including sub-lease in section 109(1)) and assignations of leases cannot be recorded in the General Register of Sasines. This will induce first registration in the Land Register of the underlying plot of land.

135. Subsection (2) provides a power for the Scottish Ministers by order to close the General Register of Sasines to standard securities. This would mean a property would need to be registered in the Land Register before a new standard security could be enforced by the creditor.

136. Subsections (3) and (4) provide a similar power to close the General Register of Sasines completely and a corresponding power to register any deeds that could be recorded in that register in the Land Register instead.

137. Subsection (9) allows an order closing the General Register of Sasines under subsections (2) or (3) to apply on an area-by-area basis.

PART 3: COMPETENCE AND EFFECT OF REGISTRATION

Overview of Part 3

138. Part 3 of the Bill provides for which documents can be registered in the Land Register and what the effect of such registration will be.
Registrable deeds

Section 48: Registrable deeds

139. Subsection (1) provides for what documents can be registered in the Land Register. These are documents which any Act provides can be registered. The most common types of registrable documents are:

- dispositions (see section 49);
- standard securities (under section 9 of the Conveyancing and Feudal Reform (Scotland) Act 1970);
- long leases (under section 1 and 20A of the Registration of Leases (Scotland) Act 1857 – section 20A as inserted by section 51);
- notices of title (under section 4A of the Conveyancing (Scotland) Act 1924 (as inserted by section 52(3)));
- decree of reduction (under section 46A(1) of the Conveyancing (Scotland) Act 1924 as inserted by section 53);
- an arbitral award which orders the reduction of a deed (under section 46A of the Conveyancing (Scotland) Act 1924 as inserted by section 53);
- an order for rectification of a document (under section 8A of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 as inserted by section 54(3));
- a standard security ranking agreement (under section 13(4) of the Conveyancing and Feudal Reform (Scotland) Act 1970 as inserted by paragraph 17(7)(c) of schedule 5);
- a deed creating a proper liferent (see section 50); and
- deeds registrable in the Land Register under section 47(7) following the closure of the General Register of Sasines under section 47(6).

Specific provisions on competence and effect of registration

Section 49: Transfer by disposition

140. Subsection (2) continues the important principle that a real right in ownership can only transfer when a valid disposition is registered.

141. Subsection (4)(a) makes subsections (1) to (3) subject to provisions in the Bill on prescriptive claimants and persons acquiring in good faith from a person with invalid title. Subsection (4)(b) makes subsections (1) to (3) subject to any other enactment or rule of law under which ownership may pass. The most significant of these is transfer of ownership by operation of a survivorship destination contained in a disposition.

142. Subsection (5) makes it clear that this section covers udal land (which exists in Orkney and Shetland).
Section 50: Proper liferents

143. This section continues the principle that proper liferents (which allow a person to live in a property until their death) must be registered in either the Land Register or the General Register of Sasines to have real effect as a matter of property law.

Section 51: Registration of, and of transactions and events affecting, leases

144. This section inserts two sections into the Registration of Leases (Scotland) Act 1857. Inserted section 20A allows deeds affecting existing long leases to be registered in the Land Register (new long leases are registrable under section 1 of that Act). Inserted section 20B provides that the registered deed has real effect. Schedule 2 makes further related amendments.

Section 52: Completion of title

145. This section amends the Conveyancing (Scotland) Act 1924 to allow people to use a notice of title to complete an uncompleted title. Under current law, the use of a notice of title is only permitted in the General Register of Sasines.

146. Subsections (2) and (3) provide that an unregistered proprietor of an unregistered property has a choice of methods of completing title. That person is either to record a notice of title in the General Register of Sasines or register a notice of title in the Land Register. The exception to this rule is that where the last recorded title is not in the General Register of Sasines (for example if the property is in a Burgh Register of Sasines or is a pre-1617 title), the effect of subsection (2)(a) is that the option of recording a notice of title in the General Register of Sasines does not apply and the notice must be registered in the Land Register.

147. Subsection (4) is a power to prescribe the forms in relation to completion of title by order. Subsection (5) provides, for Land Register cases, a simplified style of notice (the statutory styles for use in the General Register of Sasines are not altered).

Section 53: Registration of decree of reduction

148. This section inserts a new section 46A into the Conveyancing (Scotland) Act 1924, the effect of which will be that where a voidable deed is reduced, the decree does not immediately change real rights that have been entered in the Land Register. Instead, section 46A(1)(b) provides that the decree has effect on those rights when it is registered in the Land Register. The real rights of the parties concerned thus only change as of the date of the registration of the decree.

149. Subsection (3) ensures that an arbitral award ordering reduction of a deed and made under the Arbitration (Scotland) Act 2010 can where appropriate have equivalent effect as is provided for a decree of reduction under subsection (1).
Section 54: Registration of order for rectification of document etc.

150. Judicial rectification of a document under section 8 of the Law Reform (Miscellaneous Provisions) Scotland Act 1985 operates retrospectively where a court is satisfied that a document failed to give effect to the common intention of the parties. Section 3 of the 1985 Act allows the court to rectify any subsequent document that is defectively expressed by virtue of the defect in the original document. Subsection (2)(a) inserts a new subsection (3A) into section 8 to provide that, where any such subsequent document is registered in the Land Register in favour of a third party who is in good faith, judicial rectification of that document can only happen where the third party consents to the rectification.

151. Subsection (3) inserts a new section 8A which provides that an order for rectification under section 8 of a document registered in the Land Register will have no real effect until the order itself is registered. When it is so registered, it has effect at that point, rather than applying retrospectively to, for example, the date of the making of the order.

PART 4: ADVANCE NOTICES

Overview of Advance notices

152. The first sections in Part 4 provide for a system of advance notices that protects the grantee of a deed during the time between taking delivery of the deed (in exchange for the money) and the registration of that deed. This period is known as the "gap risk" as the grantee is vulnerable in this period to the registration of competing deeds or sequestration of the granter of the deed. The entry of an advance notice referring to a registrable deed ensures that during the next 35 days no disposition or competing advance notice can beat that deed in any race to the register.

153. The following examples of the way in which advance notices are intended to operate in the case of registered titles draw on the examples in schedule 3 to the draft Bill in volume 2 of the final SLC Report. They are provided for illustrative purposes and are no substitute for full consideration of the Bill:

Example 1:

Circumstances:

- X, who is the owner of Blackmains, grants an advance notice in favour of Y in respect of a prospective disposition of that property.
- The advance notice is entered in the application record of the Land Register on 1st May.
- X delivers a disposition of the property to Y but also a disposition of it to Z.
- On 8th May, Z’s disposition is registered in the Land Register.
- On 15th May, Y applies for registration in the Land Register.
These documents relate to the Land Registration etc. (Scotland) Bill (SP Bill 6) as introduced in
the Scottish Parliament on 1 December 2011

Consequences:

• The Keeper accepts Y’s application and on registering Y’s disposition replaces Z’s name by Y’s in the Land Register. Y becomes registered proprietor of the property with effect from 15th May.

Example 2:

Circumstances:

• The same as in example 1 except that Y does not apply for registration in the Land Register while the protected period is running.

Consequence:

• Y’s application is rejected.

Example 3:

Circumstances:

• X, who is the owner of Scarlet mains, grants on 1st May an advance notice in favour of Y in respect of a prospective disposition to Y of that property and on 2nd May an advance notice in favour of Z in respect of a prospective disposition to Z of that property.
• Z’s advance notice is entered in the application record of the Land Register on 8th May.
• Y’s advance notice is so entered on 9th May.
• X delivers a disposition of the property to Y but also a disposition of it to Z.
• On 15th May, Y’s disposition is registered in the Land Register.
• On 16th May, Z applies for registration in the Land Register.

Consequences:

• The Keeper accepts Z’s application and on registering Z’s disposition replaces Y’s name by Z’s in the Land Register. Z becomes registered proprietor of the property with effect from 16th May.

Example 4:

Circumstances:

• X, who is the owner of Whitemains, grants an advance notice in favour of Y in respect of a prospective disposition of that property.
• The advance notice is entered in the application record of the Land Register on 1st May.
These documents relate to the Land Registration etc. (Scotland) Bill (SP Bill 6) as introduced in the Scottish Parliament on 1 December 2011

- X delivers a disposition of the property to Y but also a deed of servitude over it to Z.
- On 8th May, the deed of servitude is registered in the Land Register.
- On 15th May, the disposition is registered in the Land Register.

Consequences:
- The Keeper removes the servitude from the Land Register.

Example 5:
Circumstances:
- X, who is the owner of Greymains, grants an advance notice in favour of Y in respect of a prospective standard security over the property.
- The advance notice is entered in the application record of the Land Register on 1st May.
- X delivers a standard security over the property to Y but also a standard security over it to Z.
- On 8th May, Z’s standard security is registered in the Land Register.
- On 15th May, Y’s standard security is registered in the Land Register.

Consequence:
- From 15th May, Y’s standard security ranks ahead of Z’s standard security.

Example 6:
Circumstances:
- X, who is the owner of Purplemains, grants an advance notice in favour of Y in respect of a prospective standard security over the property.
- The advance notice is entered in the application record of the Land Register on 1st May.
- X delivers a standard security over the property to Y but also a disposition of it to Z.
- On 8th May, Z’s disposition is registered in the Land Register.
- On 15th May, Y applies for registration of the standard security in the Land Register.

Consequences:
- The Keeper accepts Y’s application and Z’s land is encumbered with the standard security as from 15th May.
Example 7:

Circumstances:

- X, who is the owner of Greenmains, grants an advance notice in favour of Y in respect of a prospective servitude over the property.
- The advance notice is entered in the application record of the Land Register on 1st May.
- X delivers a deed of servitude over the property to Y but also a disposition of it to Z.
- On 8th May, the disposition is registered in the Land Register.
- On 15th May, Y applies for registration of the deed of servitude in the Land Register.

Consequences:

- The Keeper accepts Y’s application and Z’s land is encumbered with the servitude as from 15th May.

Example 8:

Circumstances:

- X, who holds a registered lease over Yellowmains, grants an advance notice in favour of Y in respect of a prospective assignation of the lease.
- The advance notice is entered in the application record of the Land Register on 1st May.
- X delivers an assignation of the lease to Y but also a standard security over the lease to Z.
- On 8th May, the standard security is registered in the Land Register.
- On 15th May, the assignation is registered in the Land Register.

Consequences:

- The Keeper removes the standard security from the Land Register.

Example 9:

Circumstances:

- X, who is the owner of Bluemains, grants an advance notice in favour of Y in respect of a prospective disposition of that property.
- The advance notice is entered in the application record of the Land Register on 1st May.
- X delivers a disposition of the property to Y.
• On 8th May, X grants a short lease over the property to Z who enters immediately into possession.

• On 15th May, the disposition is registered in the Land Register.

Consequence:

• The lease is not, by virtue of the registration, avoided.

Example 10:

Circumstances:

• X, who is the owner of Redmains, grants an advance notice in favour of Y in respect of a prospective disposition of that property.

• The advance notice is entered in the application record of the Land Register on 1st May.

• On 2nd May, X is inhibited.

• On 3rd May, missives of sale between X and Y are concluded. Thereafter X delivers a disposition of the property to Y and the disposition is registered in the Land Register.

Consequence:

• The disposition, if so registered while the protected period is running, is not affected by the inhibition.

Section 55: Advance notices

154. This section sets out the criteria for an advance notice. Paragraphs (a) to (c) of subsection (1) set out the requirements for advance notices generally. Paragraph (d) applies just to advance notices where the property is on the Land Register. Paragraph (e) applies for property that is not in the Land Register, most of which will be recorded in the General Register of Sasines. The difference in requirements relates to how the property must be identified.

155. Subsection (2) means mapping is not required for an advance notice relating to a flat in a tenement or in a flatted building when the building is mapped as a single cadastral unit. That is subject to similar exceptions for pertinents as for registration under Part 2 of the Bill.

Section 56: Application for advance notice

156. This section sets out the application process for an advance notice. Subsection (2) provides that such an advance notice may be applied for by the person who may grant the protected deed or any person with their consent. In a house sale, this would allow the owner of the house to apply for an advance notice operating in favour of the prospective purchaser. The purchaser would be able, with the consent of the owner, to apply for an advance notice in favour of the lender who will be providing the standard security (mortgage) for the purchase.
Section 57: Period of effect of advance notices

157. This section provides that the protected period of an advance notice will be 35 days. This period can be shortened if the advance notice is discharged under section 60.

Section 58: Effect of advance notice

158. This section sets out the effect of an advance notice. Subsections (2) and (3) give the principal effect. Where a deed, Y, is registered after another deed, Z, and deed Y is protected by an advance notice, registration of deed Y is to be completed as if deed Z did not exist. When deed Y has been duly registered, deed Z should then be “re-registered” for any effect it may have. In many circumstances Deed Z will be rejected as the person granting it is no longer entitled to do so. However if, for example, deeds Y and Z were both standard securities, deed Z could still be registered but would simply rank lower than deed Y. In the circumstances where deed Y is not, in fact, registered within the protected period, deed Z will be registered normally and have its full effect.

159. The section therefore prioritises deed Y over deed Z. The grantee of deed Z is not disadvantaged as the grantee will know of the existence and potential effect of the advance notice in favour of deed Y as it is on the Register.

160. Subsection (4) sets out the secondary effect of an advance notice. In general, an entry in the Register of Inhibitions means a person cannot sell their property free of the inhibition. Where an entry is added to the Register of Inhibitions during the protected period of an advance notice, the grantee of the protected deed will be able to purchase the property free of any effect of the inhibition.

Section 59: Removal of advance notice etc.

161. This section instructs the Keeper to remove an advance notice from the application record and add it to the archive record where the protected period has ended. Subsection (2) allows Scottish Ministers to make rules relaxing this obligation in certain circumstances. This covers the situation where the advance notice has resulted in the Keeper mapping a new property but the notice has lapsed before the deed is registered. It means the Keeper need not delete the mapping work while there is the possibility it will still be required in the near future.

Section 60: Discharge of advance notice

162. This section provides for the possibility that an advance notice may be discharged by the proposed granter of the protected deed if the potential grantee consents. While advance notices do not freeze the Land Register, they may make a property effectively unmarketable to anyone other than the grantee of the deed referred to in the advance notice. The section allows (where, for example, the sale has fallen through) for the parties to bring the advance notice to an end before the 35-day period has elapsed. Subsections (4)(b) and (5) extend the same rule to the Sasine Register.
Section 61: Application of part to specific deeds

163. This section allows Scottish Ministers to make provision modifying this Part in relation to particular types of deeds which may be protected by advance notices.

PART 5: INACCURACIES IN THE REGISTER

Section 62: Meaning of “inaccuracy”

164. This section creates a new definition of inaccuracy in relation to the entries on the Land Register. Subsection (1) sets out when a title sheet is inaccurate. It may be inaccurate in two broad ways, because it says something that is wrong, or it does not say something when it should. Subsection (1)(d) confirms a title sheet is inaccurate where it contains a provisional marking. This is an inaccuracy of which the Keeper is aware and prescription may be running to cure it, but which cannot be rectified without consent of those affected or judicial determination (as to do so would interrupt the prescriptive period).

165. Subsection (2) sets out when the cadastral map is inaccurate. This broadly mirrors subsection (1) but has no equivalent of subsection 1(d) as provisional markings do not carry onto the cadastral map. The effect of subsection (3) is that the cadastral map is considered accurate as long as the depictions in it are within the tolerances of the base map. The Ordnance Map, by virtue of section 11(6), is the default base map. Currently it has three general tolerances: 0.5 metres for urban areas, 1 metre for rural areas and 4 metres for moorland or mountain areas. These tolerances derive from the three different mapping scales used by the Ordnance Map in these areas.

166. The effect of subsection (4)(a) is that where an entry in the Land Register proceeds from a deed that was voidable and has since been reduced, the decree of reduction is to be given effect to by registration of the decree, and not by rectification. In other words, there is no inaccuracy; there is simply a later registration that changes the Register. This applies only to voidable deeds. Where an entry in the Land Register proceeds from a void deed, the register is to that extent inaccurate from the outset, and should be rectified.

167. The effect of subsection (4)(b) is that where an entry in the Land Register proceeds from a deed that has been rectified under the 1985 Act, the Register does not thereby become inaccurate, but instead the rectified deed is to be given effect to by registration.

Section 63: Shifting boundaries

168. This section provides that adjacent proprietors bounded by a natural water feature may, by registered agreement, provide that subsequent change to the physical boundary by the process of alluvion (i.e. gradual, imperceptible and non-temporary change to the water feature over time) should have no effect on their title boundary. In such circumstances, alluvion will not make the register inaccurate. Subsection (3) makes this clear.

Section 64: Proceedings involving the accuracy of the register

169. This section is self-explanatory.
PART 6: CAVEATS

Overview of Part 6

170. Part 6 provides for a new statutory system of caveats that regulate how litigation affecting titles in the Land Register is brought to the attention of third parties. In essence, a caveat is the publication of a title dispute on a title sheet. The purpose of a caveat is to warn of the ongoing dispute and the effect it might have on the title. A caveat does not prevent parties transacting with land that is subject to litigation, though it does have certain effects on registration as provided elsewhere in the Bill. Therefore, a third party is free to act despite the existence of the caveat. However, for instance, if the Keeper later adversely rectifies a title sheet as a result of the court action, the person would be unable to claim that they were not aware of the litigation and therefore compensation may be less than would be payable had there been no caveat. Caveats are intended to be time-limited but flexible and sections 67 to 70 make provision for their renewal, restriction, recall or discharge.

Section 65: Warrant to place a caveat

171. This section introduces caveats. Subsection (1) sets out the types of court action where caveats may be used. In such cases, one of the parties may apply to the court under subsection (2) for warrant to place a caveat on the title sheet of the plot of land to which the dispute relates. Subsection (3) sets out the court that may grant caveats. Subsection (4) sets out that the court must be satisfied that there is a prima facie case, a risk of the applicant being prejudiced by the other party dealing with the property and in all the circumstances it is reasonable to do so when deciding whether to grant a warrant for a caveat under subsection (3). See section 73(2) for the effect of caveats on warranty of title, and Part 9 for their other effects.

Section 66: Duration of caveat

172. Caveats are not open-ended. In the absence of further action, they expire 12 months after being placed on the title sheet.

Section 67: Renewal of caveat

173. A person who has placed a caveat on the Land Register may apply under this section to the court for its renewal. There is no maximum number of renewals the court may make.

Section 68: Restriction of caveat

174. This section makes provision for any person with an interest being able to apply to the court for a restriction of the effect of a caveat.

Section 69: Recall of caveat

175. This section makes provision that any person with an interest may apply to the court for the caveat to be recalled.
Section 70: Discharge of caveat

176. This section is self-explanatory.

PART 7: KEEPER’S WARRANTY

Keeper’s warranty

Section 71: Keeper’s warranty

177. This section continues the scheme of the state guarantee of title by Keeper’s warranty.

178. Subsection (1) provides for the default position, that when an application is accepted, the Keeper’s warranty applies to the title sheet to which the application relates. Subsection (2) lists the things that the Keeper’s default warranty does not ordinarily cover. Subsection (2)(d) provides that even though a pertinent is registered, if by law it is not a pertinent, the act of registration does not make it so. Subsection (2)(h) ensures that the warranty does not cover the case where by administrative error on the Keeper’s part, the terms of the registration are more favourable to the applicant than justified by the deed inducing registration. Subsection (2)(i) means the warranty does not cover the case where a title boundary is tied to a water boundary that has shifted.

179. The effect of subsection (3) is that where a person is given warranty in respect of an application, their successors in title can receive the benefit of that warranty.

180. Subsection (5) ensures there is no warranty in relation to an entry in favour of a prescriptive claimant.

Section 72: Keeper’s warranty on registration under sections 25 and 29

181. This section provides for warranty to be granted to a person where their land has been registered in consequence of an application for registration of a subordinate real right under section 25 or by Keeper-induced registration under section 29. Subsection (4) provides that this section is subject to sections 73 and 74.

Section 73: Extension, limitation or exclusion of warranty

182. Subsection (1) allows the Keeper to give any level of warranty to an applicant. The effect of subsection (2) is that the Keeper might exclude warranty for the next owner of property if there is a caveat on the title sheet. Subsection (4) allows warranty to be given to a prescriptive claimant when they have perfected their title by virtue of section 1(1) of the Prescription and Limitation (Scotland) Act 1973.

Section 74: Variation of warranty

183. This section allows the Keeper in certain restricted circumstances to vary the level of warranty that an owner of a registered title has after the registration process has been completed.
Claims under warranty

Section 75: Claims under Keeper’s warranty: general

184. This section provides the basis for the payment of compensation for loss incurred as a result of a breach of warranty. Subsection (2) continues the important principle that liability only arises when the register is rectified.

Section 76: Claim under warranty: circumstances where liability excluded

185. This section lists various important limitations to the Keeper’s liability. Paragraph (a) means that where the rectification arises from reasonable reliance on the base map (the default map being the Ordnance Map), the Keeper need not pay compensation. Paragraph (b) means that an applicant cannot rely on the warranty where the inaccuracy was known or ought to have been known of by the applicant at the time of registration. The effect of paragraph (c) is that where the rectification arises from a breach of the duty of care to the Keeper by the applicant or the applicant’s solicitor, the Keeper need not pay compensation.

Section 77: Claims under warranty: quantification of compensation

186. This section is self-explanatory.

PART 8: RECTIFICATION OF THE REGISTER

Rectification

Section 78: Rectification of the register

187. This section imposes a duty on the Keeper to rectify the Land Register when it contains an inaccuracy. The term “inaccuracy” appeared in section 9(1) of the Land Registration (Scotland) Act 1979, however it was not defined. The meaning of “inaccuracy” is provided for in section 62 of the Bill.

188. Subsection (1) is an important provision that sets a high evidential standard for rectification - that the inaccuracy is “manifest”. This means that the position must be beyond dispute, in effect that it is more than simply probable that there is an inaccuracy. It is for the Keeper to determine when an inaccuracy is manifest or not.

189. Subsection (2) maintains the approach, providing that the Keeper must only rectify the register if what is needed to rectify the register is manifest. It is likely that an inaccuracy, and what is needed for rectification of an inaccuracy, will be manifest only where either there is no room for doubt or where the matter has been judicially determined. In the absence of a judicial determination, it is anticipated that the Keeper’s awareness of an inaccuracy as manifest occurs on the date of rectification.

Section 79: Rectification where registration provisional etc.

190. This section is a limited qualification to the Keeper’s duty to rectify under section 78. Where rectification would interrupt a period of positive prescription (including in the case of a
prescriptive claimant under section 42), the Keeper may only rectify the Register where those who are affected consent or where the fact of the inaccuracy has been judicially determined.

Compensation in consequence of rectification

Section 80: Rectification: compensation for certain expenses and losses

191. This section is self-explanatory.

Section 81: Rectification: circumstances where liability excluded

192. This section provides for the limitations to the Keeper’s liability to pay compensation under section 80 in respect of rectification of an inaccuracy. Paragraph (a) excludes liability, for example, where rights have been changed by an off-register event such as long negative prescription (for example where a servitude right of access is dissolved where it is not used over 20 years).

193. Paragraph (c) provides that the Keeper has no liability in relation to rectifications of inaccuracies caused by the fact the title is in favour of a prescriptive claimant. This means, for example, that the removal of a provisional marking would not result in liability.

PART 9: RIGHTS OF PERSONS ACQUIRING ETC. IN GOOD FAITH

Overview of Part 9

194. This part provides for the circumstances in which the Land Register is inaccurate in law or fact, but is not to be rectified. In these cases, the Part provides for the underlying property rights to be transferred to the person in whose name title to land is currently registered. Put another way, instead of the register being changed, property rights are changed.

195. The circumstances where the Bill provides for this transfer of rights are limited and are most likely to operate in the cases of error or fraudulent sale and subsequent registration. Where a property is fraudulently registered or registered in error, the true owner can seek a reversal of that registration in their favour, as long as the property has not been openly possessed since the registration for 10 years, or registered in favour of an innocent third party more than one year after the original registration. However, where the property has been so possessed by a person, or registered in favour of such an innocent third party, the registration cannot be reversed. In such cases, the original owner would be compensated by the Keeper.

Ownership

Section 82: Acquisition from disponent without valid title

196. The effect of subsections (1) to (3) is that if the register shows someone as proprietor, but that person’s title is in fact void, then when that person disposes the title to another (and that second person is duly registered as owner), if the requirements in subsection (3) (including regarding good faith and possession for one year) are met, then that second person acquires ownership. In the absence of evidence to the contrary, the awareness of the Keeper referred to in subsection (3)(b) can be deduced from the information on the register.
197. Subsections (4) to (6) provide for the date when ownership is acquired under subsection (2). It is the later of the date of registration and the expiry of the one-year period of peaceful possession.

Section 83: Acquisition from representative of disponer without valid title

198. This section provides that section 82 also applies where the disposition in favour of a good faith acquirer is delivered by a representative of the registered proprietor (for example a trustee or executor).

Leases

Section 84: Acquisition from assigner without valid title

199. This section is the equivalent section to section 82, but for assignation of leases. It applies only to cases where there exists a valid lease but the person who assigns it does not have a title to it.

Section 85: Acquisition from representative of assigner without valid title

200. This section is the equivalent section to section 83 on representatives, but for assignation of leases.

Servitudes

Section 86: Grant of servitude by person not proprietor

201. This section is the equivalent section to section 82, but for servitudes. It provides that in certain cases a servitude granted by someone with a bad title is valid. Like section 82, it requires the proprietor of the benefited property to be in good faith. This section applies only to the grant of a new servitude. It does not cover the case where land is disponed and from the register it appears that there is a servitude benefiting the property (i.e. as a pertinent), but in fact the servitude is invalid. In such a case, the servitude remains invalid notwithstanding the transfer to a good faith acquirer.

Extinction of encumbrances etc

Section 87: Extinction of encumbrance when land disposed

202. Subsections (1) and (2) provide that where an encumbrance (such as a standard security) has been omitted from the register and there is no relevant caveat on the title sheet, a good faith acquirer acquires the land free from that encumbrance. However, where, for example, a property is subject to a standard security and the owner forges and registers a discharge (and the standard security is deleted from the title sheet) the property is still encumbered by the security because the discharge is a forgery. Nevertheless, if in the example the owner disposed the title to another person and that person was in good faith, the security would be extinguished on the day when the second person is registered as proprietor.
203. Subsection (4) lists the types of encumbrances that are not subject to the rule in subsections (1) and (2). Subsections (1) and (2) only have effect where the Keeper should have entered a burden in the burdens section of a title sheet, but has failed to do so. Consequently, subsections (1) and (2) do not apply to any encumbrance which need not be entered in the Land Register either because:

- it cannot be registered (such as in the case of a short lease);
- it relates to an off-register event (such as a servitude acquired by prescription); or
- it relates to an overriding interest (such as a public right of way).

Section 88: Extinction of encumbrance when lease assigned

204. This section is the equivalent of section 87, but for assignation of leases.

Section 89: Extinction of floating charge when land disposed

205. This section protects a good faith acquirer from the risk of an attached floating charge crystallising over their property where the floating charge was granted by a predecessor in title of the person who sold them the property.

Compensation in consequence of this Part

Section 90: Compensation for loss incurred in consequence of this part

206. Where this Part transfers a right to someone (an innocent third party), the original owner of the right will inevitably be deprived of the right. This section makes provision for compensation of such persons.

Section 91: Quantification of compensation etc.

207. This section makes provision about how much compensation is payable under section 90. It is otherwise self-explanatory.

PART 10: ELECTRONIC DOCUMENTS, ELECTRONIC CONVEYANCING AND ELECTRONIC REGISTRATION

Overview of Part 10

208. This part of the Bill amends the Requirements of Writing (Scotland) Act 1995, updating it to allow for electronic documents to have the equivalent status and standards of validity and authenticity as paper documents have now.

Electronic documents

Section 92: Where requirement for writing satisfied by electronic document

209. This section makes changes to section 1 of the Requirements of Writing (Scotland) Act 1995 (the 1995 Act). Subsection (2) makes textual adjustments to section 1 of the 1995 Act to
ensure that where a document is required to be in writing (and many documents do not require to be in writing), the form of that document can be either as a traditional document (for example on paper) or an electronic document (as long as it is a document capable of being electronic and is in the form specified in regulations).

210. Subsection (2)(a)(iv) provides that agreements under section 63 of the Bill (about shifting boundaries of subjects bounded by a water boundary) must be in writing.

Section 93: Electronic documents

211. This section inserts a new Part 3 into the Requirements of Writing (Scotland) Act 1995 (the 1995 Act) comprising seven new sections on electronic documents.

212. The new Part contains powers for Scottish Ministers to carry out two major reforms by subordinate legislation. First, it permits Scottish Ministers to make regulations making documents electronically valid. This will allow, for example, regulations to make contracts relating to transactions over land, known as missives, electronically valid. This will lead to solicitors not needing to exchange paper documents. Second, it permits Scottish Ministers to make regulations allowing electronic registration of electronically valid documents in the Keeper’s registers.

213. Consequential amendments to the 1995 Act (particularly to ensure law on paper documents continues to operate) are provided for in schedule 3.

214. Inserted section 9A defines electronic documents.

215. Inserted section 9B allows Scottish Ministers to make regulations in respect of the types of documents under section 1(2) of the 1995 Act capable of being electronically formally valid. Subsection 1 makes provision that in order for an electronic document to reach the threshold of being formally valid, the document needs to be authenticated by the granter or granters. Subsection (2) provides that an electronic document is authenticated if it bears an electronic signature. In this way, authentication can be said to be akin to the wet signature applied to a traditional document. The conditions that the electronic signature must comply with are stipulated in subsection 2(a) to (c). A document must be of a type authorised to be a valid electronic document under subsection (1)(b) and are authenticated in accordance with regulations made under subsection (2)(c). Subsection (3) allows a contract mentioned in section 1(2)(a) of the 1995 Act to be constituted by a mix of electronic and traditional documents.

216. Inserted section 9C gives Scottish Ministers a power to specify in regulations what level of authentication and certification is necessary to ensure the document can be presumed to be authenticated. On being authenticated alone, the document can be valid under section 9B. However, in order for an electronic document to have probative status, certain documents may have to have third party certification. Traditional documents receive self-proving status by witnessing. Once electronically signed in accordance with regulations made under section 9C(2), an electronic document is capable of being automatically valid without witnessing (as the equivalent evidence of who signed the electronic document (and when) is securely encrypted into the constituent data of the document).
217. Inserted section 9D makes provision allowing courts to grant decree that an electronic document is self-proving even if there is no presumption in respect of the document under section 9C.

218. Inserted section 9E allows the regulations to make provision in relation to alteration and annexations of electronically valid documents.

219. Inserted section 9F allows electronic documents to be delivered electronically (such as through the internet) or by other reasonable means (such as physical delivery of a DVD or USB memory stick). Subsection (2) is self-explanatory.

220. Inserted section 9G (1) to (3) allows Scottish Ministers to make regulations allowing for electronic registration of electronically valid documents in any of the Keeper of the Registers of Scotland’s registers. Such a document must be of a type specified in regulations under subsection (3) and be electronically authenticated under section 9C, 9D or 9E(1). Subsection (6) list the documents to which the regulations need not apply.

Section 94: Amendment of Requirements of Writing (Scotland) Act 1995

221. This section is self-explanatory. See below on schedule 3.

Electronic conveyancing

Section 95: Automated registration

222. This section provides for the Keeper to run a computer system for electronic registration in the Land Register. Currently the Keeper runs an Automated Registration of Title to Land “ARTL” system for generating electronic conveyancing deeds and electronically submitting such deeds to the Keeper. This system was provided for by the Automated Registration of Title to Land (Electronic Communications) (Scotland) Order 2006 and its successors. The 2006 Order was made under the Electronic Communications Act 2000.

223. Subsection (3) allows Scottish Ministers to make various provisions in regulations regarding automated registration. This will allow provision to be made for ARTL or any successor system.

Electronic recording and registration

Section 96: Power to enable electronic registration

224. This section makes provision for Scottish Ministers to make provision in regulations for electronic registration in any of the Keeper’s registers (including the General Register of Sasines, the Register of Inhibitions and the Books of Council and Session). Section 95 only makes provision for the Land Register. Subsection (3) allows the regulations to modify enactments in consequence of the power in subsection (1).
PART 11: MISCELLANEOUS AND GENERAL

Deduction of title

Section 97: Deduction of title

225. This section is about uncompleted titles. It continues the rule that clauses of deduction of title are not necessary for deeds relating to property in the Land Register. It extends the current practice to provide that, where a disposition inducing first registration is granted by an unrecorded holder (uninfeft proprietor), such a clause is no longer required. However, deeds recorded in the General Register of Sasines will still need such clauses (where appropriate). In order to demonstrate to the Keeper that the deed has been validly granted it will continue to be necessary to submit all links in title even if no clause of deduction of title is required.

Notes on register

Section 98: Note of date on which entry in register is made

226. This section is self-explanatory

Appeals

Section 99: Appeals

227. This section is self-explanatory.

Extracts and certified copies

Section 100: Extracts and certified copies: general

228. Subsection (1) provides for the issuing of extracts of registered documents. Subsection (2) provides for the issuing of certified copies of pending documents. Subsection (7) allows the extract of a certified copy to be sent by e-mail if the person requests that the document be received in that form.

Section 101: Evidential status of extract or certified copy

229. This section ensures that extracts and certified copies can be accepted as sufficient evidence in court.

Section 102: Liability of Keeper in respect of extracts, information and lost documents etc.

230. This section means that the Keeper is taken to warrant extracts, certified copies and certain other information. This ensures that people can be confident about the accuracy of the documents when relying on them in the course of commercial business.

Information and access

Section 103: Information and access

231. This section is self-explanatory.
These documents relate to the Land Registration etc. (Scotland) Bill (SP Bill 6) as introduced in the Scottish Parliament on 1 December 2011

Keeper’s functions

Section 104: Provisions of services by the Keeper

232. This section is largely self-explanatory and places on a statutory footing the Keeper’s power to provide services such as the existing pre-registration enquiry service and title examination service.

Section 105: Performance of Keeper’s functions during vacancy in office etc.

233. This section ensures that were the office of the Keeper to be vacant or the Keeper be incapable for the time being of acting, the validity of decisions made after that time on the Keeper’s behalf by a member of the Keeper’s staff are not deemed invalid.

Fees

Section 106: Fees

234. This section provides the fee power under which Scottish Ministers may authorise the Keeper of the Registers to charge fees for services provided in connection with the functions conferred on the Keeper in the Bill.

235. Subsection (1)(a) allows Scottish Ministers to provide for what fees may be charged for. Subparagraph (i) allows for the setting of fees for registration services in relation to any of the Keeper’s registers (of which there are 16, including the Land Register, the General Register of Sasines, the Register of Inhibitions and the Books of Council and Session). This power includes power to set the rate at which fees are payable for certain services as well as to set the amount that can be charged for the registration of any particular type of application.

236. Subparagraphs (ii) and (iii) of subsection (1)(a) also apply to all of the Keeper’s registers. In the case of sub-paragraph (iii) (the provision of information by the Keeper), subsection (4) makes clear that the fee power can cover extracts and copy certificates provided under section 99.

237. Subsection (1)(b) allows Scottish Ministers to provide for the method of payment of fees. For example, this may be used to facilitate direct debit.

238. Subsection (1)(c) allows Scottish Ministers to delegate the setting of fees to the Keeper within defined parameters. If used, this will allow fees to be increased or reduced between fee orders. This could allow, for example, the Keeper to reduce the fee for a type of application for a period of time.

239. Subsection (2) allows different fees to be set for types of application. It would allow, for example, for the fee for the processing of electronic applications to be set at a lower level than for paper applications or for the fee for voluntary registrations to be different to that for first registrations.
240. Subsection (3) ensures the Keeper is consulted about the Keeper’s expenses (which the proceeds of the fees will meet) in advance of making an order under this section.

241. Subsection (4)(b) ensures that the power to provide consultancy services under section 104 is not affected by this section.

Duty to take reasonable care

Section 107: Duties of certain persons

242. This section creates a statutory duty of care on applicants, granters of deeds to be registered and the solicitors of both, in favour of the Keeper. The duty is to ensure that the documentation or evidence submitted with an application or otherwise supplied in the course of an application does not induce the Keeper to make the register inaccurate. The duty extends until the Keeper has made the registration decision.

Offence

Section 108: Offence relating to applications for registration

243. Subsection (1) provides that it is an offence for any party submitting an application to the Keeper to include materially false or misleading statements or to fail to disclose material information in such an application. Subsection (2) makes it clear that the offence can apply to both solicitors and their clients.

244. The effect of the defence in subsections (3) and (4) is that a person will not commit an offence under this section if they give the Keeper information in good faith having taken all reasonable precautions.

245. Subsections (6) and (7) mean a person may only rely on the defence in subsection (2) if they have given the prosecutor prior notice or if the court grants leave.

General provisions

Section 109: Interpretation

246. This section is self-explanatory.

Section 110: References to “registering” etc. in the Land Register of Scotland

247. This section is self-explanatory.

Section 111: Land register rules

248. This section gives the Scottish Ministers power, in consultation with the Keeper to make rules in relation to the Land Register. The rules are to be made by regulations and subsection (1) sets out the range of matters that the rules may cover.
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Section 112: Subordinate legislation

249. This section outlines the parliamentary procedures to which the powers for making subordinate legislation by order, regulations or rules under the Bill are to be subject.

Section 113: Ancillary provision

250. This section is self-explanatory.

Section 114: Transitional provisions

251. This section is self-explanatory.

Section 115: Minor and consequential modifications

252. This section is self-explanatory.

Section 116: Saving provisions

253. This section contains savings provisions. Subsection (1) clarifies that the amendments made to the Prescription and Limitation (Scotland) Act 1973 as stated in the subsection do not strike at any a title acquired by prescription prior to the designated day.

254. Subsection (2) clarifies that section 28(1) of the Land Registration (Scotland) Act 1979 (“the 1979 Act”), is still applicable to the sections of the 1979 Act listed in the subsection. See paragraph 19 of Schedule 5 for minor and consequential amendments to the 1979 Act.

Section 117: Crown application

255. This section is self-explanatory.

Section 118: The designated day

256. This section gives the Scottish Ministers power by order to provide for the “designated day”. That day is to fall not less than 6 months after the order is made. The designated day is the day on which the main provisions of the Bill, listed in section 119(2), will come into force.

Sections 119: Commencement

257. This section is self-explanatory.

Sections 120: Short title

258. This section is self-explanatory.
SCHEDULES

Schedule 1: Registered leases tenanted in common

259. As explained in relation to sections 17 to 20 on shared plots, this schedule makes equivalent provision to shared plots for shared lease areas. The shared lease area title sheets provided for correspond to shared plot title sheets but relate to shared lease interests rather than shared ownership interests.

Schedule 2: Amendment of Registration of Leases (Scotland) Act 1857

260. This schedule makes consequential changes to the changes made by section 51.

Schedule 3: Amendment of Requirements of Writing (Scotland) Act 1995

Overview of schedule 3

261. This schedule makes changes consequential on the changes in Part 10 of the Bill to the Requirements of Writing (Scotland) Act 1995.

262. Paragraphs 2 to 17 provide for a new Part 2 of the 1995 Act. The new Part 2 makes provision for the formal validity of traditional documents, which are those documents written on paper (as opposed to being electronic). Most of the paragraphs make consequential amendment on the change of label from “document” to “traditional document”.

263. Paragraph 13 repeals section 6A of the 1995 Act. That section was inserted into the 1995 Act by section 222 of the Bankruptcy and Diligence etc (Scotland) Act 2007 to provide, in the short term, a mechanism by which a creditor could proceed with summary diligence upon a personal bond contained with a standard security created in electronic form within the Keeper’s Automated Registration of Title to Land system, given that the Books of Council and Session were open only to traditional documents. Under new section 9G of the 1995 Act, all types of electronic document become directly registrable in the Books of Council and Session provided that they meet prescribed standards, and so the provision is no longer necessary.

264. Paragraph 19 makes amendments to section 12 of the 1995 Act (the interpretation section). In paragraph (b), inserted subsection (4) provides explanation as to the meaning of certification in relation to electronic documents.

Schedule 4: Transitional provisions

265. This schedule deals with the transition from registration in the Land Register under the 1979 Act to registration under the Bill. Reference in this note to the designated day is to the day that the new scheme comes into force.

Paragraphs 1 to 6

266. Paragraphs 1 to 6 contain provisions about the treatment of existing title sheets. They become part of the Title Sheet Record and as such, title sheets for plots of land, or lease title
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sheets. The Keeper is given the power to make existing title sheets conform to the new scheme but is generally not obliged to do so. The C section on new title sheets will be called the “securities section”. The Keeper will have the power to change the name of the C section (currently called the “charges” section) to the securities section and the B section (proprietorship section) of lease title sheets to the tenancy section.

**Paragraphs 7 to 11**

267. Paragraphs 7 to 11 contain provisions about common areas that are at present included in the title sheet of each of the sharing properties. The new scheme requires that when such areas are created in future they are to have their own title sheet. Paragraphs 7 and 8 allow, but do not oblige, the Keeper to create a separate title sheet for common areas that already exist. Paragraph 9 deals with developments that are part-completed on the designated day. It allows the present practice of including common areas in the title sheets of the sharing properties to continue in respect of the remainder of the development.

**Paragraph 12**

268. This paragraph provides for the migration of existing documents into the archive record.

**Paragraphs 13 and 14**

269. Paragraph 13 makes clear that applications for registration that are pending at the designated day will be dealt with as applications under the 1979 Act.

270. Paragraph 14 provides that an application for rectification under section 9 of the 1979 Act, which has not been determined by the Keeper by the designated day, will fall. However, that does not affect the applicant’s rights as the Keeper is under a positive duty to rectify inaccuracies.

**Paragraphs 15 and 16**

271. Paragraphs 15 and 16 make clear that any claims for indemnity, or for reimbursement of expenses under the 1979 Act that have already vested are not affected by the new scheme.

**Paragraphs 17 to 24**

272. Paragraphs 17 to 24 deal with what are known bijural inaccuracies. For the concept of bijural inaccuracy, see Part 17 of the Scottish Law Commission Report (Scot Law Com No. 222). In the new scheme, there will be no bijural inaccuracies so provision requires to be made for inaccuracies of that kind that exist immediately prior to the designated day. They must either (i) cease to be an inaccuracy (in which case the rights of the parties are realigned to follow what the Land Register says they are), or (ii) be re-conceptualised as an actual inaccuracy.

273. The test adopted as to whether (i) or (ii) occurs is whether a particular inaccuracy could have been rectified under the rules in section 9 of the 1979 Act. If so, paragraphs 17 to 21 convert the bijural inaccuracy into an actual inaccuracy and make provision for compensation to be paid to a person losing a right if the register is then rectified save where a right to indemnity would not have arisen under the 1979 Act. If, however, the bijural inaccuracy could not be
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rectified under section 9 of the 1979 Act, paragraphs 22 to 24 make provision for the inaccuracy to cease to be an inaccuracy (i.e. for the rights of the parties concerned to be realigned so as to conform to what the Land Register says they are). Provision is also made for the payment of compensation to a person suffering loss as a result of such realignment where a right to indemnity would have arisen under the 1979 Act if rectification under section 9 was not possible.

274. In both cases, the practical result is the same as it is under the 1979 Act. A title that was vulnerable to rectification remains vulnerable, while one that was invulnerable (usually due to the protection given to a proprietor in possession) becomes free from the possibility of rectification. As possession is important under the current law, and in order to minimise problems of evidence, paragraph 18 provides that the person registered as proprietor of the land is presumed to be in possession for the purposes of determining whether the Keeper had power to rectify.

Paragraph 25

275. Paragraph 25 applies where the title to a flat in a tenement is already recorded in the General Register of Sasines or registered in the Land Register. In such cases, following present practice the Keeper will be able to continue to depict land further than 25 metres from the tenement building as part of the steading and, where such land is a common area, the Keeper will not be required to quantify the pro indiviso shares of the flats in such land in the proprietorship section of the title sheets of the individual flats.

Paragraph 26

276. Paragraph 26 is self-explanatory.

Schedule 5: Minor and consequential modifications

Overview

277. This schedule makes minor and consequential changes. Most of the changes are either consequential on the repeal of parts of the Land Registration (Scotland) Act 1979 and its replacement with the Bill or consequential on the amendments to the Requirements of Writing (Scotland) Act 1995 and the extension of the means of documents being self-proving from requiring to be “subscribed” (which is a paper only process) to also being capable of being “authenticated” (that is, authenticated as valid electronic documents in accordance with regulations made under the 1995 Act).

Paragraph 1 - Lands Clauses Consolidation (Scotland) Act 1845

278. This amends the note about mode of execution under the Requirements of Writing (Scotland) Act 1995 to take account of documents in electronic form.

Paragraph 2 - Commissioners Clauses Act 1847

279. Subparagraph (2) amends the 1847 Act to take account of the extension of the Requirements of Writing (Scotland) Act 1995 to documents in electronic form. Subparagraph (3) replaces the specific reference to the Requirements of Writing (Scotland) Act 1995 with a more general reference to the Act.
**Paragraph 3 - Ordnance Board Transfer Act 1855**

280. This paragraph amends section 5(2) of the 1855 Act to take account of the extension of the Requirements of Writing (Scotland) Act 1995 to documents in electronic form.

**Paragraph 4 - Transmission of Moveable Property (Scotland) Act 1862**

281. This amends the Schedules to the 1862 Act to take account of documents in electronic form under the Requirements of Writing (Scotland) Act 1995.

**Paragraph 5 - Land Registers (Scotland) Act 1868 (c.64)**

282. The effect of this amendment is to make clear that the provisions of the 1868 Act which are referred to do not apply to the Land Register.

**Paragraph 6 - Titles to Land Consolidation (Scotland) Act 1868**

283. Subparagraphs (2) and (3), which are about litigiosity, are disapplied in relation to the Land Register. The reason is that the situations they deal with will be dealt with by caveats.

284. Subparagraph (4) amends the form in Schedule B to the 1868 Act to take account of documents in electronic form under the Requirements of Writing (Scotland) Act 1995.

**Paragraph 7 - Conveyancing (Scotland) Act 1874**

285. Subparagraph (2) amends the note about mode of execution in Schedule M to the 1874 Act to take account of documents in electronic form under the Requirements of Writing (Scotland) Act 1995.

**Paragraph 8 - Trusts (Scotland) Act 1921**

286. Subparagraphs (2) and (3) amend the notes about mode of execution in the Schedules to the 1921 Act to take account of documents in electronic form under the Requirements of Writing (Scotland) Act 1995.

**Paragraph 9 - Conveyancing (Scotland) Act 1924**

287. Subparagraph (2) adds a reference to the Land Register of Scotland to section 2(5).

288. Subparagraph (3) is consequential on the repeal of schedule K by the Abolition of Feudal Tenure etc. (Scotland) Act 2000 schedule 13(1) paragraph 1.

289. Subparagraph (4) is similar to the provisions in paragraph 6(2) and (3) above concerning the Titles to Land Consolidation (Scotland) Act 1868. It disapplies the provisions of the 1924 Act in relation to the Land Register, because the matters in question will be dealt with by the caveat procedure.

290. Subparagraph (5) amends schedule B to take account of documents in electronic form under the Requirements of Writing (Scotland) Act 1995.
Paragraph 10 - Burgh Registers (Scotland) Act 1926
291. This paragraph is self-explanatory.

Paragraph 11 - Public Registers and Records (Scotland) Act 1948
292. This paragraph repeals a power to prescribe the forms of documents in the Sasines register made redundant by the Bill.

Paragraph 12 - Land Drainage (Scotland) Act 1958
293. This paragraph amends the definition of long lease by adding a reference to the Land Register.

Paragraph 13 - Harbours Act 1964
294. This paragraph amends the definition of long lease by adding a reference to the Land Register.

Paragraph 14 - Succession (Scotland) Act 1964
295. This amendment is consequential on the changes made to the Requirements of Writing (Scotland) Act 1995. The reference to section 4 is replaced by a reference to the equivalent provision in the 1995 Act as amended.

Paragraph 15 - Industrial and Provident Societies Act 1965
296. Subparagraphs (2) and (3) amend the sections mentioned to take account of the extension of the Requirements of Writing (Scotland) Act 1995 to documents in electronic form.

297. Subparagraphs (4) and (5) amend the notes about mode of execution under the Requirements of Writing (Scotland) Act 1995 to take account of documents in electronic form.

Paragraph 16 - Gas Act 1965
298. This paragraph amends the definition of long lease by adding a reference to the Land Register.

Paragraph 17 - Conveyancing and Feudal Reform (Scotland) Act 1970
299. The 1970 Act was not amended by the 1979 Act so as to take account of the introduction of the Land Register. The 1970 Act was instead subject to the "translation" provision in section 29(2) of the 1979 Act under which references to the Register of Sasines and the recording of deeds in that register were deemed to be references to the Land Register or registration. This approach has not made the 1970 Act easy to understand. The majority of amendments in this paragraph are designed to add references (where appropriate) to the Land Register.

300. The amendment to section 28(5) updates the means of describing the security subjects in a decree of foreclosure following the partial repeal of the 1979 Act.
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301. The notes that are found in various schedules about mode of execution under the Requirements of Writing (Scotland) Act 1995 are amended to take account of documents in electronic form.

**Paragraph 18 - Prescription and Limitation (Scotland) Act 1973**

302. Subparagraph (2) saves and consequently amends section 1 of the 1973 Act.

303. Subparagraph (3)(a) and (b) amend section 2 of the 1973 Act by adding references to registration in the Land Register.

304. Subparagraph (3)(c) updates the references in section 2 to section 3(3) of the 1979 Act. The new sections 20B and 20C of the 1857 Act replace section 3(3) in relation to leases.

305. Subparagraph (4) inserts a new section 1A into the 1973 Act.


307. Subparagraphs (6) and (7) make changes to schedule 1 of the 1973 Act to implement the policy that the period of negative prescription should be five years for claims against the Keeper where the Register has been rectified in favour of the claimant and twenty years for claims against the Keeper arising out of breach of warranty or from the operation of the realignment principle.

308. Subparagraph (8) amends schedule 3 to the 1973 Act by adding the obligation of the Keeper to rectify an inaccuracy to the list of imprescriptible rights and obligations.

**Paragraph 19 - Land Registration (Scotland) Act 1979**

309. This paragraph specifies the technical changes that constitute the partial repeal of the 1979 Act.

**Paragraph 20 - Education (Scotland) Act 1980**

310. This paragraph amends section 16(2) of the Education (Scotland) Act 1980 to take account of the fact that as from the designated day it will not be possible to record a disposition in the Register of Sasines.

**Paragraph 21 - Water (Scotland) Act 1980**

311. Subparagraphs (2), (3) and (4) amend the provisions referred to by adding a reference to registration in the Land Register.

312. Subparagraph (5) is self-explanatory.
Paragraph 22 - Matrimonial Homes (Family Protection) (Scotland) Act 1981
313. This paragraph replaces the reference to the 1979 Act with a reference to the equivalent provision in the Bill.

Paragraph 23 - Civil Aviation Act 1982
314. This paragraph simplifies and updates the provisions referred to following the partial repeal of the 1979 Act.

Paragraph 24 - Litter Act 1983
315. This paragraph simplifies and updates section 8 of the 1983 Act following the partial repeal of the 1979 Act.

Paragraph 25 - Health and Social Services and Social Security Adjudications Act 1983
316. This paragraph replaces the reference to the 1979 Act with a reference to the Bill.

Paragraph 26 - Telecommunications Act 1984
317. This paragraph, which amended the 1979 Act, is to be repealed following the partial repeal of that Act.

Paragraph 27 - Matrimonial and Family Proceedings Act 1984
318. This paragraph, which amended the 1979 Act, can be repealed following the partial repeal of that Act.

Paragraph 28 - Bankruptcy (Scotland) Act 1985
319. Subparagraph (2) replaces a reference to the 1979 Act with a reference to the equivalent provisions in the Bill.

Paragraph 29 - Housing Associations Act 1985
320. This paragraph adds a reference to registration in the Land Register into the 1985 Act.

Paragraph 30 - Law Reform (Miscellaneous Provisions) (Scotland) Act 1985
321. This paragraph disapplies section 8(7) of the 1985 Act to the Land Register. The reason is that the matter will be covered by the caveat procedure in relation to property in the Land Register.

Paragraph 31 - Electricity Act 1989
322. This paragraph is self-explanatory.

Paragraph 32 - Property Misdescriptions Act 1991
323. This paragraph replaces the reference to interest in land, which is the language of the 1979 Act, with a reference to right in land, which is the language of the Bill.
Paragraph 33 - Agricultural Holdings (Scotland) Act 1991

324. This amendment adds a reference to registration following the amendment of the 1857 Act to include references to registration in the Land Register.

Paragraph 34 - Coal Industry Act 1994

325. This repeals paragraph 20 of the 1994 Act, which inserted an overriding interest relating to the Coal Authority into the Land Registration (Scotland) Act 1979.

Paragraph 35 - Land Registers (Scotland) Act 1995

326. This paragraph amends the 1995 Act to reference the new fee power contained within the Bill.

Paragraph 36 - Petroleum Act 1998

327. This paragraph amends section 5(9) to take account of the extension of the Requirements of Writing (Scotland) Act 1995 to documents in electronic form.

Paragraph 37 - Public Finance and Accountability (Scotland) Act 2000

328. Section 25 of the 1868 Act is repealed and replaced by section 104 of the Bill. This paragraph makes the necessary consequential change to the 2000 Act.

Paragraph 38 - Adults with Incapacity (Scotland) Act 2000

329. Under the new scheme, there will be no land certificates or office copies but there will be extracts. Subparagraphs (2) and (3) make the necessary changes to the sections mentioned.

330. Subparagraph (4) amends the provisions mentioned to take account of the partial repeal of the 1979 Act. In future, it will not be possible to register an event or death directly in the Land Register. Registration will have to proceed on the basis of a deed such as an interlocutor.

Paragraph 39 - Abolition of Feudal Tenure etc. (Scotland) Act 2000

331. Subparagraph (3) replaces the reference to the 1979 Act with a reference to the equivalent provision in the Bill.

332. Subparagraph (5) replaces the reference to interest in land with a reference to right in land. The amendment also reflects the fact that under the new scheme registration requires to proceed on the basis of a deed.

333. Subparagraph (8) amends section 73 so as to apply the translation provisions to extracts and certified copies issued under the Bill.

Paragraph 40 - Standards in Scotland’s Schools etc. Act 2000

334. This paragraph replaces the reference to interests in land, which is the language of the 1979 Act, with a reference to rights in land, which is the language of the Bill.
Paragraph 41 - National Parks (Scotland) Act 2000

335. This paragraph replaces the references to interest in land, which is the language of the 1979 Act, with a reference to right in land, which is the language of the Bill.

Paragraph 42 - Housing (Scotland) Act 2001

336. This paragraph amends the two sections mentioned to take account of the extension of the 1995 Act to documents in electronic form.

Paragraph 43 - Title Conditions (Scotland) Act 2003

337. Subparagraphs (3) and (5) replace the reference to the 1979 Act with a reference to the equivalent provision of the Bill. Subparagraph (3) also makes a consequential amendment to section 60 following the repeal of section 15(3) of the 1979 Act.

338. Subparagraph (9) amends section 84(2) to take account of the extension of the 1995 Act to documents in electronic form.

339. Subparagraph (11) makes clear that in the case of a notice of title if a title condition is set out in a midcouple then the midcouple and the notice of title together are to be treated as the constitutive deed.

340. Subparagraph (11) also makes a consequential change to take account of the new title of section 3 of the 1857 Act.

Paragraph 44 - Civil Partnership Act 2004

341. This paragraph replaces the references to the 1979 Act with references to the equivalent provisions in the Bill.

Paragraph 45 - Stirling-Alloa-Kincardine Railway and Linked Improvements Act 2004

342. This paragraph removes the references to the 1979 Act and clarifies the meaning of subsection (3).

Paragraph 46 - Tenements (Scotland) Act 2004

343. The 1979 Act referred to interests in land. The Bill does not use that concept. Subparagraphs (2) and (3) make the necessary consequential changes.

Paragraph 47 - Edinburgh Tram (Line Two) Act 2006

344. This paragraph removes the references to the 1979 Act and clarifies the meaning of subsection (5).

Paragraph 48 - Edinburgh Tram (Line One) Act 2006

345. This paragraph removes the references to the 1979 Act and clarifies the meaning of subsection (5).
Paragraph 49 - Waverley Railway (Scotland) Act 2006

346. This paragraph removes the references to the 1979 Act and clarifies the meaning of subsection (3).

Paragraph 50 - Companies Act 2006

347. Subparagraphs (2) and (3) amend the provisions mentioned to take account of the extension of the 1995 Act to documents in electronic form.

348. Subparagraph (4) substitutes a reference to the 1979 Act with a reference to the Bill.

Paragraph 51 - Glasgow Airport Rail Link Act 2007

349. This paragraph removes the references to the 1979 Act and clarifies the meaning of subsection (3).

Paragraph 52 - Bankruptcy and Diligence etc. (Scotland) Act 2007

350. Subparagraph (2) amends the new section 13A of the 1970 Act.

351. Subparagraph (3) replaces the reference to the 1979 Act with a reference to the equivalent provision in the Bill.

Paragraph 53 - Edinburgh Airport Rail Link Act 2007

352. Subparagraph (2) replaces a reference to the 1979 Act with a reference to the equivalent provision in the Bill.

353. Subparagraph (3) removes a reference to the 1979 Act and clarifies the meaning of subsection (6).

Paragraph 54 - Airdrie-Bathgate Railway and Linked Improvements Act 2007

354. Subparagraph (2) replaces a reference to the 1979 Act with a reference to the equivalent provision in the Bill.

355. Subparagraph (3) removes a reference to the 1979 Act and clarifies the meaning of subsection (6).

Paragraph 55 - Energy Act 2008

356. This paragraph amends section 77(7) to take account of the extension of the Requirements of Writing (Scotland) Act 1995 to documents in electronic form.
These documents relate to the Land Registration etc. (Scotland) Bill (SP Bill 6) as introduced in the Scottish Parliament on 1 December 2011

FINANCIAL MEMORANDUM

INTRODUCTION

357. This document relates to the Land Registration (Scotland) Bill introduced in the Scottish Parliament on 1 December 2011. It has been prepared by the Scottish Government in order to satisfy Rule 9.3.2 of the Parliament’s Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament.

BACKGROUND

358. Secure and reliable property rights underpin the economy. The most fundamental economic effect of the work of the Registers of Scotland (RoS) lies in its role in providing clarity of ownership. This is because security over land has a direct influence on the property market, whether commercial investment or domestic through the mortgage market. The United Nations Economic Commission for Europe stated in their report on the Social and Economic Benefits of Good Land Registration that:

“Access to mortgage finance makes possible the development and diversification of large and small businesses, so promoting commercial responsiveness to internal and overseas demand. It increases the scope for inward investment. Importantly it generates employment opportunities that might otherwise be constrained or non-existent. For the homeowner access to finance makes possible decisions about housing that in turn facilitates a fluid housing market. It makes possible the scope to improve and develop existing property so increasing the value of the national housing stock”.

359. The most significant economic benefit to Scotland associated with the Bill will be realised with the completion of the Land Register. For conveyancing solicitors, transacting on a land register title is simpler, and therefore cheaper, than transacting on a property where the title is recorded in the General Register of Sasines. To RoS the unit cost of processing a dealing over a land-registered title is significantly less than the cost of processing an application for first registration, where the plot and land and all the rights and burdens pertaining thereto have to be defined for the first time. Completion of the Land Register is one of the major long-term policy objectives of the Bill and when completion is achieved, the economic benefits will be felt by all those who own and transact with heritable property in Scotland.

360. The main aim of the Land Registration (Scotland) Bill is to implement the recommendations of the Scottish Law Commission report on Land Registration published in February 2010 (the SLC Report). The recommendations of the SLC Report were to reform and modernise the law of land registration in Scotland and to allow for the use of electronic documents.

361. The primary statute governing the law of land registration is the Land Registration (Scotland) Act 1979. Since the commencement of this legislation, it has become apparent that there are fundamental flaws and deficiencies in it. These deficiencies have manifested themselves in two main ways. The first is that many of the procedures employed by the Keeper of the Registers of Scotland (the Keeper) in running the Land Register do not have a statutory basis. The second is that since the introduction of that Act the Keeper and the registered proprietors have had to resort to litigation in order to clarify the law regarding Land Registration.

362. The Bill supports five broad policy objectives:

- the Bill provides for the eventual completion of the Land Register by increasing the number of triggers for a first registration and providing for voluntary registrations and Keeper-induced registrations;
- the Bill introduces a system of “advance notices” for conveyancing transactions, which will remove the risk of losing title to a property between the settlement date and the registration date (which risk is currently underwritten by insurance);
- the Bill introduces amendments to the Requirements of Writing (Scotland) Act 1995 (the 1995 Act) to allow for electronic conveyancing and electronic registration;
- the Bill seeks to re-align registration law with property law by, for example, adjusting the circumstances in which a person can recover their property rather than only receive compensation from the Keeper;
- the Bill continues and improves the system for land registration in Scotland. It replaces the Land Registration (Scotland) Act 1979 (the 1979 Act). The Bill places on a statutory footing the administrative practices of the Keeper of the Registers of Scotland that have evolved in practice since the passing of the 1979 Act.

GENERAL COMMENTS ON FINANCIAL IMPLICATIONS

363. RoS is a Non Ministerial Department of the Scottish Administration, headed by the statutory office-holder, the Keeper of the Registers of Scotland. Since 1 April 1996, it has operated as a Trading Fund and is currently regulated by the Public Finance and Accountability (Scotland) Act 2000. As a Trading Fund, RoS derives funding solely from the fees it charges for the registration and information services it provides. RoS is expected to ensure that income is sufficient to meet its expenditure and that capital reserves are sufficient to meet its liabilities (including latent liabilities). As a consequence of RoS’ Trading Fund status, the costs of the Bill falling on RoS will not impose any burden on the Scottish Consolidated Fund. Neither will the passage and commencement of the Bill mean that fees will require to be increased.

364. The financial impact of this Bill will mainly fall on RoS. The additional cost to RoS of the Bill is estimated to be £3,902,000. These costs will arise mostly from the extra work required to process additional applications for first registration and Keeper-induced registrations, which has been estimated to be £2,665,000 and the cost of £436,300 associated with processing shared plot title sheets. In addition, there is the costs of processing advance notices, which has been estimated to be £751,000 annually in respect of the Land Register plus an estimated capital cost of £49,500 to modify the computerised Sasine register to accommodate advance notices. RoS will seek to cover the costs of additional first registration applications and shared plot title sheets from efficiency gains from new systems and processes rather than by seeking an increase
in fees. The cost of advanced notices will be met through the fees that will be charged specifically for this new service.

365. The Bill is being introduced at a time when RoS is anticipating that it will completely replace its land registration IT systems in the next three to four years. This process would have happened whether or not the Bill was to be introduced. The opportunity to design the new IT systems incorporating the changes brought about by the Bill should result in the avoidance of additional expenditure on IT arising from the Bill. Furthermore, the development of new systems and processes will generate efficiency gains and RoS intend to use these to fund the remaining additional costs instead of seeking a rise in fees.

366. In addition to the cost of the Bill on RoS, there will be some cost falling on the National Records of Scotland (formerly the National Archives of Scotland), which archives some documents registered by RoS. There should not be any significant financial implications for local authorities as a consequence of the Bill.

367. The Bill will not greatly impact on business except in the case of solicitor firms that are primarily involved in the conveyancing market. There is likely to be some short-term impact on these firms in familiarising themselves with the new legislation. In the medium to long term, there should be benefits to these firms from the provisions within the Bill, which are aimed at simplifying the registration process.

368. The measures included in the Bill which will result in the completion of the Land Register should, in the long-term, result in reduced conveyancing costs. This is so because for solicitors dealing with a transaction of a property registered in the Land Register, less work is involved than if a title were recorded in the General Register of Sasines. Equally, for RoS, the unit cost of processing an application for registration affecting the whole of a property registered in the Land Register is 15% of the unit cost for processing an application for first registration. The completion of the Land Register will also provide greater transparency of the ownership of land in Scotland. The completion of the Land Register will benefit every individual and business that transacts with heritable property in Scotland.

369. The policies in the Bill that will have some cost implications and have been considered in this document can be split into four parts:

- the modernisation of Land Registration legislation;
- completion of the Land Register;
- Advance Notices; and
- electronic conveyancing and electronic registration.

370. The provisions in the Bill for the modernisation and completion of the Land Register may result in additional cost to RoS. As referred to in paragraph 364, RoS will be developing new systems and processes which will result in efficiency savings, therefore any additional costs will be absorbed by RoS and will not be passed on to those who transact with heritable property in Scotland in higher fees for registration.
PART 1: MODERNISING THE LAW OF LAND REGISTRATION

Background

371. One of the main aims of the Bill is to modernise the law of land registration and to bring the law of registration in line with property law.

Costs to RoS

The state guarantee

372. To bring the law governing land registration in line with property law, the Bill changes the way the state guarantee of title to land will operate. Technical changes to the state guarantee will mean that in certain cases a person will get their property back rather than compensation. It will still be the case, as is the case at present, that in most cases where a person has a guaranteed right to land and the law provides that they will be denied title, that person will be able to claim compensation from the Keeper. It is thought that in general terms the number of cases where the Keeper will pay out will decrease by around 10% (see paragraph 386 below).

Shared plot titles

373. Shared plot titles are an innovation of the Bill. Any defined area of land that is held in common shares will under the Bill have its own separate Title Sheet in the Land Register. The Bill introduces the new concept of Shared Plot Title Sheet. This will be a new kind of title sheet that is designed to contribute to the transparency of the information held in the register. Instead of viewing several title sheets to determine who owns a path for example, consulting the shared plot title sheet will inform which properties have a share in the path in question. The creation of the shared plot title sheet will require more work and an initial extra cost to the registration process.

Volume assumptions and staff costs for shared plot titles

374. From analysis RoS has carried out on existing Land Register titles, it is anticipated that there will be around 205 developments per year that will include new, shared plot title sheets. Analysis has shown that, currently the average number of shared plots per development is 4.9, with an average of 74 plots per development.

375. The introduction of Shared Plot Title Sheets will require new processes to be put in place to create them. This will result in resource having to be employed by RoS. The table below gives an indication of the staff resource of implementing these provisions for the projected figure of 205 developments per annum:
These documents relate to the Land Registration etc. (Scotland) Bill (SP Bill 6) as introduced in the Scottish Parliament on 1 December 2011

<table>
<thead>
<tr>
<th>Grade</th>
<th>Number of staff</th>
<th>Costs £</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senior Case Worker</td>
<td>0.2</td>
<td>11,195</td>
</tr>
<tr>
<td>Registration Officer 1</td>
<td>1.6</td>
<td>65,549</td>
</tr>
<tr>
<td>Support Officer 1</td>
<td>12.2</td>
<td>286,820</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>14.0</strong></td>
<td><strong>363,564</strong></td>
</tr>
<tr>
<td>Plus 20% Overhead</td>
<td></td>
<td>72,713</td>
</tr>
<tr>
<td><strong>Total RoS Resource Cost</strong></td>
<td></td>
<td><strong>436,277</strong></td>
</tr>
</tbody>
</table>

*Table A*

**Training**

376. Training of RoS staff will be needed on the Bill. Specific training will be needed to deliver changes in how RoS deals with: mapping decisions; process impacts on title sheets; prescriptive claimants; shared plot title sheets and shared lease sheets; lease title sheets; closure of the General Register of Sasines; when and how to register the effect of caveats; transitional provisions; the new feesing structure (introduced following consultation); rectification, inaccuracy, warranty; and litigation.

377. The RoS budget for training on registration issues in the financial year 2011-12 is £185,000. RoS envisage that training on the new legislation will be spread over a two-year period around the commencement of the main provisions of the Bill. It is not anticipated that training on the new legislation will result in any additional training cost to RoS.

378. Training represents added cost for RoS both in specialist trainer time and time spent by staff in training that is lost to production. RoS has assessed the costs (in current figures) as follows:

**Training resource costs.**

<table>
<thead>
<tr>
<th>Grade</th>
<th>FTE</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senior Caseworker</td>
<td>0.06</td>
<td>£2,545</td>
</tr>
<tr>
<td>Registration Officer 1</td>
<td>0.23</td>
<td>£8,235</td>
</tr>
<tr>
<td>Registration Officer 2</td>
<td>0.04</td>
<td>£1,293</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>0.33</strong></td>
<td><strong>£12,073</strong></td>
</tr>
</tbody>
</table>

*Table B*
These documents relate to the Land Registration etc. (Scotland) Bill (SP Bill 6) as introduced in the Scottish Parliament on 1 December 2011

Trainee time and loss of production resource.

<table>
<thead>
<tr>
<th>Grade</th>
<th>FTE</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senior Caseworker</td>
<td>0.16</td>
<td>£7142</td>
</tr>
<tr>
<td>Registration Officer 1</td>
<td>0.43</td>
<td>£15,155</td>
</tr>
<tr>
<td>Registration Officer 2</td>
<td>0.45</td>
<td>£13,170</td>
</tr>
<tr>
<td>Support Officer 1</td>
<td>0.32</td>
<td>£6,787</td>
</tr>
<tr>
<td>Support Officer 2</td>
<td>0.19</td>
<td>£3,208</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1.54</strong></td>
<td><strong>£45,462</strong></td>
</tr>
</tbody>
</table>

*Table C*

Technical training:

Training resource costs.

<table>
<thead>
<tr>
<th>Grade</th>
<th>FTE</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senior Caseworker</td>
<td>0.18</td>
<td>£9,537</td>
</tr>
<tr>
<td>Registration Officer 1</td>
<td>1.45</td>
<td>£58,870</td>
</tr>
<tr>
<td>Registration Officer 2</td>
<td>0.08</td>
<td>£2,657</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1.71</strong></td>
<td><strong>£71,064</strong></td>
</tr>
</tbody>
</table>

*Table D*
Trainee time and loss of production resource.

<table>
<thead>
<tr>
<th>Grade</th>
<th>FTE</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senior Caseworker</td>
<td>0.49</td>
<td>£25,281</td>
</tr>
<tr>
<td>Registration Officer 1</td>
<td>2.42</td>
<td>£98,538</td>
</tr>
<tr>
<td>Registration Officer 2</td>
<td>1.78</td>
<td>£59,762</td>
</tr>
<tr>
<td>Support Officer 1</td>
<td>0.96</td>
<td>£23,149</td>
</tr>
<tr>
<td>Support Officer 2</td>
<td>0.21</td>
<td>£4,098</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>5.86</td>
<td><strong>£210,829</strong></td>
</tr>
</tbody>
</table>

Table E

379. Total cost of training to RoS is therefore estimated at around £340,000 over two years (based on 2010-2011 costs) and will therefore fall within normal training budgets.

**Costs of changes to inaccuracy, rectification and Keeper’s warranty**

380. The majority of litigation cases before the Lands Tribunal are settled and therefore not judicially determined. A claimant may typically spend in the region of £5,000 to £10,000 in legal fees (and RoS £4,000 to £5,000). If the outcome of the case requires the claimant to be compensated by RoS then the compensation includes their legal expenses. However, if the claimant goes on with the case and loses then they may be required to reimburse RoS’s legal expenses.
In the last ten years, the amounts claimed and the payments made have been as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount claimed</th>
<th>Payments made</th>
<th>Number of claims Paid</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001-02</td>
<td>£327,985</td>
<td>£86,076</td>
<td>54</td>
</tr>
<tr>
<td>2002-03</td>
<td>£850,291</td>
<td>£76,725</td>
<td>53</td>
</tr>
<tr>
<td>2003-04</td>
<td>£709,906</td>
<td>£410,417</td>
<td>86</td>
</tr>
<tr>
<td>2004-05</td>
<td>£2,371,912</td>
<td>£446,978</td>
<td>77</td>
</tr>
<tr>
<td>2005-06</td>
<td>£619,569</td>
<td>£394,174</td>
<td>83</td>
</tr>
<tr>
<td>2006-07</td>
<td>£635,821</td>
<td>£398,492</td>
<td>88</td>
</tr>
<tr>
<td>2007-08</td>
<td>£1,495,728</td>
<td>£275,517</td>
<td>80</td>
</tr>
<tr>
<td>2008-09</td>
<td>£772,207</td>
<td>£673,557</td>
<td>99</td>
</tr>
<tr>
<td>2009-10</td>
<td>£493,794</td>
<td>£444,607</td>
<td>102</td>
</tr>
<tr>
<td>2010-11</td>
<td>£796,874</td>
<td>£272,513</td>
<td>87</td>
</tr>
<tr>
<td>Last 10 years</td>
<td>£9,074,087</td>
<td>£3,479,056</td>
<td>809</td>
</tr>
</tbody>
</table>

*Table F*
382. The following table provides information about the costs of disputes under the Land Registration (Scotland) Act 1979 per instance in Scotland.

<table>
<thead>
<tr>
<th>Per Instance</th>
<th>Per Month</th>
</tr>
</thead>
<tbody>
<tr>
<td>£</td>
<td>£</td>
</tr>
<tr>
<td>Average Cost of Litigation - claimant</td>
<td>5,000- 10,000</td>
</tr>
<tr>
<td>Average Cost of Litigation - RoS</td>
<td>4,000-5,000</td>
</tr>
<tr>
<td>Cost of Disputes (Average Value of property)</td>
<td>153,623</td>
</tr>
</tbody>
</table>

Table G

383. As a result of the Bill, unsuccessful litigants, where the Land Register is not rectified in their favour, will no longer be able to claim compensation for costs from the Keeper.

384. Where an inaccuracy is rectified, the person in whose favour the rectification is made continues to be indemnified by the Keeper for loss caused by the inaccuracy. This will continue to be available not just to claimants whose title is in the Land Register, but it will also extend to owners of property registered in the General Register of Sasines where Land Register titles have encroached on their title.

385. The number of cases resulting in a claim against the Keeper is relatively small. The total number of claims in 2010-11 was just 0.03% of the total number of Land Register cases dispatched that year (277,858) and the total amount paid (£272,513) represents 0.8% of the registration fees (£33,277,518) received for Land Register applications for the same period.

386. It is envisaged that the costs to the Keeper in terms of paying out claims under warranty and rectification will be lower after the Bill is enacted. In their Economic Impact Assessment of the Draft Land Registration (Scotland) Bill commissioned by RoS, BiGGAR Economics assumed the changes proposed by the draft Bill would deliver annual savings of 10% of indemnity costs.2 Based on the figure for the total amount paid in the year 2010-11, this would result in an annual saving of £27,251.

Costs on other bodies

Solicitors

387. Solicitor firms’ case management systems are understood, to varying degrees, to be designed to deal with the application forms required to be completed under the existing 1979 Act. The application forms for land registration will be redesigned as a consequence of the Bill. While it is difficult to assess the specific impact of these changes, it is thought that solicitors will incur a cost in adjusting their individual case management systems.

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2 The BiGGAR report is reproduced in Volume 2 of the Scottish Law Commission Report on Land Registration (SCOT LAW COM No.222)
Solicitors’ training

388. With the introduction of any new legislation, solicitors will have to familiarise themselves with the changes to the law. It is anticipated that at the time the new legislation is commenced there be a range of lectures, seminars, academic papers etc. available to solicitors to facilitate training on the changes. Solicitors holding a practicing certificate in Scotland have to undertake 20 hours of Continuing Professional Development (CPD) a year, consisting of a minimum of 15 hours group study and up to five hours of private study. The training that solicitors undertake on the new legislation will form part of their annual CPD requirement. Any costs that solicitors incur in meeting their CPD requirements form part of the cost of being a solicitor. There should be no additional cost burden placed on solicitors as a result of the training on the new legislation. In fact, it is likely that RoS will provide a series of training events for solicitors free of charge. The cost of this training to RoS would fall within the normal free training costs that RoS provides to solicitors.

389. There are 10,380\(^3\) members of the Law Society of Scotland with practicing certificates. The Law Society have estimated that about 35 - 40% of solicitors will undertake training in relation to the Bill and on average they would commit four hours of annual CPD time to the new legislation.

Costs of training on other businesses

390. For businesses other than RoS (including law firms, in-house solicitors and private search firms), the cost of the Bill will be primarily in terms of training costs and the administrative costs of using different forms. Much of the costs to commercial business will be passed on in fees charged to individual house-buying customers.

Scottish Legal Aid Board

391. From the Scottish Legal Aid Board records, there were 20 cases involving RoS in the last five years (19 Court of Session cases and 1 Lands Tribunal case). Of those cases, 16 were granted a legal aid certificate; however, not all cases that are granted a certificate proceed. The average claim would appear to be for between £4,000 - 5,000 per case.

392. In 2008-9, RoS was involved in an average of 60 active cases per year. This involvement can vary from being cited as a defendant to being an expert witness in a procedural case. Not all of these cases go to completion. The total number of cases leading to litigation was 0.8% (2010-11) of the total number of first registration cases processed in that year. Based on the figures given, cases involving legal aid claims would comprise only 5% of that 0.8%.

393. Where a land dispute requires resolution, the court has always been, and will always be, the means of settling a dispute. Whether more cases will be brought to court as a result of the provisions in the Bill is hard to judge. The Keeper only has to rectify inaccuracies in the Register if they are “manifest”, i.e. more than merely probably inaccurate. If the test requires court judgments to clarify the test, it is possible there may be a slight increase in cases going to

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\(^3\) Annual Report of the Law Society of Scotland October 2010
court in the short-term, and subsequently a marginal increase in the cases requesting legal aid. This will though tail off as the system beds in.

Costs on Scottish Government, local authorities, business and individuals

394. The costs on Scottish Government and local authorities are unlikely to change significantly with regard to the changes in provisions for inaccuracy, rectification and the Keeper’s warranty. Under the new Bill, RoS will no longer be specifically liable for judicial costs for unsuccessful claimants. As RoS will no longer pay out costs for unsuccessful claims against the Keeper, individuals may be discouraged from seeking recourse to the court or at least encouraged to consider their case more carefully before so doing. However, once a court decree is passed or agreement is settled, then the Keeper will act upon that determination and make the title accurate. There will be greater certainty in law with the new provisions as registration law is brought into line with property law.

395. Under the Bill, manifest inaccuracies will be made accurate without hindrance of the Keeper’s so called “Midas touch”, meaning that compensation will not be payable for rectifying routine inaccuracies.

PART 2: COMPLETION OF THE LAND REGISTER

Background

396. The completion of the Land Register is one of the principal policy objectives behind the Bill. The process of bringing unregistered land onto the Land Register is currently governed by section 2 of the Land Registration (Scotland) Act 1979. Section 2(1)(a) of that Act sets out five circumstances in which an unregistered “interest in land” must be registered. These are referred to as the “triggers” for first registration (that is transfer of the recording of a title in the General Register of Sasines to registration the Land Register). These existing triggers are:

- on a grant of the interest in land in long lease but only to the extent that the interest has become that of the lessee;
- on a transfer of the interest for valuable consideration;
- on a transfer of the interest in consideration of marriage;
- on a transfer of the interest whereby it is absorbed into a registered interest in land; and
- on any transfer of the interest where it is held under a long lease or udal tenure.

397. In their report, the SLC noted that the following transfer events would not currently trigger first registration:

- transfer of interest by way of succession (intestate or legacy). For example, if James owns a farm and his title is in the General Register of Sasines, and he dies and leaves the farm to his daughter Kate, that is not a trigger, the title remains in the General Register of Sasines;
These documents relate to the Land Registration etc. (Scotland) Bill (SP Bill 6) as introduced in the Scottish Parliament on 1 December 2011

- transfer by way of gift. In families that hold the same property over many generations, gifts sometimes appear, for example where land is not handed down to the next heir but is donated to another near relative; and

- transfers by virtue of trusts, which are common among landowning families. Title to land may be vested in a family trust, and may remain in that trust indefinitely. If that title is held in the General Register of Sasines, first registration may be an event in the remote future.

398. Since land registration first started in the County of Renfrew in 1981 about 55% of the titles and 21% of the land mass of Scotland have been registered. If changes are not brought in to increase the triggers for first registration, it is likely that the goal of a completed Land Register could not be achieved. The SLC, in their report, argued that if the present system of first registration continued, the coverage of the Land Register would continue to grow but even in another 400 years, it would be unlikely to be completed^4.

399. The completion of the Land Register will be achieved by the use of different mechanisms. The first is to expand the triggers for first registration from those allowed in the 1979 Act. The second will stem from new powers the Keeper is to be given to instigate the gradual closure of the Sasine Register. The third is the introduction of a power to enable the Keeper to register a plot of land without an application being submitted, “Keeper-induced registrations”. Lastly, the Bill provides that the Scottish Ministers after consultation with the Keeper can remove her discretion to accept or refuse voluntary registrations.

400. The provisions in the Bill will increase the triggers for first registration. On commencement of the Bill, any transfer of interest in land will trigger registration (for example succession, gifts and inter-trustee transfers). The registration of a lease on unregistered land will also go hand in hand with the registration of the plot of land it relates to. It will also be competent to register a notice of title in the Land Register, which was not permitted under the terms of the 1979 Act.

Change of triggers on commencement

401. The Bill seeks to speed up the transfer of titles to the Land Register. A consequence of this is that there will be a higher proportion of first registrations as opposed to Sasine recordings. First registrations are much more expensive for RoS to process. The unit cost for registering a first registration in 2014-15 is predicted to be around £395. The unit cost of recording a deed in the General Register of Sasines in that same year is predicted to be £60. The main cost implication of speeding up of the transfer of titles is therefore an increase in the average processing cost of these applications.

402. The increase in costs associated with increased triggers for first registrations into the Land Register brings forward costs that would have been incurred later. The vast majority of the properties that will be affected would have been first registered anyway in due course.

^4 Paragraph 33.16, SLC Report on Land Registration
Cost to RoS

Registration of all deeds transferring title

403. Currently, any transfer of title that is not for valuable consideration does not induce first registration. The provisions of the Bill would change this and, accordingly, any disposition in favour of beneficiaries or between partners for a consideration such as "love, favour and affection" will mean the property will have to be registered. Similarly, any Notice of Title, for example local authorities completing title to land that has transferred from a previous entity by virtue of local government legislation5, or changes to trustees, will mean the property in question will have to be registered.

404. In 2010-11, there were 6,600 such dispositions and 577 notices of title. While the dispositions will generally relate to an average dwelling-type property, there is scope for the notices of title to affect much larger areas, such as local authority housing estates. Consequently, the resource impact of registering the extent of some of the areas covered by notices of title will be greater than the average first registration application.

Costs of Registration of all transfers of title

405. RoS estimate that on commencement of the Bill there will be an additional 7,000 applications per annum for first registration for dispositions for no value and notices of title. The net increase in the annual cost of registering these applications has been assessed to be around £2.345 million. This is based on the assumption that the cost differential between first registrations and Sasine recordings will be £335 and that the numbers of dispositions and notices of title remain consistent with current intakes of those deed types. As stated in paragraph 364, RoS will seek to cover the cost of this through efficiency gains from new systems and processes and not from fee increases. The table below shows the staff resource impact.

<table>
<thead>
<tr>
<th>Grade</th>
<th>FTE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senior Caseworker</td>
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<tr>
<td>Registration Officer 1</td>
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</tr>
<tr>
<td>Registration Officer 2</td>
<td>16.7</td>
</tr>
<tr>
<td>Support Officer 1</td>
<td>-2.1</td>
</tr>
<tr>
<td>Support Officer 2</td>
<td>2.3</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>44.6</strong></td>
</tr>
</tbody>
</table>

Table H

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5 Note that it is at the applicant’s discretion whether to register where the change of entity occurred prior to the implementation of the Bill - if the change occurs afterwards, first registration is required.
Registration of landlord’s title

406. As the underlying concept of the Bill relates to plots of land being the determinant unit for title sheets, the Bill provides that where a tenant’s unregistered interest is assigned or a new lease is granted the plot of land must first be registered. This is different to the current situation where only the tenants’ interest must be registered for them to obtain a real right. The registration of the plot of ground will result in some additional work for RoS. Analysing information obtained from the intakes over the last ten years, RoS anticipates that 700 additional first registrations with an estimated unit cost of £395 will be required in the first year after commencement in these cases at an estimated extra cost of £276,500 to RoS. There is no intention for the feeing arrangements currently in place for the registration of leasehold titles to be altered on commencement of these provisions. As a result, there will be no increase in the fee charged for the registration of a lease. RoS will instead seek to cover the cost of this through efficiency gains from new systems and processes. The table below shows the staff resource impact.

<table>
<thead>
<tr>
<th>Grade</th>
<th>FTE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senior Caseworker</td>
<td>0.7</td>
</tr>
<tr>
<td>Registration Officer 1</td>
<td>2.4</td>
</tr>
<tr>
<td>Registration Officer 2</td>
<td>1.9</td>
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<tr>
<td>Support Officer 1</td>
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<tr>
<td>Support Officer 2</td>
<td>0.1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>5.4</strong></td>
</tr>
</tbody>
</table>

*Table I*

Costs to Scottish Government, local authorities, business and individuals

407. The increase in triggers will mean that 7,000 applications per year will induce registration where under the current law those transfers would be recorded in the General Register of Sasines. In these cases, the fee charged for registering in the Land Register and recording in the General Register of Sasines would be the same. Therefore, no additional fee will be payable as a result of the change of triggers. Equally, it is not thought that the conveyancing costs in relation to a Sasine application or a first registration would generally be different.

Voluntary registration

Cost to RoS

408. Currently, the Keeper has absolute discretion, on an administrative basis, to accept or reject an application for voluntary registration of title to land (which would involve a transfer of the title from the Sasine Register to the Land Register). The Bill puts this onto a statutory footing and it is not expected that this will result in significant additional costs. In some cases,
applications are declined on the basis that the costs to RoS significantly outweigh the fee. The approach to fees for voluntary registrations will be consulted upon and decided after analysis is undertaken. It is important the levels of fees for voluntary registrations strike the right balance between recovery of fees by the Keeper and not making voluntary registration prohibitively expensive for landowners.

Costs to Scottish Government, local authorities, business and individuals.

409. A property registered in the Land Register has the benefit of the state guarantee and certainty on what is included in the title. It is hoped that in order to realise these benefits, local authorities, landed estates and government bodies will work with RoS on a programme of voluntary registration. However, it should be noted that the legal position on commencement of the Bill will be the same as under the 1979 Act and so the Bill itself does not change the position about these costs. Due to the large areas of land and the complexity of titles held by these organisations, it is envisioned the Keeper will negotiate a cost recovery fee for these applications, as the Keeper currently does for voluntary registrations under the 1979 Act. Public bodies have significant and complex land holdings in Scotland. Much of the details of the titles are unknown as they held in the General Register of Sasines. Due to the unknown nature of the titles, and to the fact that fees are and will be determined on a case-by-case basis, it is not possible to provide an estimate of the cost of voluntary registrations all the unregistered public land in Scotland.

Closure of General Registers of Sasines

Cost to RoS

410. The Bill provides for the closure of the General Register of Sasines. The closure will run in phases. The first phase will run in tandem with the opening up of the Land Register to allow the first registration of new deed types and will result in an increase in the number of first registrations being processed onto the Land Register. The first closure step for the General Register of Sasines is outlined above in paragraph 403.

411. The closure of the Sasine Register will be completed in two further steps. The first step is the closure of the register to the recording of new standard securities. In order for a person to obtain a real right in their security, it will have to be registered in the Land Register. Where the plot of the land to which the security will pertain is not registered, the application to register the security will have to be accompanied by an application to register the plot of ground and the title thereto. This will increase the number of first registrations received by RoS.

412. A fee will be charged for the registration of the plot and the security. The closure of the Sasine Register to standard securities will be provided for in an order made by the Scottish Ministers under the Bill. This step will not be taken until RoS has the capacity to undertake the registration of the additional first registration applications (when the number of first registrations has dropped to a level that would release resources to process these additional applications). It is likely that this would not occur for at least 5 years after commencement of the main provisions of the Bill.

413. The second closure step will be the closure of the Sasine Register to all deeds. This step will only be taken when RoS considers it has the capacity to undertake the registration of the
plots of ground that have not entered the Land Register. It is likely that this step will not be taken until most of the titles to land and the land mass of Scotland is registered in the Land Register. The closure of the Sasine Register to all deeds will also be provided for by order.

414. RoS envisage that the final step of closing the General Register of Sasines will not be taken for some considerable time, perhaps 30 to 40 years. This step will only be taken when the majority of the land mass is registered and the fees obtained from all applications to register deeds in the Land Register will be sufficient to cover the additional cost of Keeper-induced registrations. The closure of the General Register of Sasines would result in some cost savings to RoS but these would only be achieved on full closure when RoS would no longer have to administer that register. As this may not be achieved for 30 or 40 years, it would be highly speculative to estimate a figure for these savings.

Costs to Scottish Government, local authorities, business and individuals.

415. After the closure of the General Register of Sasines to standard securities, deeds relating to standard securities will have to be registered in the Land Register. Where the underlying plot of land is not registered, it is a requirement of the Bill that the plot of land to which the standard security pertains will have to be registered. RoS envisage that the closure of the General Register of Sasines to standard securities will be taken as a first step in the final closure of that register. Under the current feeing arrangements, the person applying to record a standard security in the General Register of Sasines only has to pay the fee to record the standard security. Once this closure of the General Register of Sasines to standard securities occurs, a person wishing to re-mortgage their property will require to apply for registration before their lender can obtain a real right in the re-mortgage. Public bodies do not typically grant standard securities so the closure of the General Register to standard securities should not result it any additional costs to them.

416. The full closure of the General Register of Sasines to all deeds should not result in any additional costs to those who apply to register deeds in the Land Register. The decision to close the General Register of Sasines will only be taken when RoS has the resources to register the unregistered plots of land and the income derived from fees charged by RoS is sufficient to pay for the registration of the unregistered land.

417. When the Land Register is completed, there will be no further costly first registration applications to deal with for solicitors and RoS. The prospect of a completed Land Register has the potential to result in a reduction in the cost of conveyancing, as registration in respect of a land-registered title is less costly than first registration for both solicitors and RoS. It has not been possible to obtain estimates for the difference in the conveyancing cost between a first registration and land register transaction. In discussions with law firms in Glasgow it became clear that fees charged for conveyancing where the property is already registered in the Land Register are often fixed (for example at £360). The firms contacted all stated that they did not set a fixed fee for first registrations and instead always charge a fee on a time per client basis. It is thought that solicitors do this due to the high level of variation in the work required for a first registration. It is this degree of uncertainty that prevents meaningful estimates being made of the difference in the conveyancing cost between the two types of case.
Keeper-induced registration

Costs to RoS

418. The provision in the Bill that allows for the Keeper to register a plot of land without an application being made (Keeper-induced registration) is the element of completion of the Register that will have potentially the biggest cost implication for RoS. In these cases, there will be no application, and it is unlikely that the Keeper will be able to recover costs. Costs associated with the registration of the plot will therefore be borne by RoS. The fee power included in the Bill states that one of the contributing factors to be taken into account by the Scottish Ministers when the level of fees is set by order is the expense to the Keeper of completing the Register. Therefore, a portion of the general fees charged by RoS will cover costs to RoS of Keeper-induced registrations.

419. It is not immediately clear that Keeper-induced registrations would be undertaken at the time the Bill comes into force. The use of any such registration is likely to depend upon available resource and other pressures.

420. On the assumption that a decision was made to carry out 100 Keeper-induced registrations per year, the estimated cost would be £39,500, although actual costs would depend on the type of registrations chosen.

Costs to Scottish Government, Local Authorities, Business and Individuals

421. Costs associated with Keeper-induced registrations will be spread among everyone who transacts with property in Scotland and applies to register deeds with RoS.

PART 3: ADVANCE NOTICES

Background

422. The object of a normal conveyancing transaction is that a buyer of land receives a real right in a property from the seller, and the seller receives money, or other consideration, from the buyer. (A real right is a right protected by law against anyone, not just against a particular person.) In most cases there is a single point in the transaction, called settlement, when consideration is given to the seller and the deed is delivered to the buyer (in practice through the parties’ solicitors). Delivery of the deed does not of itself confer on the buyer a real right in the property. The real right can only be obtained on registration of that deed in the Land Register or recording in the General Register of Sasines. In practice there is always a period of time between the date the deed is delivered and the registration or recording of that deed.

423. In this period, the buyer who has received the deed is at risk. The risks are that the seller of the deed is made insolvent or that there is the risk of fraud, i.e. the seller grants a fraudulent deed to another party. This is referred to as the gap risk.

424. In Scotland, the traditional way of covering the gap risk is for there to be a “letter of obligation” by the seller’s solicitor in favour of the buyer. This is a guarantee, binding the

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6 RoS estimates an average cost of £395 for FRs in 2014-15 (staff costs and additional overheads).
solicitors firm, which covers the gap period. Law firms insure against the risks they incur in
these guarantees. This insurance forms part of the master insurance policy paid by the Law
Society of Scotland, to which all solicitors’ firms contribute. The system of letters of obligation
is unique to Scotland. In most other jurisdictions a system of registered advance notices (or
similar) has been developed, which provides a low-cost solution to plug the gap risk. The
provisions in the Bill on advance notices provide the necessary protection for a deed before it is
registered.

425. The letter of obligation system developed at a time when people had family solicitors
who knew their client. When the letter of obligation was granted, the solicitor would have been
aware of the risks to which they were exposing themselves. In modern times, the practice of
having a family solicitor has fallen away and it is likely that in conveyancing transactions many
solicitors will not have had a previous relationship with their clients. This may expose the
solicitor to greater risk when granting the letter of obligation.

426. Discussions between the Law Society of Scotland and the SLC resulted in the
Commission including provisions for advance notices in their Report on Land Registration. It
had become apparent that law firms were becoming increasingly reluctant to grant letters of
obligation particularly in commercial transactions. There were also concerns from the Society
that insurance would not continue to be available at reasonable rates indefinitely. If problems
arose with the system of letters of obligation, this might have a serious detrimental effect on the
Scottish conveyancing system.

427. The provisions for advance notices in the Bill will introduce a scheme where person (A)
will grant an advance notice to person (B) for a specified deed over a named property: person
(A) being the granter of the deed and person (B) being the grantee. The advance notice will be
submitted to RoS for noting against the title. The effect will be to give person (B) a 35-day
period to submit the specified deed for registration. In this 35-day period, the registration of this
deed is protected against another deed or the insolvency of the granter.

428. The scheme included in the Bill will allow for advance notices to be noted on the
application record of the Land Register for properties registered in the Land Register and
recorded in the General Register of Sasines for properties recorded in that register. Before an
application for first registration in the Land Register is made, an advance notice will be recorded
in the General Register of Sasines to protect the deed that will be registered in the Land Register.

429. It is anticipated that advance notices will be submitted in respect of the majority of
dispositions, standard securities and deeds of servitude. It is highly improbable that they will be
used in relation to discharges, notices of title, notices of grants and similar deeds. The numbers
being submitted are likely to be substantial, since in a normal house purchase there will be two
deeds to be protected: a disposition and a standard security.

430. An analysis of deeds currently recorded in the General Register of Sasines indicates that
44% are likely to be subject to an advance notice. For Land Register transactions, it is envisaged
that 53% of deeds will be preceded by an advance notice. The projected intakes of advance
notices and generally for all product types for 2014-15, based on current RoS Corporate Plan
figures, are shown in the table below:
These documents relate to the Land Registration etc. (Scotland) Bill (SP Bill 6) as introduced in the Scottish Parliament on 1 December 2011

<table>
<thead>
<tr>
<th></th>
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<tbody>
<tr>
<td>Sasine transactions</td>
<td>47,000</td>
<td>21,000</td>
</tr>
<tr>
<td>First Registration</td>
<td>26,900</td>
<td>44,000</td>
</tr>
<tr>
<td>Transfer of Part</td>
<td>15,600</td>
<td>24,000</td>
</tr>
<tr>
<td>Dealing with Whole</td>
<td>220,000</td>
<td>141,000</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td><strong>309,500</strong></td>
<td><strong>230,000</strong></td>
</tr>
</tbody>
</table>

Table J

431. Taking advance notices into consideration, there would be a 138% increase in deeds entering the Sasine register (including advance notices relating to first registration transactions) and a 75% increase in Dealing with Whole type applications. (It should be noted that the advance notices relating to Transfer of Part applications would be submitted as applications against the parent title.) The overall increase in deeds registered as a direct consequence of the introduction of advance notices is predicted to be 74%.

**Cost to RoS**

*IT costs*

432. The General Register of Sasines and the Land Register use different IT systems to facilitate the recording and registration of deeds in the respective registers. As discussed in the general comments above, it is RoS’s intention to replace the IT systems that underpin the Land Register. The new IT systems will be designed to incorporate advance notices for entry on the application record. This new IT system will allow advance notices, along with most applications for registration, to be submitted electronically. Therefore, in relation to the Land Register it is not anticipated that the introduction of advance notices will result in any additional IT expenditure. However, it is expected that advance notices in relation to land where the title is recorded in the General Register of Sasines will rely on the existing Sasine IT system. RoS’s IT supplier has estimated that the cost of modifying this system to be £49,500.

*Resource costs*

433. RoS has estimated the additional annual resource costs that will be incurred to process advance notices at £751,000. This figure includes the cost of the staff required to process paper advance notices and general overhead costs. The figures are based on 2011-12 work rates and the projected intake of applications for 2013-14. The table below shows a breakdown of the

7 This is because 20,680 notices related to Sasine transactions will be supplemented by 44,385 advance notices related to FR transactions. Intake estimate will therefore be 112,065 instead of 47,000, which will mean an increase of 138% for Sasine intakes.
These documents relate to the Land Registration etc. (Scotland) Bill (SP Bill 6) as introduced in the Scottish Parliament on 1 December 2011

annual costs for each product type processed by RoS. It is anticipated that the new IT system will allow for advance notices for dealing of whole applications over registered land to be submitted and processed electronically. We estimate that all dealing of whole advance notices will be submitted electronically, where no RoS staff resource will be required.

434. The paper applications for entry of an advance notice can be split into three categories. The first is those that relate to a dealing with whole. It is anticipated that these will be submitted electronically; therefore, there will no resource cost attached to these. The second type of case is a transfer of part advance notice (which requires mapping). The third type is advance notices that can be recorded on Sasines. We have estimated the time cost of this process to be equivalent (but marginally simpler) to the processing of a P16 application (which is a comparison of a deed plan with the ordnance survey map).

435. The table below gives a breakdown of the estimated RoS resource costs.

<table>
<thead>
<tr>
<th>Product Type</th>
<th>Process</th>
<th>FTE</th>
<th>Cost (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>First Registration Sasine</td>
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<td>15.4</td>
<td>359,000</td>
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<tr>
<td>Transfer of Part Land Register</td>
<td></td>
<td>3.8</td>
<td>100,000</td>
</tr>
<tr>
<td>Dealing with Whole Land Register - nil</td>
<td></td>
<td>0</td>
<td>-</td>
</tr>
<tr>
<td>General Register of Sasines</td>
<td>Sasine</td>
<td>7.1</td>
<td>167,000</td>
</tr>
<tr>
<td>Staff Cost Total</td>
<td></td>
<td>26.3</td>
<td>626,000</td>
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<tr>
<td>Plus 20% Overhead</td>
<td></td>
<td></td>
<td>125,000</td>
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<tr>
<td>Total RoS Resource Cost</td>
<td></td>
<td></td>
<td>751,000</td>
</tr>
</tbody>
</table>

Table K

436. RoS will recover the annual costs of running the system of advance notices from fees charged. These fees will be set by Scottish Ministers.

Costs to Scottish Government

437. The cost incurred by parts of Scottish Government other than RoS will be those incurred by them as an owner of land in a conveyancing transaction. The cost incurred will be the fee charged to submit the advance notice to RoS to protect a deed that will be presented for registration. As government bodies generally self insure, it is uncommon for them to grant letters of obligation. Therefore it is anticipated that it will be equally uncommon for advance notices to the granted in sale of government land.
Cost to local authorities

438. The primary cost incurred by local authorities will be those incurred as an owner of land in a conveyancing transaction. The cost incurred will be the fee charged to submit the advance notices to RoS to protect a deed that will be presented for registration. As local authorities are thought to self insure, it is uncommon for them to grant letters of obligation. Therefore it is anticipated that it will be equally uncommon for advance notices to the granted in sale of local authority land.

439. An additional cost that may be incurred by local authorities will be when an advance notice would be required to protect a charging order under sections 21 to 24 of the Health and Social Services and Social Security Adjudications Act 1983. Charging orders are used to recover the cost for residential accommodation from the assets of residents. When a person enters residential care and they are the owner of a property, there is a 12-week period during which the local authority cannot place a charging order on the property in order to recover the cost of their care. A local authority may wish to submit an advance notice to the Keeper before the end of this disregard period in order to protect a charging order they intend to place over a property at the end of the 12-week period from the effect of a competing deed.

440. In the financial year 2010-2011, RoS received 1,182 applications to register or record charging orders in the Land Register and General Registers of Sasines. If local authorities chose to register an advance notice in respect of each of these, there would be a cost implication for them. Based on the estimates on the volumes and costs for advance notices, it is expected that the cost to RoS per advance notice would be less than £5. The final fee for advance notices is not yet settled and will be consulted upon in advance of the making of the relevant fee order by Scottish Ministers under section 106 of the Bill. However, it is expected that the fee for advance notices will not be less than cost recovery or more than £10.

Cost to other bodies, individuals and businesses

441. As with other parts of Scottish Government and Local Authorities, the costs associated with advance notices that will be borne by the other bodies, individuals and businesses will be the fee charged by RoS for applying for an advance notice.

442. A standard conveyancing transaction for a house purchase will usually result in a disposition and standard security being submitted for registration. We anticipate that an advance notice will be submitted to RoS for most house purchases. It may become practice for lenders to insist that an advance notice will be required for re-mortgaging transactions. Currently, letters of obligation are not granted in this type of transaction therefore the fee incurred for the advance notices would be an additional cost.

443. Letters of obligation are rare in commercial conveyancing transactions or in the transfer of high value properties. The introduction of advance notices will allow for the gap period to be protected against in these transactions. This could prove to be a benefit to commercial conveyancing in Scotland. There may be a small additional cost for these transactions being the fee for applying for the advance notices, although this cost will form an insignificant percentage of the overall conveyancing cost incurred.
444. The provisions for advance notices are designed to replace the guarantee contained in letters of obligation covering the gap risk. As discussed above, solicitors insure against the risk incurred in giving this guarantee. Consumers currently pay for letters of obligation. The cost associated with the letters reflects both the work involved for a solicitor and the underlying insurance which the letter offers. The insurance cost associated with a letter of obligation for any individual transaction is minimal. The Law Society has informed RoS that in the last five years there have been 37 claims made in connection with letters of obligation and that the total amount paid or reserved in this regard was £1.97 million. It is assumed that the premiums solicitors currently pay reflect this level of risk.

445. There is no requirement in law for solicitors to grant letter of obligation but it is a long established part of conveyancing practice that selling agents provide such letters. The potential liability that the profession is exposed to in granting the letters is covered by the Law Society’s master insurance policy. The professional indemnity insurers have been pressing on the Law Society to take steps to minimise claims against the master insurance policy which are the result of letters of obligation. Both the Law Society and their insurers are keen to see the introduction of advance notices which would effectively mean the demise of letters of obligation for dealing with the gap risk and the liabilities which they include.

PART 4: ELECTRONIC CONVEYANCING AND REGISTRATION

Background

446. The provisions within the Bill for electronic documents are included in the amendments to the Requirements of Writing (Scotland) 1995 (the 1995 Act). They will allow for subordinate legislation to prescribe that certain electronic deeds or documents (for example, missives in conveyancing transactions) can be legally valid if they are authenticated to a standard set out in the subordinate legislation. In addition, the amendment to the 1995 Act includes provisions that amend the legislation to allow subordinate legislation to provide for electronic registration in the General Register of Sasines, the Register of Deeds in the Books of Council and Session and the Register of Inhibitions (all of which are under the management and control of the Keeper).

Costs to RoS

Electronic documents

447. The cost to RoS in relation to electronic documents is likely to be minimal. The provisions on the validity of electronic documents do not relate to registration as such, and detailed policy on electronic documents to be implemented in the subordinate legislation will be developed over time by officials within Scottish Government. However, RoS does have expertise in the field of electronic signatures (which it provides in connection with the system of Automated Registration of Title to Land (ARTL)) and there is likely to be a degree of information sharing between RoS and the Scottish Government.

Electronic registration

448. The provisions in the Bill amending the 1995 Act contain a subordinate legislation power to allow for electronic registration in registers the Keeper administers. RoS has experience of electronic registration in the Land Register with the ARTL scheme. While there are no
imminent plans to change the form of documents that can be registered in, for example, the Books of Council and Session, the legislation (proposed by the Scottish Law Commission) is seen as enabling technological development in due course. These provisions of the Bill should therefore be seen as future-proofing.

449. As there are no immediate plans to make provision for electronic registration in other registers, it is difficult to assess what the cost implications will be. It is anticipated that no rollout of electronic registration of, for example, documents in the Register of Deeds in Books of Council of Session would take place until a system of electronic exchange of valid electronic documents is established.

450. Any use of the subordinate legislation power to allow for electronic registration would be consulted upon widely and costed in advance of the making of the relevant regulations. Any such regulations would be subject to affirmative resolution procedure.

451. It is anticipated that any cost incurred by RoS will be covered by the fees charged for registration in the register to which the regulations relate. The fees will be set on a cost recovery basis in line with RoS current fee policy.

Savings associated with electronic registration

452. There would inevitably be costs associated with electronic registration in, for example, the General Register of Sasines and the Register of Inhibitions (ROI). The purpose of the reforms is - in part - to enable these registers to be held, in the longer term, on a solely electronic form. The current legislation prescribes that these registers must be held in paper form.

453. The General Register of Sasines and the ROI are currently compiled on computer systems run and managed by the Keeper. Paper copies of the registers are printed out and transmitted to the National Records of Scotland for preservation. An aim of the reforms where they apply is to remove the obligations to retain and provide paper copies.

454. There is no additional cost to RoS from these provisions. All the registers are currently held in an electronic form. These reforms should result in cost savings for RoS through the elimination of certain practices currently required by law. The two principal costs to RoS of the current legislation are the cost of producing the Sasine Minute book and the ROI Minute Book. The cost of producing the Sasine Minute book in 2010-2011 was £53,000 (including staff time and paper printing costs). The cost of producing the Minute Book in the same year for the ROI was £44,000.

Cost to Scottish Government

455. It is expected that the Scottish Government will develop policy in relation to the types of document to be allowed to be constituted as electronically valid documents as well as policy on the standards of certification that should be required for such documents.

456. The provisions in the Bill enabling electronic conveyancing do not compel the use of electronic deeds and documents. There is pressure from the legal profession to allow for the
electronic transfer of missives and it is likely that this is the part of the electronic conveyancing provisions that will be commenced first. The Bill provides that the Scottish Ministers can prescribe that a particular type of digital signature can be used in such circumstances as may be prescribed and meet such requirements as may be prescribed. This will accordingly be enabled through secondary legislation. The role of the Scottish Ministers will be to lay out the requirements by order. It would not be necessary for the Scottish Government to run the digital signature scheme. There should not be a significant cost burden on the Scottish Government in relation to these matters.

**Cost to National Records of Scotland**

457. In addition to the cost that may fall on Scottish Government in relation to digital signatures, there will be additional cost to National Records of Scotland (NRS). NRS is a Non Ministerial Department of the Scottish Administration responsible for the archiving of the General Registers of Sasines, the Register of Inhibitions and the Register of Deeds in the Books of Council and Session. NRS is partly funded from the Scottish Consolidated Fund.

458. The provisions that amend the 1995 Act will have an impact on NRS as they will have to archive the electronic deeds and documents with digital signatures once the provisions in the Bill that allow for their registration have been commenced. Deeds for archiving in those registers are currently produced in paper form by RoS and transferred to NRS.

459. The NRS have indicated that there will be a one-off cost to them to research, understand and implement any solution that will allow for them to receive and archive electronic deeds and documents. This is principally a staff cost, which can be broken down as follows:

- B3 archivist - 3 months (£22,817)
- B3(IT) - 3 months (£24,296)
- B2(IT) - 2 months (£13,706)
- TOTAL estimated cost = £60,819

460. In addition, for each new record type generated in electronic form, NRS have said there will be a requirement for in-depth analysis before the records can be transferred to them. The maximum number of new types of electronic record that could result from the provisions of the Bill is eight (Sasine minute books, Sasine presentment books, register of inhibitions, register of inhibitions minute book, register of inhibitions presentment book, register of deeds etc in books of council and session, register of deeds etc minute book, register of deeds etc presentment book). The cost associated with this can be broken down as follows:

- B3 archivist - 2 months per type (£15,211)
- B2(IT) - 1 week per type (£1,713)
- B1(IT) - 1 month per type (£6,249)
- Estimated cost per type = £23,173

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8 All NRS staff costs have been calculated using a table provided by NRS Corporate Services.
461. It is not known at this time when the provisions to allow the electronic preservation of deeds for the different registers will be commenced therefore it not possible to state when the cost outlined in paragraphs 459 and 460 will be borne by NRS. The decision to allow electronic registration will only be taken by Scottish Ministers after consultation with the Keeper of the Registers of Scotland the Keeper of the Records of Scotland. It is expected that the enabling of electronic registers of deed types would be done on a phased basis over a number of years. If on commencement of the Bill the decision was taken to allow the General Register of Sasine to take a fully electronic form this would result in additional cost to NRS in that financial year of £107,165 (the one-off cost detailed in paragraph 459 and cost of two record types outlined in paragraph 460).

462. When the provisions that allow for the registration of electronic deeds are commenced, this will lead to an increase in the volume of digital records transferred from RoS to NRS. NRS consider that the costs associated with additional storage are likely to be minimal, as the cost of storage devices is relatively low and seems to be falling. With more data being transferred from RoS to NRS, a strong business case may develop for the installation of a fixed link for data transfer between the two organisations. NRS have stated that the costs associated with this are not quantifiable at this stage. The option to install a fixed link would only be considered when the benefits outweighed the costs. Currently, electronic deeds are transferred using a physical data storage device. This solution would continue for the foreseeable future.

463. Electronic registration may lead to savings in archiving costs due to a reduction in NRS’ requirements to bind physical materials transmitted by RoS. This saving would largely accrue only if the provisions of the Bill relating to the creation of the Register of Inhibitions in electronic form were activated. Currently, NRS incur a staff cost of £62,322 per year (one B1 conservator) in binding physical records transmitted by RoS. It is anticipated that this post would be allocated to other duties. With a decrease in the volume of physical documents being transferred from RoS to NRS, the rate at which the NRS will need additional storage capacity for physical records would slow.

464. In the future, with increased electronic registration, there would be a much-reduced requirement for NRS to produce physical objects in their public search rooms to satisfy access requests. NRS will, however, need to ensure that access to authentic electronic records is maintained over time (which could lead to additional costs). NRS will also need to be in a position to provide both plain copies and extracts of digital records. A technological solution to this issue has not yet been developed and therefore NRS is unable to estimate a cost for this. NRS have indicated that the costs associated with access will be neutral.

465. The provisions within the Bill for electronic conveyancing and registration are in effect future proofing legislation against technological developments; the current legislation that governs the form of conveyancing documents and the registration of those documents would bar technological developments in this field. The provisions in the Bill with regard to these matters prescribe that the form of electronic documents, digital signatures and certification will be prescribed by the Scottish Ministers in a statutory instrument after consultation with the Keeper of the Registers of Scotland and the Keeper of the Records of Scotland. It is not possible to
provide an estimate of the full costs to NRS until the technological solution to implement these provisions has been developed.

Cost to local authorities

466. The provisions in the Bill for electronic conveyancing should not impose any additional costs on local authorities. The provisions for electronic conveyancing do not compel the use of electronic deeds therefore it will be up to the each Local Authority to decide if they wish to take advantage of the provisions. If they were to use the provisions, they are likely to have to invest in a digital signature in due course. It is perceived that to carry out business electronically is more efficient and less costly than using paper, as it brings savings in time, paper and post. In the case of conveyancing, electronic documents may also make the process less risky (as electronic conveyancing has the potential to remove the gap risk referred to in the section on advance notices). Therefore, the cost of obtaining digital signatures could be outweighed by the cost savings incurred through their use. As there is currently no established retail market for digital signatures, it is not possible to estimate the costs of obtaining a digital signature.

Cost to other bodies, individuals and businesses

467. It is anticipated that bodies in the private sector will seek to provide electronic signatures to those who wish to constitute electronically valid documents. That electronic signature would require to be of a security standard at or above the standard specified in the subordinate legislation, which may involve an investment cost to any such person.

468. Once a marketable electronic signatures product is certified, individuals (such as solicitors) wishing to constitute electronically valid documents could purchase the product (and associated services) from that private sector provider. It is not predictable how much solicitors will have to pay for this service.

469. If the Scottish Ministers later decide to allow electronic registration in, for example, the Books of Council and Session or the Register of Inhibitions, it is anticipated that the electronic signatures used for electronic documents could be used for those registrations (meaning there would be no additional costs to business in using such a system).

Savings from electronic registration

470. Since the introduction of ARTL, RoS has charged a lower fee for registering deeds using ARTL than applications received in paper. It is likely that applications for electronic registration in other registers will also incur a lower fee than paper applications. Below is the table for the current fee order, which shows the price differential between paper and ARTL applications for registering a disposition. As fees for registration are paid by the person transacting with a property, be it an individual, business or local authority, this is a direct saving to them.
These documents relate to the Land Registration etc. (Scotland) Bill (SP Bill 6) as introduced in the Scottish Parliament on 1 December 2011

<table>
<thead>
<tr>
<th>Consideration/value £</th>
<th>Paper Fee £</th>
<th>ARTL Fee £</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not exceeding</td>
<td></td>
<td></td>
</tr>
<tr>
<td>£50,000</td>
<td>60</td>
<td>50</td>
</tr>
<tr>
<td>£100,000</td>
<td>120</td>
<td>90</td>
</tr>
<tr>
<td>£150,000</td>
<td>240</td>
<td>180</td>
</tr>
<tr>
<td>£200,000</td>
<td>360</td>
<td>270</td>
</tr>
<tr>
<td>£300,000</td>
<td>480</td>
<td>360</td>
</tr>
<tr>
<td>£500,000</td>
<td>600</td>
<td>450</td>
</tr>
<tr>
<td>£700,000</td>
<td>720</td>
<td>540</td>
</tr>
<tr>
<td>£1,000,000</td>
<td>840</td>
<td>660</td>
</tr>
<tr>
<td>£2,000,000</td>
<td>1,000</td>
<td>800</td>
</tr>
<tr>
<td>£3,000,000</td>
<td>3,000</td>
<td>2,500</td>
</tr>
<tr>
<td>£5,000,000</td>
<td>5,000</td>
<td>4,500</td>
</tr>
<tr>
<td>Exceeds £5,000,000</td>
<td>7,500</td>
<td>7,000</td>
</tr>
</tbody>
</table>

*Table L*
SUMMARY

471. The following table provides a summary of the known additional initial costs associated with the Bill (under the costs head set out above):

<table>
<thead>
<tr>
<th>Part of the Bill</th>
<th>Costs to RoS</th>
<th>Cost to Scottish Government (including NRS)</th>
<th>Cost to local authorities</th>
<th>Cost to others</th>
</tr>
</thead>
<tbody>
<tr>
<td>Modernising the Law</td>
<td>nil</td>
<td>nil</td>
<td>nil</td>
<td>nil</td>
</tr>
<tr>
<td>Completing the Land Register</td>
<td>nil</td>
<td>nil</td>
<td>nil</td>
<td>nil</td>
</tr>
<tr>
<td>Advance Notices</td>
<td>£49,500 (paragraph 432)</td>
<td>nil</td>
<td>nil</td>
<td>nil</td>
</tr>
<tr>
<td>Electronic documents and electronic registration</td>
<td>Unknown</td>
<td>£246,000 (paragraphs 459 &amp; 460)</td>
<td>Unknown</td>
<td>Unknown</td>
</tr>
</tbody>
</table>

Table M
472. The following table provides a summary of the known additional annual costs associated with the Bill (under the same cost heads):

<table>
<thead>
<tr>
<th>Part of the Bill</th>
<th>Costs to RoS</th>
<th>Cost to Scottish Government</th>
<th>Cost to local authorities</th>
<th>Cost to others</th>
</tr>
</thead>
<tbody>
<tr>
<td>Modernising the Law</td>
<td>£436,277 (Cost of Shared plot title sheets, paragraph 375)</td>
<td>nil</td>
<td>nil</td>
<td>nil</td>
</tr>
<tr>
<td>Completing the Land Register</td>
<td>£2,661,000 (cost of processing additional first registrations - paragraphs 405 and 406 and Keeper Induced Registrations paragraph 420)</td>
<td>nil</td>
<td>nil</td>
<td>nil</td>
</tr>
<tr>
<td>Advance Notices</td>
<td>£751,000 (paragraph 435)</td>
<td>Fee for advance notices (to be set by Scottish Ministers)</td>
<td>Fee for advance notices (to be set by Scottish Ministers)</td>
<td>Fee for advance notices</td>
</tr>
<tr>
<td>Electronic documents and electronic registration</td>
<td>nil</td>
<td>nil</td>
<td>nil</td>
<td>nil</td>
</tr>
</tbody>
</table>
473. The following table provides a summary of the potential cost savings associated with the Bill:

<table>
<thead>
<tr>
<th>Part of the Bill</th>
<th>Savings to RoS</th>
<th>Savings to Scottish Government</th>
<th>Savings to local authorities</th>
<th>Savings to others</th>
</tr>
</thead>
<tbody>
<tr>
<td>Modernising the Law</td>
<td>£27,251</td>
<td>not quantifiable</td>
<td>not quantifiable</td>
<td>not quantifiable</td>
</tr>
<tr>
<td></td>
<td>(paragraph 386)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Completing the Land Register</td>
<td>nil</td>
<td>not quantifiable</td>
<td>not quantifiable</td>
<td>not quantifiable</td>
</tr>
<tr>
<td>Advance Notices</td>
<td>nil</td>
<td>not quantifiable</td>
<td>not quantifiable</td>
<td>not quantifiable</td>
</tr>
<tr>
<td>Electronic documents and electronic registration</td>
<td>£97,000</td>
<td>not quantifiable</td>
<td>not quantifiable</td>
<td>not quantifiable</td>
</tr>
<tr>
<td></td>
<td>(paragraph 454)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table O

SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE

474. On 1 December 2011, the Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney MSP) made the following statement:

“In my view, the provisions of the Land Registration etc. (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

475. On 30 November 2011, the Presiding Officer (Tricia Marwick MSP) made the following statement:

“In my view, the provisions of the Land Registration etc. (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
LAND REGISTRATION ETC. (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Land Registration etc. (Scotland) Bill introduced in the Scottish Parliament on 1 December 2011. It has been prepared by the Scottish Government to satisfy Rule 9.3.3(c) of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 6–EN.

2. Secure, reliable and accessible information about who owns land is fundamental to the operation of modern market economies. The registration of legal rights in land in a property register ensures accurate and reliable information is available to parties transacting with interests in land. An entry for a property registered in a land register of the type provided for in this Bill includes a description of a property with reference to a plan that allows anyone looking at the register to establish the extent of a property. It discloses who owns that property, what rights and burdens the land is subject to and any securities, such as mortgages, which affect the land. When someone wants to sell their land any potential buyer can establish from the register that the person selling the land is the legal owner and what the extent of the land is. It also enables the owner of a property to secure finance using the property as security by allowing a lender to establish through the register that the person is the legal owner. This ensures the smooth running of a vibrant property market.

OVERVIEW OF LAND REGISTRATION IN SCOTLAND

3. Scotland has a long history of public registration of rights in land. The General Register of Sasines, Scotland’s original national register of property deeds, dates back to 1617. Over the centuries, the General Register of Sasines developed into an effective public record which, combined with high standards in professional conveyancing and principled property law, has given Scotland an effective balance between certainty as to ownership and ease of transacting with land.

4. However, from the mid 19th century, a different approach to land registration began evolving in some other jurisdictions, including England and Wales. This approach comprised two innovations: first, the idea of a map-based register, which reflects legal boundaries in a clear and accessible manner; and second, the idea that registered titles should be guaranteed by the state, which gives protection to property owners and potential purchasers.
5. The Land Registration (Scotland) Act 1979 (“the 1979 Act”) introduced this new form of registration to Scotland. Beginning with the County of Renfrew in April 1981, property that was sold for value began to be transferred from the General Register of Sasines to the new Land Register of Scotland. The Land Register became operational across the whole of Scotland in 2003 and now contains some 55% of titles and 21% of the land mass of Scotland.

6. The Land Register is managed by the Keeper of the Registers of Scotland (“the Keeper”). The Keeper is the statutory officeholder who heads the Registers of Scotland (“RoS”). The Keeper is responsible for compiling and maintaining 16 public registers. The Keeper handles around half a million registration transactions each year and also makes information from the registers publicly available. This Bill is primarily associated with the Land Register, however it also makes some provision in respect of the General Register of Sasines and the Keeper’s other registers.

7. In Scotland, the Land Register was introduced to make conveyancing simpler and cheaper. It has achieved this for titles on the Land Register. The Land Register is open and transparent. When looking at a title in the Land Register, it is easy to determine the boundaries of the property; the ownership of the property; whether there are any securities over the property; and what rights and burdens affect the property. This process is slower when examining a title in the General Register of Sasines, and consequently conveyancing fees are higher.

8. An effective system of land registration is vital to a country’s economic development. According to the United Nations Economic Commission for Europe “a system of compulsory registration of private land rights facilitates … a crucial feature of a successful economy. Land registration makes possible quick and sure procedures for creating and securing mortgages. The evolution of a flourishing financial sector, providing loans for development and investment, comes about where land rights are guaranteed”.

WORK OF THE SCOTTISH LAW COMMISSION

9. In 2002, the Keeper, with the agreement of Scottish Ministers, invited the Scottish Law Commission (“the SLC”) to review the law of land registration in Scotland. The SLC issued three discussion papers. The first was a Discussion Paper entitled Land Registration: Void and Voidable Titles (Scots Law Com DP No 125, 2004), the second was a Discussion Paper on Land Registration: Registration, Rectification and Indemnity (Scot Law Com DP No 128, 2005) and the third was a Discussion Paper on Land Registration: Miscellaneous Issues (Scot Law Com DP No 130, 2005). The SLC project culminated in the publication of its Final Report on Land Registration (Scot Law Com No 222) (referred to in this document as the SLC report), including a draft Land Registration (Scotland) Bill, in February 2010.

10. The policy in the Bill as introduced to the Scottish Parliament follows closely the policy in the Bill explained in the SLC report, though there are some differences of detail. Where the policy in the Bill is fully explained in the SLC report, this Memorandum, instead of repeating the report at length, provides a summary and also cross-refers to the relevant parts of the report in order to provide a detailed, but readable, explanation of the Government’s policy intentions.
This document relates to the Land Registration etc. (Scotland) Bill (SP Bill 6) as introduced in the Scottish Parliament on 1 December 2011

ALTERNATIVE APPROACHES

11. Consideration has been given to a number of alternative approaches to the various polices in the Bill. Where appropriate, this document makes reference to these alternative approaches and explains why they have been discounted.

BILL OVERVIEW

12. The Land Registration etc. (Scotland) Bill is intended to achieve five broad policy objectives. It:

- provides for the eventual completion of the Land Register by increasing the number of triggers for a first registration and providing for voluntary registrations and Keeper-induced registrations;
- introduces a system of “advance notices” for conveyancing transactions which will remove the risk of losing title to a property between the settlement date and the registration date (which risk is currently underwritten by insurance);
- introduces amendments to the Requirements of Writing (Scotland) Act 1995 (the 1995 Act) to allow for electronic conveyancing and electronic registration;
- seeks to re-align registration law with property law by, for example, adjusting the circumstances in which a person can recover their property rather than only receive compensation from the Keeper; and
- continues and makes improvements to the system for land registration in Scotland. It replaces much of the Land Registration (Scotland) Act 1979. The Bill places on a sound statutory footing the administrative practices of the Keeper of the Registers of Scotland that have evolved in practice since the passing of the 1979 Act.

POLICY OBJECTIVES OF THE BILL

Overview of the bill provisions

13. The Bill provides a statutory framework for the continuation and improvement of the land registration system in Scotland. The Bill is in 11 parts and 5 schedules. The provisions can broadly be divided across the five principal policy objectives described above. This document deals with each in turn instead of describing the Bill Part by Part. In addition to these policies there are some other miscellaneous provisions that contain further policy objectives. These are explained below.

Completion of the Land Register: general

14. Completion of the Land Register is considered to be the most important policy aim of the Bill. A completed Land Register is viewed as highly desirable in the longer term. For both professional solicitors and members of the public, having one property registration system is more efficient than having two. The Land Register is more modern, transparent and easier to understand than the General Register of Sasines. The Land Register also better serves those involved in conveyancing transactions in relation to residential, commercial and agricultural property. Finally, the Land Register aims to deliver cheaper conveyancing. The financial saving
of land registration as opposed to recording in the General Register of Sasines was the primary policy objective behind the 1979 Act and is still the one of the primary long term policy objectives behind the provisions in the Bill. Registration of title in the Land Register also offers titleholders a title that is definitive in nature and extent and backed by a state guarantee.

15. The current law as to when a property enters the Land Register is contained in section 2 of the 1979 Act. It provides that unregistered property enters the Land Register as and when it is sold for a monetary consideration. The sale of unregistered property is what is commonly referred to as a “trigger” for “first registration”. First registration describes the process by which land becomes registered in the Land Register for the first time. There are properties in Scotland that have not been, and are unlikely to be, sold. Examples include farms and estates that are passed down through families from one generation to the next through the law of succession, and some land that is publicly owned.

16. Currently, approximately 55% of title holdings in Scotland are registered in the Land Register. However, this only equates to around 21% of the land mass. This is because the registered title holdings are concentrated in urban areas where the turnover of properties is higher than in rural areas. Although Land Register coverage continues to grow, total coverage is unlikely to be completed without legislative change.

17. The Bill contains several provisions that ensure the eventual completion of the Land Register. The three main elements of the strategy to increase land register coverage and the eventual closure of the General Register of Sasines are to provide: more triggers for first registration; a power to remove the Keeper’s discretion to refuse a voluntary registration; and a power that will allow the Keeper to initiate registration of any unregistered property without an application being made. The following paragraphs describe these key policy ideas.

18. There are two alternative approaches to this policy that have been discounted. The first would have been to maintain the scheme for first registration that was included in the 1979 Act. This was discounted on the basis that it would result in the operation of two registers indefinitely. Equally, scrapping the Land Register and resorting to the General Register of Sasines for registration of title to land. This was not considered a serious option on the basis of the advantages to property-owners in having their title registered on the Land Register (particularly where 55% of titles are already on the register).

19. Part 33 of the SLC report contains a detailed explanation of the background to the objectives of completing the Land Register. Paragraphs 33.13 to 33.18 of the report contain detail as to why completion of the Land Register is desirable.

**Completion of the Land Register: increased “triggers” for registration**

20. New “triggers” for first registration will be created. Under the Bill all transfers of land (including those not for money) will result in the requirement to register the land in the Land Register. This will coincide with the closure of the General Register of Sasines to all new transfer deeds. It is anticipated that this will result in an additional 7000 first registration applications being received by RoS per annum. This compares with the 26,000 application for first registration received in financial year 2010-11. Paragraphs 33.29 to 33.33 of the SLC report explain the thinking behind this policy in greater detail.
Completion of the Land Register: closure of the General Register of Sasines to new deeds

21. The Bill includes two additional provisions that will result in the full closure of the General Register of Sasines. These provisions are the closure of the register to standard securities and the eventual closure to all deeds. Once the Land Register is nearing completion, there will be a gradual and phased closing of the General Register of Sasines to various deed types. When Scottish Ministers consider that, at a point in the future, it would be beneficial to increase the triggers for first registration by subordinate legislation, the recording of a standard security in the General Register of Sasines will no longer be of effect. The final stage will be the eventual closure to all deeds; again this will be achieved through subordinate legislation. Paragraphs 33.36 to 33.46 of the SLC report explain this policy in greater detail.

Completion of the Land Register: voluntary registration

22. The Keeper has a power under the 1979 Act to accept or reject an application for registration by a land-owner on a voluntary basis. The Bill re-enacts this power but allows subordinate legislation to remove the Keeper’s discretion to reject such applications. The Keeper already accepts applications that RoS has the resources to deal with, so it is unlikely the subordinate legislation power will be used in the short term. In the financial year 2010-11 approximately 1300 voluntary registrations were accepted by the Keeper. The ability to accept applications for voluntary registrations will facilitate the completion objective in the Bill in two ways. First, it will help to accelerate land registration coverage. Second, it will help to fill the gap left when recording a deed in the General Register of Sasines is no longer of effect. When that register is eventually closed to all deeds, an owner of an unregistered property must have the ability to register their title. Paragraphs 33.24 to 33.28 of the SLC report explain this policy in greater detail.

Completion of the Land Register: Keeper-induced registration

23. The final policy that will facilitate the ultimate completion of the Land Register is that of “Keeper-induced registration.” This policy is a power for the Keeper to register a title without an application by the proprietor and without the consent of the proprietor. It is Keeper-induced registration that will allow for the final completion of the Land Register to be realised. The power allows the Keeper to ‘fill in the gaps’ in the Land Register where surrounding properties are registered. Under the Bill, the Keeper could notify owners of land and other persons with an interest when completing a Keeper-induced registration. Paragraphs 33.47 to 33.58 of the SLC explain this policy in greater detail. In a slight departure from the SLC Bill, it is considered that the Keeper should be able to grant warranty where appropriate to avoid possible adverse practical implications for the title of those affected.

Electronic documents and electronic conveyancing

24. The Bill makes amendments to the Requirements of Writing (Scotland) Act 1995 (the 1995 Act). The amendments will permit all types of land deed and contracts relating to land (known as missives) to take an electronic form, subject to safeguards. Part 34 of the SLC report contains a detailed explanation of the background to the objectives surrounding the reform of the 1995 Act contained in the Bill. The Bill goes a step further, however, in allowing for electronic wills and some other categories of electronic documents.
25. Historically Scots law has had rules about the form and authentication of contracts relating to rights in land and deeds that create, transfer or vary rights in land such as dispositions (property transfer deeds) and standard securities (mortgage deeds). Currently, the 1995 Act provides the rules for the form and authentication of contracts relating to rights in land. These rules apply to deeds creating, transferring or varying rights in land such as dispositions and standard securities. Rules about form and authentication are vital to minimise the scope for uncertainty and disputes about the intentions of parties entering into such land contracts and deeds. The 1995 Act did not originally contemplate land contracts and deeds being in electronic form, or being authenticated electronically. Rather, the 1995 Act restricts itself to what the SLC have termed ‘traditional documents’ in which text must be applied to a physical surface such as paper or parchment and also authenticated in a physical format (usually in the form of a handwritten signature).

26. When the 1995 Act came into force, land contracts and deeds relating to land could only be formed on paper. An exception to that rule was created in 2006 by the Automated Registration of Title to Land (Electronic Communications) (Scotland) Order 2006 which permitted valid electronic deeds to be created and authenticated by secure digital signature (but only within RoS’s Automated Registration to Title Land (ARTL) system).

27. Electronic communication has revolutionised the way in which many types of business are conducted but all land contracts and most land deeds are excluded from the benefits of new technology by the terms of the 1995 Act. The legal profession and lenders are firmly of the view that the ability to exchange missives electronically should be made a reality.

28. The Bill rewrites the part of the 1995 Act that deals with these matters. It provides for two types of valid document: traditional paper documents and electronic documents. The Bill provides a new legislative basis for electronically valid documents and allows for registration of those documents in any register the Keeper controls. These new powers will allow subordinate legislation to make provision allowing documents (including missives) to be electronically valid (meaning solicitors will be able to email each other documents without relying on paper back-ups for some legal purposes).

29. There are numerous advantages to electronic conveyancing including faster, and hence less risky, conveyancing for the consumer. It is thought that an increase in the use of electronic systems in conveyancing firms, lending institutions and in the Keeper’s offices could eventually lead to reduced costs for consumers. There is also an overarching policy desire at European, UK and Scottish Government level to develop e-commerce generally.

30. Despite the technological possibilities, safeguards are needed to protect individual rights. To account for this the Bill includes provision to allow for minimum standards of authentication of electronic documents to be set and to be varied in reaction to future technological developments.

31. If the 1995 Act was not amended to allow Scottish Ministers to make provision about electronic documents and electronic registration, then the status quo would be maintained allowing only partial electronic conveyancing as through ARTL (the current system of electronic registration of titles in the Land Register). This approach was discounted, as without the
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proposed powers, the benefits of the greater efficiencies that derive from electronic documents and electronic registration for homeowners, lenders and for business would not be realised.

Advances notices

32. The Bill introduces a system of "advance notices". The system was developed by the SLC at the request of the Law Society of Scotland. Advance notices are designed to cover the "gap risk" period in a conveyancing transaction between the delivery of the deed and its registration in the Land Register. Where there is a potential sale of a property the owner will, after the commencement of the Bill, be able to apply to the Keeper for an advance notice to be placed on the Land Register or the General Register of Sasines, depending on which register the property is held. This advance notice will protect the potential purchaser from the "gap risk". This “gap risk” period is currently covered by a system known as “letters of obligation” which guarantees that nothing prejudicial to the purchaser will occur in the gap risk period that will result in their title being reduced or an exclusion of indemnity appearing on the eventual land certificate (the official document which currently shows a snapshot of each property title on the Land Register). The letters of obligation system is underpinned by the Law Society of Scotland’s master insurance policy, the premiums of which are paid by all solicitors in Scotland.

33. In an ordinary conveyancing transaction the buyer usually purchases a house using mortgage funds from a lender. The buyer will receive a deed known as a disposition transferring ownership of the house, and will grant a standard security to the lender in security of the mortgage. The seller will receive money for the property; this is known as “the consideration”. Finalising the process is known as “settlement”.

34. In reality, registration cannot occur simultaneously with the delivery of the deed to the buyer. The period between delivery and registration is the period to which the phrase “gap risk” applies. The two main risks that a buyer in a conveyancing transaction is exposed to are (1) the insolvency of the seller, and (2) that a competing deed will be registered before that deed. It is worthwhile noting that the use of the Keeper’s ARTL system greatly reduces the “gap risk” period because the deed is delivered electronically to the Keeper for registration on the day of settlement.

35. Part 14 of the SLC report contains a detailed explanation on the policy behind advance notices. The SLC report provided for advance notices for titles on the Land Register and a power to make subordinate legislation in relation to titles on the General Register of Sasines. The Bill as introduced makes provision for both types of advance notice. For titles on the General Register of Sasines which are being registered in the Land Register for the first time, the advance notice will be recorded on the General Register of Sasines.

36. There are three possible other approaches to this policy. First, not to introduce the policy. This is not a suitable long term solution as the insurance that underpins this system is coming under increasing pressure and there is the potential risk that it will be withdrawn. The second option would be to allow registration of advance notices on the Register of Inhibitions. (Inhibitions are enforcement orders which ‘freeze’ property) This was discounted on the basis that advance notices are not inhibitions. The third option would be to create a stand-alone register of advance notices. This was discounted on the basis that solicitors would have the
burden of searching an additional register when conducting a conveyancing transaction, resulting in additional cost.

The state guarantee of registered titles in land

37. The most technical and complex parts of the Bill concern the reform of the state guarantee of titles to land. The 1979 Act established a state guarantee on the registration of the title in the Land Register (subject to the power of the Keeper to exclude that right, by excluding indemnity). This principle is sound and has been retained in the Bill. Part 19 of the SLC report provides a detailed explanation as to why there should continue to be a state guarantee of title. Part 22 of the report provides a detailed explanation of what the limits to that guarantee should be.

38. Sometimes in land registration, two or more parties can have a claim over the same land. This can happen due to an error in registration, as a consequence of the underlying conveyancing or by fraud on the part of one of the parties. The 1979 Act solution to this problem was to provide that, where one of the parties is in possession of the property, the Land Register cannot be rectified against their interests. Under the 1979 Act, the party who does not get the land, but has a legally sound competing claim to it, normally gets compensation from the Keeper. The current position means that ownership of a property is dependent on what the register provides and on the possession of the property at any given time (even if this is in conflict with the true legal position). It leads to the situation where a court determines who the owner of a property is but RoS cannot correct the Land Register to reflect the judgement of the court. Often the true owner of the property receives monetary compensation from the Keeper rather than getting their property back. Parts 20 and 21 of the SLC report provide a detailed explanation of this issue and characterises it in terms of receiving the mud (the property) or the money (compensation).

39. The Bill adjusts the circumstances in which an inaccuracy in the Land Register can be rectified in favour of a person who has been the victim of fraud or error. It provides that in certain cases, instead of rectification, the underlying right to ownership of a property is changed to reflect what the Land Register says. The circumstances where the Bill provides for this transfer of rights are limited and are most likely to operate in the cases of error or fraudulent sale and subsequent registration. Where a property is fraudulently registered or registered in error, the true owner can seek a reversal of that registration in their favour, as long as the property has not been possessed since the registration for ten years, or has not been registered in favour of an innocent third party and possessed by that party (or the original purchaser followed by the third party) for more than one year after the original registration. However, where the property has been so possessed by a person, or registered in favour of such an innocent third party, the registration cannot be reversed. In such cases the original true owner would be compensated by the Keeper. Part 23 of the SLC Report provides a detailed analysis of these changes to the state guarantee of title, which have been carried into the Bill as introduced.

40. The SLC’s proposed reform of this area is to replace the proprietor in possession test which exists under the 1979 Act (where the true owner of a property cannot get their property back when there is a proprietor in possession, unless they consent, it can be proven that they were fraudulent or careless or the Keeper excluded indemnity). This new scheme strikes a fairer balance between the interests of the registered proprietor and the true owner in more situations. The Bill takes this approach. One alternative to this policy would be to retain the existing
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proprietor in possession test for resolving disputes. However, the proprietor in possession test was one of the principal reasons that the Keeper first invited the SLC to review the 1979 Act back in 2002. Furthermore, this test produces inconsistent results and has resulted in litigation (and would probably continue to do so). Another alternative would be to change the underlying ethos of the land registration system. The "curtain principle" (where a person need not look behind what the register says) could be removed. However, this would mean that the register itself could not be relied upon and the underlying deeds would have to be examined by solicitors in each transaction. This would make conveyancing expensive for those transacting with heritable property. The proposed changes to the state guarantee of title seek to find the correct balance between fairness and certainty.

Keeper's right to seek recovery for loss

41. The Bill makes it a condition of a payment for compensation that the claimant assigns the right to pursue a claim for damages against another person to the Keeper. Part 24 of the SLC report explains in detail. This differs to the policy of section 13(3) of the 1979 Act which allowed, but did not compel, a formal assignation of such rights.

Inaccuracy and Rectification

42. The Bill makes provision for defining inaccuracy in the Land Register and, more importantly, when and how the Land Register can be rectified. The test provided for in the Bill is whether the inaccuracy is manifest (i.e. where it is indisputable or more than merely possible or probable). This gives the Keeper the ability to retain control of the Land Register and ensure its integrity is maintained. Where a court rules on a matter, the decision of the court would make the position in relation to an inaccuracy on a title sheet manifest. Parts 17 and 18 of the SLC report contain detail on policy background to inaccuracy and rectification.

Caveats

43. Caveats are a new method by which information about pending court action affecting titles in the Land Register is entered on to the Land Register. They serve as notice to third parties searching the Register that court action may be pending or ongoing. The current law has several methods by which such notice is given. Caveats provide a single method, which will be simpler and clearer.

44. A caveat is intended to protect the party who has placed it on the Register. It does this principally by appearing on the Land Register. This ensures where the other party in the dispute sells the property the purchaser will not be able to claim they were unaware of a defect in the title (i.e. when they bought the property they knew it had an issue with the title). The policies behind the topic of caveats are explained in Part 32 of the SLC report.

General reforms of the Land Register

General reforms of the Land Register: Provisions placing the Land Register and the Keeper’s practices on a statutory footing

45. The 1979 Act does not include much detail on the form of the Land Register and the practices the Keeper should employ in running the register. The Bill provides much greater detail as to the processes of land registration than was provided for under the 1979 Act. The policy
thinking behind this is that it is important that the rules surrounding land registration are
transparent and clear. Many of the reforms simply formalise the existing processes that are
executed on an administrative non-statutory basis. Part 4 of the SLC report provides more policy
detail.

General reforms: The “one-shot principle”

46. Provision is made in the Bill for what the SLC call the “one shot principle”. This allows
the Keeper to refuse to allow an application to be supplemented after the application is
submitted. Currently, the Land Registration (Scotland) Rules 2006 allow the Keeper to
requisition documents from the applicant if they are missing from what they originally
submitted. The process of requisition places an administrative burden upon the Keeper to obtain
from the solicitor submitting the application information that should have been included in the
application. Requisitions are also costly for solicitors to deal with as usually by the time the
conveyancing solicitor receives a requisition, they will already have billed their client.
Therefore, there are efficiency savings for both the Keeper and the solicitor in the enforcement
of the “one shot principle”. It is likely that the power would not be used where significant work
already done by the Keeper would be lost if the power was used. The power is meant to improve
administrative conveyancing practice and lead to efficiency savings (which can in due course be
passed on to home-buyers in lower fees). Paragraphs 12.71 to 12.77 of the SLC report provide
greater policy detail.

General Reforms: Mapping

47. It is one of the basic principles of property law in Scotland that a real right can be created
or transferred only in relation to that which can be specifically identified. This is known as the
specificity principle. A conveyancing deed must therefore describe the land it deals with in such
a way that the land can be identified. Currently, there is no legal requirement for such a deed to
contain or refer to a plan.

48. Since the inception of the Land Register in 1981, the Keeper has included in every title
sheet a title plan based on the Ordnance Survey map. The Keeper currently maintains a map
(known as the “index map”) that is based on the Ordnance Survey map, which shows all the
registered titles.

49. The Bill provides that there should be maintained, as a constituent part of the Land
Register, a map of Scotland to be known as the “cadastral map”. The cadastral map is
conceptually similar to the current index map. A cadastral map is a map showing the boundaries
and ownership of land parcels. This term is in common usage around the world for land register
maps. A cadastral map is not a topographic map, although it may use an underlying
topographical map, such as the Ordnance Survey map, as the starting point (the Bill refers to this
as the “base map”). The power in the Bill to use a base map other than the Ordnance Survey
base map is likely to be used to make provision for mapping of titles on the seabed out to the 12
mile limit. Examples of such titles are long leases for renewable energy projects or fish farming.
Paragraphs 5.5 to 5.12 of the SLC report provide policy detail on the relationship between the
cadastral map and the base map.
50. The extent of the cadastral map will be constituted by the combined extents of all of the registered titles. The map will be divided into cadastral units, which will represent a single registered plot of land that is owned by one person (e.g. an individual or company) or one group of persons. There are limited exceptions to the rule that one plot of land equals one cadastral unit such as for a tenement and where land is subordinate and ancillary to other land. Paragraphs 5.25 to 5.30 provide detail on this issue. One point of divergence from the Bill included within the SLC report is that the Bill as introduced permits large pertinents cut off from a property (such as a garage or a garden across a road) to be included in the same cadastral unit as the main property. This policy will prevent homeowners having to have two title sheets for their property (and potentially incurring two registration fees). The SLC report envisaged this would only be possible for features that are too small to be shown on the cadastral map.

51. The provisions in the Bill regarding the identification of registered properties on the Ordnance Survey map establish the legal principle of map-based registration in Scotland. The proposals give a statutory footing to the principle (subject to limited exceptions) that there should be no land registration without mapping (see paragraphs 5.14 to 5.18 of the SLC report for more detail).

52. Flats within tenements are often described in conveyancing deeds without reference to a plan. In such a case, the deed simply contains a written description of the flat and the exclusive and common property rights that pertain to it. In these cases, the Keeper maps the tenement as a site of single extent on the title plan (i.e. a red edge goes around the whole area occupied by the tenement building and its associated garden ground) and includes a written description for the exclusive and common property in the property section of the title sheet of the individual flat. The 1979 Act was silent as to how flats in tenements should be mapped and registered. Therefore, it may be presumed that they were to be treated in the same way as other property. However, tenements are unique. The SLC’s view was that the Keeper’s practice is sound and the Bill gives this approach a statutory basis. Greater detail of the policy is contained in paragraphs 5.19 to 5.23 of the SLC report.

53. The alternative approach to tenement mapping would be to require tenements to be mapped precisely. This is impossible to do without three-dimensional mapping (which the cadastral map does not currently provide for – see paragraph 5.43 of the SLC report). Furthermore, historically title deeds for flats within traditional tenements have relied on describing the properties verbally and have not included plans. If legislation prescribed that the deeds transferring tenement flats had to include a description with reference to a plan this could add considerable additional costs onto transactions involving these types of property, which would be borne by purchasers of tenement properties.

54. Part 5 of the SLC Report contains more policy detail on the mapping aspects of the Bill.

Common areas & shared plot title sheets

55. Common areas are those that are in the ownership of more than one proprietor or set of proprietors. They are distinct from joint ownership (such as a husband and wife, who jointly own all of their property). Typical types of common property are shared driveways and areas of amenity ground in housing developments. The Keeper’s current practice is to include in the title sheet for an individual property any shares in common property that relate to it. For example, a
plot of ground that encompasses a driveway that is in common ownership between two neighbouring properties might be included in the title sheets of both properties accompanied by a statement in each saying that its inclusion is limited to a half share of ownership. With the introduction of the concept of the correlation between one title sheet and one cadastral unit, the driveway would be given a separate cadastral unit number and a separate title sheet. The title sheet will reflect that this area of ground is common property. The Bill will affect the registration of all common property, including common property within developments.

56. The Keeper will be able to make up “shared plot title sheets” for property in common ownership. This change is purely a different way of presenting the same information but is necessary to realise a true map based system of land registration.

57. One alternative approach to this policy would be to continue to allow shared titles to land to continue to be shown in multiple title sheets. This was discounted on the basis that in order to establish the ownership of an area of ground, anybody searching the register would have to look at several title sheets. Another alternative could be not to make provision for shared plot title sheets. The Keeper could continue to use the current arrangement for title sheets and to narrate all the common proprietors in the title sheet. However, this would result in "double handling" in any conveyancing transaction affecting any of the properties surrounding the common area. Such "double handling" would result in increased costs for proprietors.

Prescriptive Claimants

58. It is important that apparently abandoned land can be brought into use by individuals who wish to use it. However, that interest must be balanced with the property rights of a person who owns the property (even if the person does not know they own it). The Bill places on a statutory footing the requirements that an applicant must meet to allow the Keeper to register a modern equivalent to what in Scots law has been known as an a non domino disposition. The term “a non domino” literally means “from one who is not the owner”. The law on prescription allows someone to grant a deed which, if unchallenged for 10 years, allows them to become owner if they have been in peaceful, open and uninterrupted possession of the land. The 1979 Act is silent as to how the Keeper should process such applications. The registration of an a non domino disposition can prejudice the true owner of the property in question, therefore there can be ramifications not just for the true owner (because they will lose their land), but also for the publicly-funded Keeper’s indemnity fund. It is imperative that registration law strikes a fair balance in relation to the circumstances in which an a non domino disposition can enter the Land Register.

59. Currently, the law of prescription is used to allow property that is abandoned to come back into economic use. The law is found in statute and is provided for in section 1(1) of the Prescription and Limitation (Scotland) Act 1973. The Keeper considers that an a non domino disposition can be a legitimate way of acquiring title where the true proprietor acquiesces over the acquisition or cannot be traced. Prescription operates to bring land that has been abandoned or has otherwise fallen into disuse back into economic use. It can also be used where property has been passed down through several generations of a family without the formality of recording or registration of the documents of transfer. If the family wish the title to be regularised (so, for example, they can obtain a loan secured against it) then an a non domino facility allows for this. The Bill seeks to place on a statutory footing the Keeper’s policy of ensuring that reasonable
steps are taken to notify true owners of property before a 10 year prescriptive period can start running in favour of another person. This is an innovation not included in the SLC Bill attached to the report.

60. Furthermore, to prevent fraudulent claims, the Bill requires the Keeper to notify the true owner of the claim and to allow them a chance to object to the claim before it is registered. The notification will act as a double-check that the true owner has been notified. This policy reverses the position in rule 18(2) of the Land Registration (Scotland) Rules 2006, which prevented the Keeper approaching the true owner (except in the case of the foreshore, where the Keeper is duty bound by section 14 of the 1979 Act to notify the Crown Estate Commissioners of any registration of the foreshore). This policy in particular assists true owners of property who do not know what they own (such as the Queen’s and Lord Treasurer’s Remembrancer and owners of commities) or true owners who cannot effectively police their land (such as some statutory landowners).

61. The policy intention behind the notification requirements is both to build transparency into the system and to force contact between persons who wish to acquire land and owners who do not use the land. It is expected that in many cases an agreement might be struck for the land to be disposed to the person who would otherwise have become the prescriptive claimant.

62. In addition to these tests, the Bill retains the policy, developed by the SLC, of requiring the underlying land to have been abandoned for seven years, and occupied by the claimant for the year before the application to register the prescriptive claim is made to the Keeper. The seven-year abandonment test, in particular, places a high bar in front of prescriptive claimants. Part 16 of the SLC report provides more policy detail behind the proposals.

63. There are possible other approaches to this policy. Not allowing prescriptive claimants at all would not provide the advantages noted above. It might be possible to withdraw the requirements to notify the true owners of property, on the basis that occupation of land is notice enough. This was discounted as some landowners do not know what they own or cannot effectively police against such occupation, which could result in landowners being unfairly deprived of property. Another alternative, to withdraw the policy requiring seven-years abandonment of the property or one year occupation (or both), was discounted on the basis that a high bar should be set before ownership in land can be acquired by prescription.

Registration of, and of transaction and events affecting, leases

64. The Bill simplifies the law on the registration of deeds affecting registered leases. Previously the law in this area was unclear as to when such a deed required registration and exactly what the effect of such registration was. There are three broad types of deed affecting registered leases. These are, deeds extending the duration of the lease, deeds terminating the lease and deeds altering the terms of the lease. The Bill provides that these deeds are registerable and that in order for these deeds to have effect, they must be registered.

65. This policy reflects the view that registered leases (i.e. long written leases) are more than a contract between two parties. They are, in many respects, akin to ownership and are capable of affecting third parties. It is important that people searching the register can rely on the fact it is
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accurate and up to date. This policy helps achieve that by vastly reducing the ways in which leases can be affected by off register events.

**Fees**

66. RoS is the only Non-Ministerial Department in the Scottish Administration that operates as a trading fund. This means that RoS must operate as a self-funded entity. This funding is derived from the fees charged in respect of the registration or recording of deeds and documents in any register under the management and control of the Keeper, and in the provision of other services such as searches, reports, certificates and the provision of other documents or copies of documents. The provisions contained in the Bill do not require increases in the fees charged by RoS.

67. The current fee power derives from section 25 of the Land Registers (Scotland) Act 1868 (although it was inserted into that Act by the 1979 Act). This power is old-fashioned and no longer allows the Keeper the flexibility required to continue to operate as a viable quasi-commercial entity. At present, whenever Scottish Ministers wish to adjust the level of fees that the Keeper may charge, a new fee order is required. This is inevitably a slow process that means the level of fees can lag behind market conditions. The replacement of section 25 of the 1868 Act was part of recommendation 37 of the SLC report (see paragraph 8.23).

68. The new fee power maintains the position that the level at which fees are set will be by order made by Scottish Ministers. However, rather than requiring that the order must fix fees at a particular level, the new provision will allow Scottish Ministers to set fees within defined parameters. This change will give RoS greater flexibility in which to operate by allowing the level of fees to be adjusted within the parameters set by Scottish Ministers without the need for a further fee order. The new flexibility will allow RoS to be more responsive to changes in the housing market by either reducing or increasing fees to take into account any increase or reduction in the intake of deeds for registration.

69. The new fee power will also allow Scottish Ministers to set the rate at which fees are payable for processing certain applications. At present, all fees are set on an *ad valorem* scale (where the fees are set in proportion to the value of the property). The ability to charge time-and-line for complex transactions will allow the Keeper to recover the true cost of processing applications in complex cases where currently losses are made processing such cases (effectively meaning that fees for other cases may have to be higher).

70. The new fee power changes the relationship between the expenses of the Keeper and the level of fees set. Under the 1868 Act, fees could not be set above the level that would defray the expenses of the Keeper. The new power breaks this link but ensures that Scottish Ministers must take the expenses of the Keeper into account when setting fees. This change might, for example, allow the Keeper to charge lower fees in the knowledge that fees could be increased above cost-recovery levels later should market conditions significantly deteriorate (or vice versa).
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Provision of information

71. The Bill provides a power to make subordinate legislation about the information that must be made available by the Keeper. This implements part of recommendation 37 of the SLC report (paragraph 8.23).

Consultancy and other powers

72. As mentioned above, RoS operates as a trading fund (the only such trading fund in Scotland). The Keeper’s expenses are recovered from fees paid for processing applications for registration and from the provision of information from the registers under the Keeper’s control. However, the Keeper is keen to do what is possible to keep the level of fees low so that business in Scotland can thrive. One aspect of this is driving efficiency and added value gains from the registration systems. To be as efficient as possible, RoS has also developed a quasi-commercial consultancy and advisory practice which includes a “title-investigation” service and “pre-registration enquiries” service. Functioning on a quasi-commercial basis (including making a profit) makes the Keeper better able to maintain and improve the registers the Keeper maintains and controls, serve the people of Scotland and deliver real and commercial benefits for customers. To provide a statutory underpinning to these activities, the Bill allows the Keeper to provide consultancy, advisory or other services and to form, or participate in the formation of, a company that provides these services. These provisions are similar to those conferred on the Chief Land Registrar in England and Wales by the Land Registration Act 2002. These powers were proposed by recommendation 149 of the SLC report.

Duty of Care

73. The Bill places on a statutory footing the duty owed by a person who grants a deed, the grantee of that deed and both their solicitors. This places on a statutory footing the common law duty that the SLC consider has existed since 2008. The duty is to take reasonable care that the Keeper does not inadvertently make the Land Register inaccurate as a result of information supplied. Where the individual or the solicitor knows something detrimental to the application but does not tell the Keeper, they will breach the duty of care and potentially be liable to be sued by the Keeper.

74. The SLC recommended in their report that the duty of care for applicants and their agents should end when the application for registration has been submitted to the Keeper, although it was noted in the report that the Commissioners did not agree on this point. Further policy consideration has resulted in the duty of care provisions in the Bill for applicants and their agents being extended to when the registration decision on the application is made by the Keeper. Extending the duty of care ensures that if an applicant or their solicitor becomes aware of any information which may affect the accuracy of the register, this should be disclosed to the Keeper if the registration decision has not been made.

75. The reason for this provision is that there is a strong public interest in the accuracy of the Land Register. It is ultimately the responsibility of the Keeper to ensure the Land Register is accurate. The duty of care will help to ensure that the Keeper is in possession of all the relevant facts when making registration decisions which should minimise the potential for inaccuracy entering the Register. Paragraphs 12.101 to 12.107 of the SLC report provide more background policy detail.
Statutory Offence

76. The Bill introduces a new statutory offence. This was not proposed by the SLC but was included in the terms of reference for the project supplied to the SLC in 2002. The offence is designed to deter fraudsters and their solicitors from using the Land Register to legitimise transactions that are being undertaken to launder the proceeds of crime or otherwise meet criminal ends by mortgage fraud. Under the Bill, it will be an offence to make a materially false or misleading statement in relation to an application to the Keeper, or intentionally to fail to disclose material information in relation to an application, or be reckless as to whether all material information is disclosed.

77. The new statutory offence is consistent with the Scottish Government’s strategy to tackle serious organised crime. In 2009, the Scottish Government published “Letting Our Communities Flourish: A Strategy for Tackling Serious Organised Crime in Scotland”. The document sets out the Scottish Government’s commitment to reduce the harm caused by serious organised crime, and to make Scotland a hostile environment for serious organised criminals. The offence in the Bill provides an addition to the wide-ranging use of disruption tactics available to law enforcement in addressing the threat from serious organised crime groups. It is expected that the offence, in itself, should act as a deterrent to fraudsters and solicitors acting on behalf of fraudsters.

78. Whilst agents submitting applications to the Keeper are already heavily regulated, the Keeper relies on the information supplied in an application for registration. Indeed, due to the high volumes of applications received by the Keeper she has no choice but to place a lot of trust in the solicitor profession to submit applications that are legitimate. It has been known for the Keeper to be in receipt of applications submitted by solicitors who are, in fact, party to the fraud. In addition to this, the Keeper receives a number of personal presentments directly from applicants.

79. The common law of fraud already applies in relation to applications to the Keeper and is currently relied upon to secure the conviction of any person making such a fraudulent application. A key element of that offence is that knowledge of the fraud has to be proven, which is extremely difficult. A solicitor may meet the legislative requirements in respect of identifying their client (in terms of the Money Laundering Regulations 2007). However, a solicitor may have a suspicion that the funds being used to purchase subjects are derived from criminal activity or that the funds acquired through securities against the subjects are being used to finance criminal activity. The proposed statutory offence introduces "recklessness" on the part of the client or the agent as being a constituent part of the statutory offence.

80. It is important that the offence applies to solicitors as well as clients as solicitors are effectively the gate-keepers to conveyancing transactions in Scotland and are trusted by the Keeper to supply accurate information. However, it is recognised that the Keeper might be misled in an application by a solicitor in good faith. In those cases where a person has simply made a mistake, strong defences are provided so that the offence provision will not apply. The alternative approach to creating the offence would have been to rely on the common law of fraud for prosecuting illegal behaviour. This was discounted on the basis that it is seen as an insufficient deterrent to fraudulent behaviour due to the difficulties in prosecution for that offence.
Savings and Transitional Provisions

81. The Bill deals with the process of replacing the 1979 Act by the new legislation. The changes included in the Bill prevent discontinuity in the Register. The scheme of the Bill is that existing registration will continue in the Register after commencement. The differences between the provisions in the Bill and the 1979 Act mean that some legislative provisions are required to cover the change. The most important provisions are about what happens to inaccuracies in the register that exist immediately before the commencement of the new legislation.

82. The Bill makes it clear that on commencement a title sheet which forms part of the Land Register will form part of the title sheets record on the Land Register. Where an existing title sheet does not conform to the requirements of the Bill, the Keeper will have the power to make it conform. This might, for example, relate to information about quantum of share of a common area or about pertinents (for example the benefit of a servitude acquired by prescription) or encumbrances (for example the burden of a servitude acquired by prescription). The Bill, whilst giving the Keeper the power to make existing title sheets conform, does not compel this because of the potential costs that might be involved.

83. If anyone has a vested right against the Keeper for payment of an indemnity claim under section 12(1) of the 1979 Act when the Bill is commenced, that right should be unaffected by the new legislation. Whilst this would no doubt be implied anyway, the Bill has a specific provision confirming that that will be the position.

84. All actual inaccuracies in the Register will continue to be actual inaccuracies unless and until rectified. That is simple. Less simple is the question of bijural inaccuracy (that is where there is conflict between registration law and property law). The Bill abandons the idea of bijuralism, and with it the unfairness and uncertainty in that area of law. In abandoning bijuralism the Bill must also abandon the concept of bijural inaccuracy; and where such an inaccuracy is to be found in existing titles, it must either be deemed to cease to be an inaccuracy, or be re-categorised as an actual inaccuracy (and thereafter rectified).

85. The criterion is whether, on the moment of commencement of the new legislation, a particular inaccuracy could have been rectified under the rules in section 9 of the 1979 Act. If the answer is that it could be so rectified, then the bijural inaccuracy should be converted automatically into an actual inaccuracy. In the new scheme all inaccuracies would be rectifiable, and so this class of inaccuracies, already rectifiable before the commencement of the new legislation, would continue to be rectifiable thereafter. In effect, therefore, there would be no change – except in a conceptual sense.

86. But if the answer is that the bijural inaccuracy could not be rectified under section 9 of the 1979 Act at the time the Bill is commenced then as a result of the provisions in the Bill the inaccuracy ceases to be an inaccuracy. That is, the rights of the parties concerned are realigned so as to conform to what the Register says they are. This has the effect of making inaccuracies accurate. The Bill makes provision allowing for compensation of those adversely affected by these rules.

87. In order to minimise problems of evidence in the scenario explained above (especially after the passage of time) the Bill contains a presumption that the owner of the land is in
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possession of their land immediately before the designated day (although this could readily be rebutted by evidence of contrary possession). For a further policy discussion see paragraphs 36.9 to 36.14 of the SLC Report.

CONSULTATION

88. A formal public consultation process was carried out in autumn 2010. The consultation was based on a draft Bill annexed to the SLC report. The Land Registration (Scotland) Bill consultation document was circulated to a number of consultees. These included representative bodies of the legal profession, key lenders and representative bodies within the lending industry, a number of government bodies, all Scottish local authorities and all Scottish university law schools. The primary distribution list of consultees is published on the RoS website, www.ros.gov.uk. The consultation was also advertised in the Journal of the Law Society of Scotland.

89. A total of 71 responses were received. The responses of those who consented to publication of their responses are available on the RoS website. Those who responded came from a wide variety of professional backgrounds and interest groups. Of the 71 responses, 29 answered only the questions that pertained to electronic registration and conveyancing: the other 42 responses varied in the questions that they answered.

90. Stakeholders responding to the consultation were generally supportive of the proposals although some had concerns about particular matters. The stakeholders who raised particular points were invited to discuss the Bill provisions with officials. These stakeholders included:

- Professors Stewart Brymer, George Gretton, Kenneth Reid and Robert Rennie;
- Mr John MacLeod;
- Law Society of Scotland;
- The Scottish Law Agents Society;
- Council of Mortgage Lenders;
- Lloyds Banking Group PLC;
- Solicitor for the Crown Estate Commissioners;
- Scottish Water;
- Queen’s and Lord Treasurer’s Remembrancer;
- COSLA;
- SOLAR (the local authority solicitors’ group);
- Scottish Court Service;
- Scottish Law Commission;
- Mr Andy Wightman; and
- Scottish and Southern Energy.
91. In addition to the public consultation, in 2011 RoS conducted a Scottish Firms Impact Test whereby the following ten Scottish firms discussed the impact of the Bill on their business:
  - AB & A Matthews;
  - Miller & Bryce;
  - Scottish Building Society;
  - Marjory MacDonald;
  - Royal Bank of Scotland;
  - Pagan Osbourne;
  - RA Direct;
  - First Title;
  - Aberdein Considine; and
  - Cullen Kilshaw.

92. A stakeholder event was held in Edinburgh in June 2011. Further events were held in Edinburgh, Glasgow and Aberdeen in November 2011.

93. In addition to the stakeholders who were formally consulted, discussions have taken place with a number of other interested bodies. These include the recently created Scottish Land and Estate Group.

94. There has also been an independent steering group established. This group is under the chairmanship of Professor George Gretton of the University of Edinburgh and Scottish Law Commission. The group includes a further two conveyancing professors as well as representatives from the legal profession, the lending industry and local authorities.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal Opportunities

95. The Bill’s provisions do not discriminate on the basis of gender, race, age, religion, disability or sexual orientation. An Equalities Impact Assessment was carried out for the public consultation on the SLC Bill. No update of the assessment was required in light of the terms of the Bill as introduced.

Human Rights

96. The Scottish Government is satisfied that the provisions of the Bill are compatible with the European Convention on Human Rights.
In particular, we have been mindful throughout that the provisions need to be compatible with Article 1 of Protocol 1, which states that every natural and legal person is entitled to peaceful enjoyment of his possessions.

**Island communities**

The Bill has no direct impact upon island communities. We have considered that certain rural communities may be impacted by the provisions relating to completion of the Land Register. This is because land registration coverage is concentrated in urban areas. However, the fee power in the Bill will allow the Keeper to recover the costs of completing the Land Register. This cost will be recovered from registration fees for registrations across the whole of Scotland.

**Local government**

SOLAR and COSLA were both consulted on the draft Bill. SOLAR responded and bilateral meeting with both bodies were conducted since the consultation. An issue has arisen with regard to the advance notice policy and the effect this will have on the ability of local authorities to register charging orders. An amendment has been made to the SLC proposals for advance notices to allow local authorities to submit an advance notice to protect a charging order.

**Sustainable development**

The Bill will have a positive impact on sustainable development. The provisions regarding completion of the land register, electronic conveyancing and registration will eventually reduce the cost of transacting with heritable property in Scotland. Moreover, the decreased need for paper will have positive impact upon the environment.

A Business Regulatory Impact Assessment was carried out in preparation for the introduction of the Bill.
LAND REGISTRATION ETC. (SCOTLAND) BILL

DELEGATED POWERS MEMORANDUM

PURPOSE

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament’s Standing Orders, in relation to the Land Registration etc. (Scotland) Bill. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

2. The contents of this Memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

OUTLINE OF BILL PROVISIONS

3. The Bill contains five broad policy objectives:

- provides for the eventual completion of the Land Register by increasing the number of triggers for a first registration and providing for voluntary registrations and Keeper-induced registrations;

- introduces a system of “advance notices” for conveyancing transactions which will remove the risk of losing title to a property between the settlement date and the registration date (which risk is currently underwritten by insurance);

- introduces amendments to the Requirements of Writing (Scotland) Act 1995 (the 1995 Act) to allow for electronic conveyancing and electronic registration;

- seeks to re-align registration law with property law by, for example, adjusting the circumstances in which a person can recover their property rather than only receive compensation from the Keeper; and

- continues and makes improvements to the system for land registration in Scotland. It replaces much of the Land Registration (Scotland) Act 1979 (the "1979 Act"). The Bill places on a sound statutory footing the administrative practices of the Keeper of the Registers of Scotland that have evolved in practice since the passing of the 1979 Act.
This document relates to the Land Registration etc. (Scotland) Bill (SP Bill 6) as introduced in the Scottish Parliament on 1 December 2011

4. Further information about the Bill's provisions are contained in the Explanatory Notes and Financial Memorandum, published separately as SP Bill 6 EN and the Policy Memorandum, published separately as SP Bill 6 PM.

RATIONALE FOR SUBORDINATE LEGISLATION

5. The Bill contains a number of delegated powers that are explained in more detail below. The Scottish Government has carefully considered whether provisions should be set out in subordinate legislation or on the face of the Bill. In so doing, the Scottish Government had regard to:

- the need to make proper use of valuable Parliamentary time;
- the need to ensure sufficient flexibility to respond to changing circumstances and technological advances;
- the likely frequency of amendment;
- allowing detailed administrative arrangements to be made or kept up to date within the basic structures and principles set out in the primary legislation; and
- anticipating the unexpected, which might otherwise frustrate the purpose of the provision in primary legislation.

6. When deciding whether negative or affirmative procedure is appropriate, the Scottish Government has considered carefully the degree of Parliamentary scrutiny that is required, balancing the need for an appropriate level of scrutiny with the need to avoid using Parliamentary time unnecessarily.

DELEGATED POWERS

7. The delegated powers provisions are listed below, together with a short explanation of:

- what each power allows;
- who the power is conferred on;
- the form in which the power is to be exercised;
- why it is considered appropriate to delegate the power; and
- the Parliamentary procedure (if any) to which the exercise of the power is to be subject and why this procedure (if any) is considered appropriate.

8. The approach in the Bill to powers to make subordinate legislation is, generally, for powers to be conferred within the section in relation to which the power relates. Section 111 is the general exception to this, as it provides substantive powers to make rules of more general
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application in relation to the Land Register. It is expected that many of the powers will be invoked simultaneously and the resulting subordinate legislation will be the “land register rules”.

9. The Bill contains the power to make land register rules by regulations. In addition to the main power, there are various specific references to the land register rules in other sections of the Bill. Section 109 defines “land register rules” as the rules made under section 111(1). The general rule-making power is considered first below. The provisions making specific reference to the rules are considered next, with an explanation of why they are appropriate to be included in the land register rules. Other powers are then considered in the order in which they appear in the Bill.

Section 111(1) - land register rules

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: negative procedure

Provision

10. This provision allows the Scottish Ministers to make land register rules that cover:

- the making up and keeping of the Land Register;
- the procedures in relation to applications for registration;
- forms to be used in relation to the register;
- when the application record is open for entries;
- information, not covered in the Bill, that the Keeper is required or authorised to enter in the title sheet record; and
- other matters which seem to them necessary or expedient to give effect to the purposes of the Bill.

Reason for taking power

11. The land register rules will provide detail to support the provisions in the Bill on the Land Register. It is expected that the rules will look something like the current Land Registration (Scotland) Rules 2006 but will make more detailed provision. While is it not expected that the rules will be subject to frequent change, it is foreseeable that they will require amendment as time goes on. In particular, the rules will allow the Scottish Ministers to regulate how the Land Register is kept in light of changing circumstances and technologies. Amendments to the rules will also allow any application forms to be altered as required, where, for example, a development in the law requires the Keeper to ask different questions or be supplied with different information by applicants.
This document relates to the Land Registration etc. (Scotland) Bill (SP Bill 6) as introduced in the Scottish Parliament on 1 December 2011

Choice of procedure

12. The current Land Registration (Scotland) Rules 2006 are subject to negative procedure and this is considered appropriate for the new land register rules. The rules are concerned with the normal running of the register and will not affect the underlying principles of the Bill.

Other matters to be provided for in land register rules

Section 14(1)(b) - documents which the Keeper must add to the archive record.

Provision

13. This section provides that the archive record is to consist of, among other things, copies of documents which the Keeper must include under the land register rules.

Reason for inclusion in land register rules

14. The provision is designed to ensure that, if in future it is considered desirable that documents not covered by section 14 (which may be new documents that do not exist in law at present) are included in the archive record, the Scottish Ministers may provide for this in the land register rules. It is related to administration of the Land Register and as such is suitable to be made in the land register rules.

Section 22(1)(d) - the form of any application in the land register rules

Provision

15. This provision refers to the Scottish Ministers’ power to prescribe, in the land register rules under section 111(1), the form (if any) required for applications for registration.

Reason for inclusion in land register rules

16. The form of applications must be flexible to allow for changes in approach and also for changes in property law, which may result in a different form of application being required. As more property comes onto the Land Register, it may be possible and desirable to streamline the form of particular types of application. This is largely an administrative matter regarding application forms for registration and is therefore considered suitable for land register rules.

Section 33(2) - circumstances in which the Keeper must consent to an application being substituted or amended

Provision

17. Section 33(2) provides that the land register rules may specify the circumstances in which the Keeper must give consent to an application being substituted or amended.
Reason for inclusion in land register rules

18. Section 33 is intended to ensure that applications to the Keeper are correct first time, thus increasing the efficiency of the land registration system. However, section 33(2) recognises that experience may show that there are some circumstances where a deviation from this principle is appropriate. Specifying some such circumstances in the rules will add certainty for applicants. It will not otherwise affect stakeholders; therefore, it is thought to be suitable for inclusion in land register rules.

Section 34(1) - the period in which the Keeper must make a decision

Provision

19. This provision allows the time period within which the Keeper must accept or reject an application to be prescribed in the land register rules. Section 34(2) confirms that different periods may be prescribed for different types of application.

Reason for inclusion in land register rules

20. The time period within which it is appropriate for the Keeper to make a decision on an application may be subject to change as a result of such factors as the condition of the property market and the overall volume and complexity of applications submitted to the Keeper. The period might therefore require to be amended to reflect those changing circumstances. Accordingly, it is considered appropriate for the period to be specified in the land register rules rather than primary legislation.

21. Different periods for different cases are required as a simple re-mortgage over a registered property will be capable of completion more quickly than a complex first registration.

Section 39(5) - further provision regarding notification of acceptance, rejection or withdrawal of application

Provision

22. Section 39(1) and (2) provides that various parties must be notified when the Keeper has accepted or rejected an application for registration or it has been withdrawn. Section 39(5) allows the land register rules to make further provision about such notification.

Reason for inclusion in land register rules

23. The detail of notification under section 39(1) and (2), how it is done and who is notified is an area where views are likely to alter in light of changing circumstances. It is thought desirable to have the flexibility provided by subordinate legislation to change the rules accordingly. Notification to applicants and other related parties is not required for the creation of rights and it is largely an administrative practice. As such, it is considered suitable for land register rules.
Section 40(5) - further provision regarding notification to proprietors

Provision

24. Where the Keeper has accepted an application for registration of a kind that triggers registration of the underlying plot or the Keeper has registered a plot of land by Keeper-induced registration, section 40(2) provides that the Keeper must notify the proprietor of the plot and any other person the Keeper considers appropriate. Section 40(5) allows the land register rules to make further provision regulating such notification.

Reason for inclusion in land register rules

25. The detail of notification under section 40(2), how it is done and who is notified is an area where practice is likely to alter in light of changing circumstances. As such, it is thought desirable to have the flexibility provided by the Scottish Ministers being able to make provision in subordinate legislation to change the rules accordingly. This is largely an administrative practice and is considered appropriate for inclusion in the land register rules.

Section 42(7) - further provision regarding notification to various parties of applications relating to prescriptive claimants

Provision

26. Section 42 makes provision for prescriptive claimants and the statutory rules relating to prescriptive claimant applications. Section 42(4) provides that the applicant must satisfy the Keeper that he or she has notified the proprietor, whom failing any person who appears capable of completing title. If neither exist or cannot be traced, the applicant must satisfy the Keeper that he or she has notified the Crown. Section 42(7) allows the Scottish Ministers to make further provision in the land register rules about such notification.

Reason for inclusion in land register rules

27. The detail of notification, how it is done and the information to be provided is an area where practice is likely to alter in light of changing circumstances. As such, it is thought desirable to have the flexibility provided by subordinate legislation to make provision in the land register rules. As an administrative practice it is considered appropriate for inclusion in the land register rules.

Section 44(6) - further provision regarding notification by the Keeper to various parties in relation to prescriptive claimants

Provision

28. Section 44 concerns the Keeper’s duty to notify applications for registration by prescriptive claimants. It provides that the Keeper, as an administrative double check, must notify the same parties as the prescriptive claimant making the application is required to do under section 42.
Section 44(6) allows the Scottish Ministers to make further provision in the land register rules about such notification.

**Reason for inclusion in land register rules**

29. As with section 42 and the other sections on notification more generally, this is an area where views are likely to alter in light of changing circumstances. As such, it is thought desirable to have the flexibility provided by subordinate legislation to make changes in the light of changing circumstances. As a largely administrative practice it is considered appropriate to be included in the land register rules.

**Section 59(2) - the period after which mapping of advance notice must be removed from cadastral map**

**Provision**

30. Section 56(4)(a)(ii) provides that where an advance notice relates to part only of the subjects of a lease or of a plot of land, the Keeper must delineate such part on the cadastral map. Section 59(2) provides that the Keeper, after the period prescribed in the land register rules, must remove the delineation from the cadastral map if the deed to which the advance notice relates has not been registered.

**Reason for inclusion in land register rules**

31. This matter relates to the issue of where a deed has not followed the advance notice. It may be that a further advance notice will be registered (perhaps by another purchaser if the original sale has fallen through). If the intention is still to split the plot of land, it would be unwise for the Keeper to delete the work done to delineate the plot immediately. However, if the plot of land is not to be split then the delineation should, at some point, be removed from the cadastral map. The power allows the Scottish Ministers to determine, from experience, what is an appropriate length of time to delete the relevant mapping work. The matter fits within the land register rules, as it is related to how the Keeper administers the register.

**Section 77(4) - the rate of interest payable on claims under warranty**

**Provision**

32. Section 77 is about quantification of compensation for loss incurred as a result of a breach of Keeper's warranty. Section 77(2) makes provides about when interest is payable on the compensation. Section 77(4) allows the land register rules to provide for the rate of interest payable by virtue of section 77(2).

**Reason for inclusion in land register rules**

33. The power does not extend to altering the principle of warranty or calculating the compensation itself. Interest rates can fluctuate and it is desirable for the Scottish Ministers to have power to amend the interest rates from time to time to fit with the market. As the power is
limited only to interest rates rather than the compensation itself, it is considered appropriate for this to be dealt with in the land register rules.

Section 78(5) - provision relating to notification on rectification of the Register

Provision

34. Section 78(4)(b) provides that the Keeper must give notice of rectification of the register to any person who appears to the Keeper to be materially affected by it. Section 78(5) provides that the land register rules may make provision regarding the persons to be notified and the method of notification.

Reason for inclusion in land register rules

35. The detail of notification, how it is done and who is notified is an area where views are likely to alter in light of changing circumstances. As such, it is thought desirable to have the flexibility provided by subordinate legislation to change the rules accordingly. Notification to applicants and other related parties is not required for the creation of rights, its function is largely administrative. As such, it is thought suitable to be dealt with in land register rules.

Section 80(7) - the rate of interest payable on claims for compensation as a result of rectification of the register

Provision

36. Section 80 is about compensation for loss in consequence of rectification. Section 80(5) provides that interest is payable on the compensation. Section 80(7) allows the land register rules to provide the rate of interest payable by virtue of section 80(5)

Reason for inclusion in land register rules

37. The power does not alter the principle of rectification or affect the calculation of the compensation itself. Interest rates can fluctuate and it is desirable for the Scottish Ministers to have power to amend the interest rates from time to time to fit with the market. As the power is limited only to interest rates rather than the compensation itself, it is considered appropriate for this to be dealt with in the land register rules.

Section 91(4) - the rate of interest on compensation for realignment of rights

Provision

38. Section 91 is about quantification of compensation for loss incurred as a result of the operation of realignment of rights. Section 91(2) provides that interest is payable on the compensation. Section 91(4) allows the land register rules to provide for the rate of interest payable by virtue of section 91(2)
Reason for inclusion in land register rules

39. The power does not extend to altering the principle of compensation for realignment losses. Clearly, interest rates can fluctuate and it is desirable for the Scottish Ministers to have power to amend the interest rates from time to time to fit with the market. As the power is limited only to interest rates rather than the compensation itself, it is considered appropriate for this to be dealt with in the land register rules.

Other subordinate legislation powers

Section 11(6)(b) - Power to prescribe the requirements of a system of mapping, other than the Ordnance Map, to be used for the base map

Power conferred on: the Scottish Ministers

Power exercisable by: order made by Scottish statutory instrument

Parliamentary procedure: negative procedure

Provision

40. This provision allows the Scottish Ministers to prescribe requirements for a mapping system other than the Ordnance Map. A mapping system meeting these requirements may then be used, instead of or in conjunction with the Ordnance Map, as the base map.

Reason for taking power

41. The provision is intended to future-proof mapping in the Land Register. If a mapping system more suitable than the Ordnance Map comes along then, providing it meets the requirements set out, it should be capable of being used as the base map. As mapping techniques and providers move forward, the Land Register should be able to do so too. Also, the Ordnance Map does not extend to the sea-bed. This power will allow the Scottish Ministers to prescribe requirements for a sea-bed mapping system for those areas.

Choice of procedure

42. This is considered part of the normal running of the register. There should be flexibility to choose the mapping provider in the same way as other providers. It is therefore thought that negative procedure is suitable.

Section 27(6) - Power to remove the Keeper's discretion to decline to accept an application for voluntary registration

Power conferred on: the Scottish Ministers

Power exercisable by: order made by Scottish statutory instrument
Parliamentary procedure: negative procedure

Provision

43. Section 27(6) enables the Scottish Ministers to repeal section 27(3)(b), thus removing the Keeper’s discretion to decline to accept applications for voluntary registrations. Section 27(8) allows an order under section 27(6) to make different provision for different areas.

Reason for taking power

44. The Bill retains the Keeper’s discretion regarding voluntary registrations contained in the 1979 Act. This is required to give the Keeper time to consider the staff resource and other practical implications of being obliged to accept voluntary registration applications. It is considered preferable that, when considered appropriate, the discretion to decline an application for voluntary registration should be removed without the need for primary legislation.

45. The power to make different provision for different areas is required as it may be desirable to remove the discretion, for example, for the county of Renfrew (which has been on the Land Register since 1981) at a different time to Midlothian (which has only been on the Land Register since 2001).

Choice of procedure

46. The power only removes the Keeper’s discretion and the Keeper is to be consulted; it does not affect the rights of any other party. The use of this power removes, rather than adds to, the Keeper’s powers. It is therefore considered that negative procedure is suitable.

Section 36(3) and section 37 - power to make different provision as regards time of registration

Power conferred on: the Scottish Ministers

Power exercisable by: order made by Scottish statutory instrument

Parliamentary procedure: affirmative procedure

Provision

47. Section 36(3)(a) allows the Scottish Ministers to amend section 36(2) to make different provision as regards time of registration. Section 36(3)(b) allows the Scottish Ministers to amend other parts of the Bill consequential upon the amendment under section 36(3)(a). Section 37 provides that if the Scottish Ministers make such an order amending the Bill, they may correspondingly amend section 6 of the Land Registers (Scotland) Act 1868 and other parts of that Act. This allows for the extension of the provision to the General Register of Sasines.

Reason for taking power

48. The Bill reflects current registration systems and practice in that the time of registration is deemed to be the moment at which and following receipt of the application by the Keeper, the
application record next closes. So two applications, one received at 10am and one received at
3pm are deemed to be received at the same time. It may be that advances in registration systems
would allow for this to be improved. It is also possible that the advances would allow for such
improvement to be done in stages. As this is, to a large extent, technology-dependent, it is
desirable that the capacity is available without the need for primary legislation.

49. The power in section 36(3)(a) is necessary as other parts of the Bill would require
amendment in order to continue to work as intended. It is thought appropriate that such
consequential changes should also be made by subordinate legislation.

Choice of procedure

50. Affirmative procedure is thought appropriate here as the power includes power to amend
primary legislation. This will require Parliament to consider the impact of the amendment and
whether it is appropriate.

Section 42(8) - Power to amend relevant time periods for prescriptive claimant applications

Power conferred on: the Scottish Ministers

Power exercisable by: order made by Scottish statutory instrument

Parliamentary procedure: affirmative procedure

Provision

51. Section 42 is about prescriptive claimants and it sets out the criteria to be satisfied for the
Keeper to accept an application from a prescriptive claimant. Section 42(3)(a) sets out that the
true owner must not have been in possession of the land for a period of seven years preceding the
applications and section 42(3)(b) sets out that the applicant must have been in possession for one
year. Section 42(8) allows the Scottish Ministers to substitute different time periods for those in
subsection (3)(a) and (b).

Reason for taking power

52. Prescriptive claimants are a new statutory creation and there is a balance to be struck
between allowing prescriptive claims to be registered in order to bring into use abandoned land
and protecting the rights of any underlying owner. This power will allow the Scottish Ministers
to amend the time periods if experience shows they are not achieving the correct balance.

Choice of procedure

53. This power includes the power to amend primary legislation. The time periods will also be of
significance to stakeholders and are important for the operation of the system of prescriptive
claimants. Affirmative procedure is therefore considered appropriate.

Section 44(7) - power to amend the period of time in section 44(5)
Power conferred on: the Scottish Ministers
Power exercisable by: order made by Scottish statutory instrument
Parliamentary procedure: negative procedure

Provision

54. Section 44(7) allows the Scottish Ministers to substitute a different number of days for the number of days provided for in section 44(5). Section 44(5) relates to the number of days (set in the Bill at 60 days) within which a person notified by the Keeper of a prescriptive application may object to that application.

Reason for taking power

55. Flexibility is required here if, in practice, the period of notice is found to be too short or too long. As the principle of notice is not amended, it is considered appropriate for the number of days to be substituted without the need for primary legislation.

Choice of procedure

56. As this is a procedural matter about the period of notice, it is considered appropriate for negative procedure to be applied.

Section 47(5) and 47(6) - power to prescribe days, on or after which recording of certain deeds in the Register of Sasines will have no effect

Power conferred on: the Scottish Ministers
Power exercisable by: order made by Scottish statutory instrument
Parliamentary procedure: affirmative procedure

Provision

57. Section 47(5) allows the Scottish Ministers to prescribe the day on or after which the recording of a standard security in the Register of Sasines will have no effect. Section 47(6) allows the Scottish Ministers to prescribe the day on or after which the recording of any deed in the Register of Sasines will have no effect. Section 47(10) provides any day prescribed under 47(5) or 47(6) is to be a day no earlier than the day the Keeper's discretion relating to voluntary registrations under section 27(3)(b) is removed.

58. Section 47(12) allows for different provision to be made under 47(5) and 47(6) for different areas.

Reason for taking power

59. The provision is related to the policy objective of completion of the Land Register. It allows the Scottish Ministers to exercise some control over the rate of first registrations coming into the
Land Register when the Register of Sasines is to be closed. It allows for the Scottish Ministers to increase the rate of first registrations at a suitable time when the Keeper has made requisite preparations. It is considered suitable for this to be done under subordinate legislation.

60. Section 47(12) allows for the possibility that it may be desirable to increase the rate of first registrations in certain areas at different times. This would allow, for example, for the Register of Sasines in the County of Renfrew (which has a lot of property in the Land Register) to be closed before the County of Midlothian (which does not).

Choice of procedure

61. Closure of the Register of Sasines to new deeds is a significant step. It is likely to affect various stakeholders and it is therefore thought that affirmative procedure will provide the appropriate level of scrutiny.

Section 52(4) inserted section 49A(1) of the Conveyancing (Scotland) Act 1924 - Power to modify any schedule to the Conveyancing (Scotland) Act 1924

Power conferred on: the Scottish Ministers

Power exercisable by: order made by Scottish statutory instrument

Parliamentary procedure: affirmative procedure

Provision

62. Section 52(4) inserts a new section 49A(1) into the Conveyancing (Scotland) Act 1924. The new section inserts the form of a notice of title to be used in the Land Register; it also includes a power for the Scottish Ministers to amend any schedules to the 1924 Act.

Reason for taking power

63. The form of a notice of title inserted by the Bill is a much simplified version of the form required for use in the Register of Sasines. In future, it may be possible to simplify the form further. The Act includes various other statutory forms for deeds for registration or recording that may benefit from simplification in future.

Choice of procedure

64. This is a power to amend primary legislation and therefore affirmative procedure is considered appropriate.

Section 55(4) - Power to make provision about the description of subjects in an advance notice

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: affirmative procedure

Provision

65. This section allows the Scottish Ministers to make provision concerning the description of subjects in advance notices in relation to unregistered leases or plots.

Reason for taking power

66. Advance notices for registered subjects will be described by reference to the title number or a plan. This power allows the Scottish Ministers to make provision about the standard of description required for notices going into the Register of Sasines (which is not a map-based register). A balance is required between making the notice quick and easy to prepare but sufficiently detailed to identify the subjects. The power will allow for the provision to be decided based on experience of the new system.

Choice of procedure

67. This power will be of interest to stakeholders and it is important for the running of the system; affirmative procedure is considered appropriate.

Section 57(6) - Power to change protected period of advance notice

Power conferred on: the Scottish Ministers

Power exercisable by: order made by Scottish statutory instrument

Parliamentary procedure: affirmative procedure

Provision

68. Section 57(1) sets the length of time an advance notice has effect at 35 days. Subsection (6) of that section gives the Scottish Ministers a power to vary that period.

Reason for taking power

69. The advance notice scheme is new to Scotland. It is thought that 35 days is the appropriate period but that may change. Flexibility is required if experience shows the period to be too short or too long.

Choice of procedure

70. Affirmative procedure is considered suitable for this power since it would have a significant effect on the workings of the policy.
Section 58(6)(b) - Power to provide certain documents are unaffected by advance notices

Power conferred on: the Scottish Ministers

Power exercisable by: order made by Scottish statutory instrument

Parliamentary procedure: negative procedure

Provision

71. Section 58(6)(a) provides that the effect of an advance notice does not apply to specific documents registered under certain specified enactments. Section 58(6)(b) allows the Scottish Ministers to specify other types of deeds to be similarly unaffected.

Reason for taking power

72. Advance notices are a new concept in Scotland. There may be changes required to the procedure relating to advanced notices in light of experience. It is also possible there will be new types of deed created by statute that should not be affected by advance notices. It is therefore considered necessary that the Scottish Ministers are able to provide for such deeds.

Choice of procedure

73. Negative procedure is thought appropriate given that this power is simply adding further detail and will not make significant changes to the policy.

Section 61(1) - Power to amend application of advance notices scheme in relation to certain deeds

Power conferred on: the Scottish Ministers

Power exercisable by: order made by Scottish statutory instrument

Parliamentary procedure: negative procedure

Provision

74. Section 61(1) provides that the Scottish Ministers may modify the application of Part 4 of the Bill in relation to certain deeds (e.g. to enable a particular type of deed to be capable of being protected by an advance notice where that otherwise wouldn’t be possible by virtue of the provisions in Part 4).

Reason for taking power

75. Section 58 envisages that certain deeds may be exempted from the effect of an advance notice. Similarly, certain registrable deeds (such as unilateral deeds granted by local authorities under statute) may have to be capable of being protected by an advance notice. It is therefore considered necessary for the Scottish Ministers to be able to tailor the provision made to provide specifically for such deeds. Advance notices are also a new concept in Scotland and inevitably...
there may be changes required to the procedure relating to advanced notices in light of experience.

Choice of procedure

76. Negative procedure is thought appropriate given that this provision allows for further detail to be added to the advance notice system for specific cases and as a result of experience. It will not make significant changes to the operation of advance notices generally.

Section 66(3) - Power to set period after caveat expires

Power conferred on: the Scottish Ministers
Power exercisable by: order made by Scottish statutory instrument
Parliamentary procedure: affirmative procedure

Provision

77. Section 66(1) makes provision about the period of time (12 months) after which a caveat under section 65 expires. Subsection (3) allows the Scottish Ministers to vary that time period.

Reason for taking power

78. Caveats are a new concept to land registration in Scotland. The period of 12 months is thought to be an appropriate period for a caveat placed or a caveat renewed (as this is the length of time court caveats last). If practice shows this period to be too short or too long, it is desirable to have the flexibility to change the period by subordinate legislation.

Choice of procedure

79. This time period will be of interest to various stakeholders, including the Lands Tribunal for Scotland. Affirmative procedure is considered appropriate.

Section 93(2) - inserted section 9B(1)(b) and 9B(2)(c) of the Requirements of Writing (Scotland) Act 1995 - Power to make regulations regarding validity of electronic documents.

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: negative procedure
This document relates to the Land Registration etc. (Scotland) Bill (SP Bill 6) as introduced in the Scottish Parliament on 1 December 2011

Provision

80. Section 93(2) inserts a new section 9B into the Requirements of Writing (Scotland) Act 1995. Inserted section 9B(1)(b) provides that the Scottish Ministers may prescribe other requirements for an electronic document to be valid in respect of the formalities of execution. Section 9B(2)(c) provides for the Scottish Ministers to prescribe the type of electronic signature and any requirements for an electronic signature needed to authenticate such electronic document.

Reason for taking power

81. Electronic documents are required for electronic conveyancing and registration and may in future be desirable for other areas. They are intrinsically linked to technology and technological advances. It is therefore appropriate for the Scottish Ministers to have the power to set standards in this fast moving area.

Choice of procedure

82. This power is concerned with the practicalities of electronic validation and execution. The principles of the 1995 Act will not be altered. Negative procedure is considered appropriate.

Section 93(2) - inserted section 9C(2) of the Requirements of Writing (Scotland) Act 1995 - Power to make regulations regarding the presumption as to authentication of electronic documents

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: negative procedure

Provision

83. Section 93(2) inserts a new section 9C into the Requirements of Writing (Scotland) Act 1995. Inserted section 9C(2) provides that the Scottish Ministers may prescribe the type of and any requirements for an electronic signature to an electronic document needed in order to engage the presumption as to authentication.

Reason for taking power

84. There is a requirement for the Bill to be technology-neutral in this area so that the Scottish Ministers can ensure the law does not fall behind the technology. Given the fast pace of change in this area, it is considered appropriate to make changes in secondary legislation rather than require primary legislation.

Choice of procedure

85. This is mainly about process and how electronic documents will operate. It is considered negative procedure is appropriate.
Section 93(2) - inserted section 9E(1) of the Requirements of Writing (Scotland) Act 1995 - Further powers related to electronic documents

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: negative procedure, but affirmative procedure where regulations amend or repeal any enactment.

Provision

86. Section 93(2) inserts a new section 9E into the Requirements of Writing (Scotland) Act 1995. Inserted section 9E(1) provides that the Scottish Ministers may make provision in regulations as to the effectiveness or formal validity of, or presumptions to be applied to:

- alterations made before or after execution to an electronic document;
- authentication, by or on behalf of the granter, of such a document;
- authentication, by or on behalf of a person with a disability, of such a document; and
- any annexation to such a document.

87. Inserted section 9E(2) provides that regulations under section 9E(1) may make incidental, supplemental, consequential, transitional, transitory or saving provisions considered necessary in light of regulations made under 9E(1).

Reason for taking power

88. The presumptions and rules on alterations etc. of traditional documents already exist. The provision allows the Scottish Ministers, in light of experience and technology, to make suitable corresponding regulations for electronic documents.

Choice of procedure

89. These regulations are, in the main, about process and procedure and so negative procedure is thought appropriate. However, where regulations under 9E(1) amend or repeal any enactment, affirmative procedure is required. This is normal for amendment or repeal of enactments.
This document relates to the Land Registration etc. (Scotland) Bill (SP Bill 6) as introduced in the Scottish Parliament on 1 December 2011

Parliamentary procedure: negative procedure

Provision

90. Section 93(2) inserts a new section 9G into the Requirements of Writing (Scotland) Act 1995. Inserted Section 9G(3) provides that the Scottish Ministers may, after consultation with the Keeper of the Registers of Scotland, the Keeper of the Records of Scotland and the Lord President (under 9G(4)), make provision as to the form and type of an electronic document, the electronic signature authenticating it and, if it bears to be certified, the certification, of an electronic document that can be registered or recorded in one of the Keeper’s registers. Inserted Section 9G(5) provides different provision may be made for different cases or classes of case.

Reason for taking the power

91. It is possible for electronic documents to exist in many different and often incompatible electronic forms. It is not realistic to expect the Keeper to be able to register every conceivable type of electronic document. The power is therefore required to control what forms of electronic document are and are not able to be registered. The provision allows the Scottish Ministers to consider, amongst other things, technology and cost of possible forms. It is considered this is best done in subordinate legislation.

Choice of procedure

92. This power is about ensuring smooth running and good administration of the Land Register. Negative procedure is considered appropriate.

Section 95(3) - Power to make provision regulating the Keeper's electronic land registration system

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: affirmative procedure

Provision

93. The provision allows the Scottish Ministers to make various provisions regarding automated registration. Currently this is known as the Automated Registration of Title to Land (ARTL) system. The power allows the Scottish Ministers to make provisions regarding:

- the kind of deeds that may be authorised for registration under such system;
- persons who may be authorised to use the system;
- the suspension or revocation of a person’s authorisation;
- the method of appeal against such suspension or regulation;
This document relates to the Land Registration etc. (Scotland) Bill (SP Bill 6) as introduced in the Scottish Parliament on 1 December 2011

- the imposition of obligations on persons using the system; and
- the creation of deemed warranties by persons using the system.

Reason for taking power

94. ARTL (and any successor system) requires security in order to operate effectively. Such systems operate on the presumption that applications made through them will be in order. As such, there is a need for rules on authorised users and rules on when such users should no longer be authorised. These rules are also, by their very nature, linked to advances in technology. They will require to be flexible and up to date. As such, they are better set out in secondary legislation than primary legislation.

Choice of procedure

95. ARTL is currently regulated by the Automated Registration of Title to Land (Electronic Communications) (Scotland) Order 2006, made under sections 8 and 9(5) and (6) of the Electronic Communications Act 2000. The current procedure is affirmative. Given the significance of the regulations being made and their importance to stakeholders, it is considered affirmative procedure is suitable here as well.

Section 96(1) - Powers to enable electronic registration

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: negative procedure, but affirmative procedure where regulations amend or repeal any enactment.

Provision

96. Section 96(1) allows the Scottish Ministers to enable the recording or registration of electronic documents in any of the Keeper's registers.

Reason for taking power

97. The Bill envisages electronic registration in the Land Register. However, as technology and commerce move on, there may be a need for other registers to be e-enabled. The Bill provides the underlying framework for all electronic documents, so the flexibility of being able to open up other registers to such documents is desirable.

Choice of procedure

98. These regulations are, in the main, about the process and procedure of registering deeds in certain registers and so negative procedure will suffice. However, where they amend or repeal
any enactment, affirmative procedure is required. This is usual for amendment or repeal of enactments.

Section 103(1) - Power to make provision regulating availability of information and access to the Keeper's registers

Power conferred on: the Scottish Ministers
Power exercisable by: order made by Scottish statutory instrument
Parliamentary procedure: affirmative procedure

Provision

99. The provision allows the Scottish Ministers to make provisions regarding what information has to be made available by the Keeper and the method of doing so and access to any of the Keeper's registers.

Reason for taking power

100. This provision is about what information the Keeper provides and how it is provided. It is also concerned with access to each of the Keeper's registers. As such, it is closely linked to technology and to IT. Giving power to the Scottish Ministers allows for the flexibility required to react to IT capabilities.

Choice of procedure

101. Information and access are an important element of public registers. As such, affirmative procedure is considered appropriate.

Section 106(1) - Power to set fees

Power conferred on: the Scottish Ministers
Power exercisable by: order made by Scottish statutory instrument
Parliamentary procedure: affirmative procedure

Provision

102. Section 106(1) allows the Scottish Ministers to provide for fees payable in relation to:

- registering, recording or entering in any register under the management and control of the Keeper;
- access to such a register; and
103. The power also allows for the Scottish Ministers to provide for the method of paying fees and for the Scottish Ministers to authorise the Keeper to determine, subject to limitations and conditions set out in the order, any such fees.

104. Section 106(1)(c) allows the Scottish Ministers to sub-delegate the power to set fees within specified parameters. If used, this power would allow the Keeper to react to market conditions without a new fee order being required.

105. Section 106(2) allows for the order to make different provision for different cases or classes of case. Section 106(3) provides the Scottish Ministers must first consult the Keeper before making an order under this section. Section 106(4) clarifies "information" in this section does not include information provided under section 104.

**Reason for taking power**

106. Fees will necessarily be influenced by costs and market conditions. They will also be influenced by technological advances. They may also have a role to play in encouraging registration in order to assist with completion of the Land Register. If they are to do this, they will require to be flexible. The Keeper therefore has flexibility to set fees within the limitations set by the Scottish Ministers.

**Choice of procedure**

107. The current fee order is subject to negative procedure. However, the level of fees is clearly of interest to stakeholders. The affirmative procedure will allow Parliament to scrutinise the fee order and decide what the range of fees should be.

**Section 109(4) - Power to amend part of the definition of "designation" in the Bill**

*Power conferred on:* the Scottish Ministers  
*Power exercisable by:* order made by Scottish statutory instrument  
*Parliamentary procedure:* affirmative procedure

**Provision**

108. Section 109(1) defines "designation" for the purposes of the Bill. Section 109(4) allows Scottish Minister to amend paragraph (b) of the definition of designation.

**Reason for taking power**

109. In land registration, a person's "designation" is their unique identifier. It is also an anti-fraud measure. At present, an individual's designation is their name and address. If, in future, a better, more secure method of designating individuals emerges, it is desirable that the Scottish Ministers should be able to provide for its use without the need for primary legislation.
Choice of procedure

110. Affirmative procedure is considered appropriate given that this is a power to amend primary legislation.

Section 113(1) - Power to make ancillary provision

Power conferred on: the Scottish Ministers

Power exercisable by: order made by Scottish statutory instrument

Parliamentary procedure: negative procedure, but affirmative procedure where the order amends or repeals any enactment.

Provision

111. The provision empowers the Scottish Ministers to make incidental, supplementary, consequential, transitory, transitional or saving provisions by order as they think appropriate. Subsection (2) allows such an order to make changes to primary legislation.

Reason for taking power

112. This is a general provision in standard terms that allows the Scottish Ministers to make provision by order to support the full implementation of the Bill. The power is considered appropriate for a Bill of this length and complexity.

Choice of procedure

113. Orders of the type under section 113(1) are in general made subject to negative resolution procedure but an exception is made where the order adds to, replaces or omits any part of the text of an Act. In that case, affirmative resolution procedure applies. This approach on procedure is in line with the approach taken in other Bills and there are not considered to be any reasons for a different approach in this case.

Section 118 - Power to provide for a designated day in relation to the Bill

Power conferred on: the Scottish Ministers

Power exercisable by: order made by Scottish statutory instrument

Parliamentary procedure: To be laid before the Scottish Parliament under section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010.

Provision

114. This provision allows the Scottish Ministers to make provision by order as to a designated day for the purposes of the Bill.
115. Setting a designated day for the main operative land registration provisions of the Bill, which must be 6 months after the order under this section is made, allows for people affected by the Bill to prepare for any impact it may have. This is similar to the approach taken to the Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5).

116. This provision is similar to a commencement order it. It is appropriate that it is not subject to any Parliamentary procedure other than laying.

117. This section provides that the provisions of the Bill not specified in section 119(1) (which come into force on Royal Assent) or specified in section 119(2) (which come into force on the “designated day” under section 118) will come into force on a day set by the Scottish Ministers by order. Different days may be appointed for different provisions and different purposes.

118. This will enable the Scottish Ministers to bring the Bill into force. It is considered appropriate for the relevant provisions to be commenced at such times as the Scottish Ministers consider appropriate or expedient. It is standard procedure for such commencement provisions to be dealt with by subordinate legislation.
Economy, Energy and Tourism Committee

3rd Report, 2012 (Session 4)

Stage 1 Report on the Land Registration etc (Scotland) Bill

Published by the Scottish Parliament on 6 March 2012
Economy, Energy and Tourism Committee

3rd Report, 2012 (Session 4)

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Economy, Energy and Tourism Committee

Remit and membership

Remit:

The remit of the Committee is to consider and report on the Scottish economy, enterprise, energy, tourism and renewables and all other matters within the responsibility of the Cabinet Secretary for Finance, Employment and Sustainable Growth apart from those covered by the remit of the Local Government and Regeneration Committee and matters relating to the Cities Strategy falling within the responsibility of the Cabinet Secretary for Health, Wellbeing and Cities Strategy.

Membership:

Chic Brodie
Murdo Fraser (Convener)
Rhoda Grant
Patrick Harvie
Angus MacDonald
Mike MacKenzie
Stuart McMillan
John Park
John Wilson (Deputy Convener)

Committee Clerking Team:

Clerk to the Committee
Stephen Imrie

Senior Assistant Clerk
Joanna Hardy

Assistant Clerk
Diane Barr
The Committee reports to the Parliament as follows—

INTRODUCTION

1. The Land Registration etc. (Scotland) Bill¹ (SP Bill 6), (“the Bill”) was introduced to the Scottish Parliament by the Cabinet Secretary for Finance, Employment and Sustainable Growth on 1 December 2011. The Bill was accompanied by Explanatory Notes² (SP Bill 6-EN), including a Financial Memorandum, and a Policy Memorandum³ (SP Bill 6-PM). The Explanatory Notes and the Policy Memorandum have been prepared by the Scottish Government.

2. On 7 December 2011, under Rule 9.6, the Parliament agreed that the Economy, Energy and Tourism Committee (“the Committee”) be appointed as the lead committee to consider and report on the general principles of the Bill at Stage 1.⁴

Purpose of the Bill

3. The Bill proposes to reform and restate the law on the registration of rights to land in the Land Register; to enable electronic conveyancing and registration of electronic documents in the Land Register; to provide for the closure of the Register of Sasines in due course; to make provision about the functions of the Keeper of the Registers of Scotland; to allow electronic documents to be used for certain contracts, unilateral obligations and trusts that must be constituted by writing; to provide for the formal validity of electronic documents and for their registration; and for connected purposes.

¹ Land Registration etc. (Scotland) Bill. Available at: http://www.scottish.parliament.uk/parliamentarybusiness/Bills/44469.aspx
² Land Registration etc. (Scotland) Bill, Explanatory Notes. Available at: http://www.scottish.parliament.uk/S4_Bills/Land%20Registration%20etc.%20(Scotland)%20Bill/Ex_Notes_and_FM.pdf
³ Land Registration etc. (Scotland) Bill, Policy Memorandum. Available at: http://www.scottish.parliament.uk/S4_Bills/Land%20Registration%20etc.%20(Scotland)%20Bill/Policy_Memo.pdf
⁴ S4M-1519 Bruce Crawford on behalf of the Parliamentary Bureau: Designation of Lead Committee
Committee consideration

4. The Committee agreed its approach to evidence-taking on 14 December 2011 and took evidence at 5 meetings. Extracts from the minutes of the oral evidence sessions are attached in Annexe C and the written evidence and extracts of the Official Reports of the oral evidence sessions are attached in Annexe D. The Committee would like to express its thanks, both to those who submitted written evidence, and to those who took part in the oral evidence sessions.

5. The Committee issued a call for evidence on 15 December 2011 and received a total of 34 written submissions.
BACKGROUND TO THE BILL

6. The Land Register of Scotland was established under the Land Registration (Scotland) Act 1979 (c 33) to replace and improve upon the Register of Sasines, which has been in use since 1617 for the registration of deeds relating to land. The Land Register was brought into operation in phases across Scotland and, since 1 April 2003, has applied throughout the country. The Register of Sasines is, however, still in use for certain classes of deed.

7. In 2002, the Keeper of the Registers of Scotland, with the agreement of Scottish Ministers, invited the Scottish Law Commission (SLC) to review the law of land registration in Scotland. The SLC issued three discussion papers on land registration. The first on Void and Voidable Titles, the second on Registration, Rectification and Indemnity and the third on Miscellaneous Issues. The SLC project culminated in the publication of its Final Report on Land Registration including a draft Land Registration (Scotland) Bill, in February 2010. The policy in the Bill as introduced to the Scottish Parliament follows closely the policy in the Bill explained in the SLC report, though there are some differences of detail.

The consultation process

8. A formal public consultation process was carried out by the Registers of Scotland (RoS) in 2010. Prior to this the Scottish Law Commission (SLC) carried out a consultation process, which is contained in Appendix B of its report. The RoS consultation was based on the draft Bill in the SLC report and contained a number of questions. It was circulated to representative bodies of the legal profession, key lenders and representative bodies within the lending industry, a number of government bodies, all Scottish local authorities and all Scottish university law schools. The primary distribution list of consultees is available on the RoS website. The consultation was also advertised in the Journal of the Law Society of Scotland.

9. A total of 71 responses were received. Of those, 29 answered only the questions that pertained to electronic registration and conveyancing, whilst the remaining 42 responses varied in the questions that they answered. A minority of respondents addressed the questions relating to the completion of the Land Register, such as the requirement for first registrations, the introduction of voluntary registrations and the closure of the Register of Sasines. Responses to those questions indicated there was strong support for the completion of the Land Register.

10. A minority of respondents answered the questions on the effect of registration, rectification of inaccuracies and the state guarantee of title. Of those that responded there was strong support for aligning the consequences of registration in the Land Register with the normal rules of property law and for a duty on the Keeper to rectify all inaccuracies in the Land Register which come to

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5 http://www.legislation.gov.uk/ukpga/1979/33/contents
7 http://www.scotlawcom.gov.uk/publications/reports/2010-present/
8 Registers of Scotland: www.ros.gov.uk
light. The proposals to adjust the state guarantee of title to make it less likely that a “true” owner would be deprived of title to his or her property were particularly popular, with 21 out of the 23 respondents (91%) expressing their support.

11. The least popular proposal was that of permitting Keeper-induced registrations. Eleven out of 23 stakeholders responding to the main question on this topic (48%) were supportive; four were opposed (17%); and eight (35%) left the question open.

12. A stakeholder event was held in Edinburgh in June 2011 and further events were held in Edinburgh, Glasgow and Aberdeen in November 2011. In 2011, RoS conducted a Scottish Firms Impact Test with 10 Scottish firms to discuss the impact of the proposed Bill on their businesses.

13. The Economy, Energy and Tourism Committee considers that the Scottish Government’s consultation on the proposals contained within the Bill has been acceptable, with the exception of a new offence created by section 108 on which we comment later in the report.

14. We note the extensive consultation by the Scottish Law Commission which preceded the Bill.
Policy intention

15. A key policy aim of the Bill is the completion of the Land Register. The Policy Memorandum states that “Currently, approximately 55% of title holdings in Scotland are registered in the Land Register. However, this only equates to around 21% of the land mass”, and that “Although Land Register coverage continues to grow, total coverage is unlikely to be completed without legislative change.” The Bill provides a statutory framework for the continuation and improvement of the land registration system in Scotland.

16. The Bill contains several provisions aimed at achieving the completion of the Land Register. These include the eventual closure of the Register of Sasines and 3 ways to increase first registrations of titles in the Land Register: increased triggers for first registration; a power to remove the Keeper’s discretion to refuse voluntary first registrations; and a power that will allow the Keeper to initiate registration of any unregistered property without an application being made.

17. It also makes amendments to the Requirements of Writing (Scotland) Act 1995 to permit all types of land deed and contracts for the sale of land (known as missives) to be in electronic form, subject to safeguards. It provides a new legislative basis for electronically valid documents and allows for registration of those documents in any register the Keeper controls.

18. The other main areas of the Bill are: the introduction of a system of advance notices to replace the letters of obligation currently granted by solicitors who act for the seller of land; registration of a title that is definitive in nature and extent and backed by a state guarantee; provisions for the rectification of errors; the introduction of a new statutory offence; a withdrawal and amendment procedure; shared plot title sheets; a new procedure in relation to prescriptive claims; registration of deeds affecting registered leases; provisions for fees; consultancy and other powers.

Completion of the Land Register

19. There was overwhelming support from witnesses for a Land Register that is reliable, secure and accessible and for the eventual closure of the Register of Sasines. However, although the Committee heard that the policy aim of a complete register was desirable, there were questions raised about whether or not this was possible to achieve within a reasonable time frame or indeed at all. It is clear to the Committee that transaction-based applications alone are not enough to complete the Register.

20. The Committee considered how, and to what extent, the proposed new powers for increasing registrations would work. The Bill contains four strategies to accelerate the registration process and to complete the Register. Firstly, all

9 Land Registration etc. (Scotland) Bill, Policy Memorandum. Available at: http://www.scottish.parliament.uk/S4_Bills/Land%20Registration%20etc.%20(Scotland)%20Bill/Policy_Memo.pdf
transfers and not just those arising from a sale will induce first registration. Secondly, deeds which create encumbrances on land, and in particular securities (mortgages), will, in due course, trigger first registration of the land to which they relate. Thirdly, the Keeper will continue to accept ‘voluntary’ first registrations and may, if Ministers so decide, lose discretion to refuse such registrations. Fourthly, the Keeper can register land without the consent or co-operation of the owner.

21. Graeme McCormick of Conveyancing Direct detailed the impact that extra fees and costs triggered by a first registration could have on those who wish to remortgage. He asked for clarification of whether there would be one charge and if it would be on the value of the property—

“If we are to have mandatory land registration of a title on a remortgage, we must consider whether there will be a charge according to the value of the property or just a single payment regardless of the value of the property. That obviously affects the economics and the all-in charges that are likely to be made”.

22. In oral evidence to the Committee, the Minister for Energy, Enterprise, and Tourism indicated that at present fees for all registrations are set on a scale which does not reflect the time and work that the Registers of Scotland undertake for land registrations. He indicated that the Bill seeks to rectify this. He said—

“…fees are based on a scale; they are not based on the actual cost of the work required for an application. The first registration of title of a large landholding of several thousand hectares in Scotland would require the keeper to do a considerable amount of work, and the cost to the keeper might far exceed the fee that the keeper is entitled to receive for that work.”

23. The Committee heard that, as the Registers of Scotland is self-funding, if fees are to be reduced in one area then they would have to be raised in another. Gavin Henderson of the Registers of Scotland confirmed that “time and line” fees would be considered as an option in the proposed consultation. He said—

“As you know, the fee power in the bill is subject to affirmative procedure, and ministers will want to consult stakeholders on what an appropriate level would be before moving to time-and-line charging for only some-if any-properties.”

Voluntary registrations
24. Section 27 of the Bill provides for application for voluntary registration. By continuing to allow the Keeper to accept voluntary registration the aim of the Bill is to assist in the acceleration of land registration coverage. There was widespread support in both written and oral evidence for this provision in principle. However, the Committee heard from a number of witnesses that for it to have the necessary

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12 Official Report, 8 February 2012, Col 952.
13 Official Report, 8 February 2012, Col 957.
impact there should be a reduced fee for voluntary registration. Ross Mackay of the Law Society of Scotland held this view—

“If we ask the public to register voluntarily and then hit them with a big fee in the process, their response will be, “Thanks, but no thanks.””\(^{14}\)

25. A number of witnesses shared this view, including Richard Blake of Scottish Land & Estates Ltd who told the Committee that a reduced fee procedure was in operation in England and Wales—

“I suspect that that is an area in which there might be discussion about an application fee and whether encouragement should be given. I think that that is the case in England and Wales, where the fee for application for voluntary first registration is pretty low, to encourage people to get land on to the register.”\(^{15}\)

26. The Committee heard that for those who own a lot of land the level of voluntary registration costs act as a disincentive. Tom Axford told the Committee that this was an issue for Scottish Water—

“We are moving to voluntary first registration for selected key sites. At the moment, the issue with that is the fees and costs that are involved, which we need to balance up.”\(^{16}\)

27. In supplementary evidence the Keeper, Sheenagh Adams, confirmed to the Committee that currently the fee for voluntary registrations is the same as the fee for trigger-induced registrations. However, she indicated that the level of fees was a matter for Scottish Ministers, who would be consulting on this issue. She said—

“Fees are set by Scottish Ministers and are prescribed by the Fees in the Registers of Scotland Order 1995 (as amended) ... Ministers will be considering and consulting on whether this remains the appropriate feeing mechanism when they next consider making a Fee Order.”\(^{17}\)

28. The Committee appreciates that voluntary land registration is a key part of the policy aim of increasing the amount of registered land and towards the eventual completion of the Land Register. Given that the Registers of Scotland currently has reserves of approximately £75 million, we ask the Scottish Government to consider possible ways of incentivising voluntary land registration, such as the introduction of reduced fees in more complex cases.

**Keeper-induced registrations**

29. Section 29 of the Bill provides for Keeper-induced registration. This provision gives the Keeper the power to register land without an application from, or the consent of, the landowner. The Committee was told that the main purpose

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\(^{14}\) Official Report, 11 January 2012, Col 748.  
\(^{15}\) Official Report, 18 January 2012, Col 830.  
\(^{16}\) Official Report, 18 January 2012, Col 830.  
\(^{17}\) Registers of Scotland, supplementary written submission, Annex E, page 5.
of the inclusion of this section is to register land that would perhaps not ordinarily be registered and thereby achieve a complete Land Register.

30. There were a number of concerns raised in evidence about the cost implications for landowners and the proposal for land to be registered without the landowner either being notified beforehand or giving their consent. There was also concern that a landowner could be asked to pay for a re-registration which they had not requested and may not want.

31. Some witnesses requested clarification on whether a fee would be charged for this type of registration. Andy Wightman told the Committee that the issue of who paid should depend on the circumstances. He said—

“If the public interest is in registering the land, the keeper should substantially pay. However, the owner should not be exempt. As a consequence of registration, the owner will get a much better title that is guaranteed by the state. That is incredibly valuable to have, in comparison with the quality of titles that some people have. It is therefore only fair that owners should pay something. However, sending somebody a bill for something that they did not ask to be done is in a sense a political problem.”

32. In oral evidence to the Committee, Richard Blake of Scottish Land & Estates Ltd indicated that even if there were no fees associated with a Keeper-induced registration the landowner would still incur legal costs checking that the title received from the Keeper was correct. He requested clarification on the fees issue and on how the process would work, stating—

“As far as I can see, the bill neither says anything about when the keeper has to inform a landowner that a keeper-induced registration has taken effect, nor sets out the period for raising what we might call an objection or appeal against the certificate as issued. Will the keeper be under an obligation to deal with any queries that the landowner makes after a keeper-induced first registration certificate has been issued? All those practical issues need to be seriously addressed.”

33. In oral evidence to the Committee the Keeper confirmed that there were no plans for reimbursement of the legal costs incurred by landowners checking their land certificate was accurate, whilst acknowledging that this was not an unreasonable thing for landowners to do. She said—

“… the effort and investment that a landowner wanted to put into checking the outcome of a keeper-induced registration would be their choice.”

34. The Minister for Energy, Enterprise and Tourism reiterated this view in his evidence to the Committee. He said—

“There can therefore be considerable benefits to a landowner in a keeper-induced registration, a voluntary registration or a first registration, because

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they will then have a clear title that is based on the Ordnance Survey map and which, in most cases, is registered with the keeper without exclusion of indemnity, and so can be used for securitisation purposes.\textsuperscript{21}

35. In oral evidence to the Committee the Keeper outlined a proposal to be put to Scottish Ministers to use Keeper-induced registrations over a 5-10 year period to register “research areas”, which were expected to be a quite cheap and easy method of getting a lot of titles on to the Land Register. She said—

“Over the years, we have done a lot of pre-mapping in research areas ... We think that something like 720,000 titles in those research areas are not yet on the land register ... We will be looking into the cost of that, and talking about it to the minister.”\textsuperscript{22}

36. In supplementary evidence to the Committee the Keeper stated that concerns regarding costs to landowners was something that had been considered and a commitment had been made that Keeper-induced registrations would not be carried out in the lifetime of this Parliament—

“This concern has been recognised by the Minister and the Keeper and a commitment has been given that RoS will not carry out any Keeper-induced registrations during the lifetime of this Parliament. Given this, we do not consider this option should be progressed further at this time.”\textsuperscript{23}

37. This was in contrast to the oral evidence that the Minister for Energy, Enterprise and Tourism gave, where he restricted this commitment to large and complex land titles only—

“In particular, there will be no keeper-induced registration of large and complex land titles in this parliamentary session.”\textsuperscript{24}

38. It is unclear to the Committee, partly as the detail will follow in subordinate legislation, whether there will be a fee for Keeper-induced registration. We therefore ask the Minister to make the Scottish Government’s intentions clear during the Stage 1 debate.

39. The Committee is unclear how the Keeper can achieve the inclusion of research area titles within the Land Register when it would appear that Keeper-induced registrations have been ruled out in this Parliamentary session and how this approach would be consistent with a priority of completing the Land Register. The Committee would appreciate clarity on this and on how prescriptive Ministers intend to be in making decisions on Keeper-induced registrations. We therefore recommend that the Scottish Government clarify when it intends to begin Keeper-induced registrations and also how they will work in practice.

\textsuperscript{21} Official Report, 8 February 2012, Col 954.
\textsuperscript{22} Official Report, 25 January 2012, Col 867.
\textsuperscript{23} Registers of Scotland, supplementary written submission, Annex E, page 6.
\textsuperscript{24} Official Report, 8 February, Col 949.
First registrations
40. The Committee is aware of the crucial importance of the first registration of land as it determines the quality of the Land Register. The Committee has heard evidence from witnesses expressing their unhappiness with what is seen as the low quality of first registrations.

41. The Council of Mortgage Lenders highlighted in their written submission that they are concerned about the time that it takes at present for first registrations and the possible increased risk to solicitors of any such delays. It said—

“From the perspective of our members the main interest which they will have in this matter will to be ensure that Standard Securities granted in their favour as security for lending which they have provided are registered as quickly as possible in the Land Register and there are no delays which could expose our members to additional risk ... The speed of registration in Scotland compares unfavourably with that in England and Wales, particularly on a first registration and this is an area which in our view needs to be addressed.”

42. The Committee heard from the Keeper that the time for first registrations may increase as some of the first registrations prompted by the new triggers were expected to be complex and time consuming, which would have resource implications for the Registers of Scotland. She said—

“The bill provides for additional triggers that will bring in more registrations- we estimate that it will be about 7,000 a year from the new triggers ... Many of the titles that still have to come on to the land register will be fairly complex, because the easy stuff has been sold and transacted on.”

43. The Committee considers that the powers contained within the Bill for increasing land registration will assist in securing the desired objective of a complete Land Register. The Committee appreciates that these powers will have significant resource implications for the Registers of Scotland and therefore asks the Scottish Government to consider how they can be implemented to ensure the correct balance is struck between incentives, fees and costs to the Keeper.

Fees
44. Section 106 provides Scottish Ministers with the power to set fees for registration. Subsection 106(2) allows different fees to be set for different types of application, for example reduced fees for electronic applications or voluntary registrations.

45. In the Financial Memorandum it states that the cost of first registrations for dispositions for no value and notices of title is expected to be around £2.34 million, but that the Registers of Scotland do not intend to recover these costs through increases to fees—

25 Council of Mortgage lenders, written submission, page 1.
“The net increase in the annual cost of registering these applications has been assessed to be around £2.345 million … RoS will seek to cover the cost of this through efficiency gains from new systems and processes and not from fee increases.”

46. The Committee heard that some practitioners had serious concerns about current and future fees, in particular the proposal for “time and line” fees for complex registrations.

47. Fiona Letham of Dundas & Wilson told the Committee of her concerns. She said—

“We do not support any move to increase fees. A number of our clients who deal with property in England are surprised to find that the fees for registering high-value properties in Scotland are significantly—indeed, 10 times—higher than they are there … I have to say that, with regard to complex transactions, I am concerned about proposals to allow the keeper to charge on a time-and-line basis rather than according to a scale.”

48. In its written submission, the Scottish Property Federation highlighted the higher fees at present in Scotland compared to England and Wales and say this could be a disincentive to investment. It stated—

“An additional point we would make here is the significant difference between Registration fees north and south of the border where Scottish Land Registration fees are sometimes considerably higher than their English counterparts. The maximum Scottish fee is some £7,000 whereas in England HM Land Registry charge at a maximum £920 for properties in excess of £1mn.”

49. The Committee was told that the increase in fees could also have a disproportionate impact on the time and cost of a re-mortgage application. Kenneth Swinton of the Scottish Law Agents Society indicated that any fees need to be proportionate and not slow down the process—

“Our concern about fees relates to a situation in which a title is at present in sasines and the owner wishes to remortgage. Under the bill, that might be a trigger event, depending on whether those particular provisions are activated, and we doubt whether it is proportionate to increase the costs of a remortgage transaction for those who remortgage and slow the transaction down by requiring a first registration”.

50. The Committee notes the level of fees is to be dealt with in future subordinate legislation. It believes that the level of fees set is central to the success of completion of the Land Register. The Committee considered 2
issues: the level of fees in general and the fees incurred due to new triggers and powers in the Bill.

51. The Committee believes that the setting of fees will have an impact on land registration and that, if these are set too high, this could act as a disincentive. There is a balance to be struck between the benefit of registration and the cost to the Keeper. The Committee notes the particular proposal to move to “time and line fees” that are not necessarily limited to the value of property and asks the Minister to clarify the Scottish Government’s position during the Stage 1 debate.

Ability to cope with the expected increase in registrations

52. Concerns were expressed about the ability of the Registers of Scotland to cope with the increase in first registrations, estimated as “an additional 7,000 applications per annum”, resulting from the drive to complete the Register.

53. In oral evidence to the Committee the Minister for Energy, Enterprise and Tourism provided assurances that he was confident that the measures that theRegisters of Scotland had put in place were sufficient to cope with the increased workload. He said—

“… we are confident that the keeper has the capacity to deal with the workload in the times ahead. She is also building up capacity to cope with that, in particular the complex work that is required in relation to examination of title.”

Timeframe and target

54. Whilst there was a clear view that there would be economic benefits to consumers as well as to public and private bodies in having an accurate and complete Land Register, there were conflicting views on whether or not an accelerated programme to complete the Register should be undertaken. Andy Wightman told the Committee that any proposed acceleration must take account of the cost. He stated—

“If you want Registers of Scotland to continue to be a self-funding organisation that does not receive any public money, a balance must be struck between the demands on its time, the costs to those who are paying fees for the registration of titles and public demand for that information …”.

55. The Committee also heard conflicting views on whether or not a target date for completion of the Land Register should be set. Andy Wightman told the Committee that it would be “highly beneficial” whilst Iain Langlands of the Royal Institute of Chartered Surveyors (RICS), thought that “… a target must be in there, or the aspiration simply will not be achieved.”

31 Financial Memorandum, paragraph 405.
32 Official Report, 8 February 2012, Col 960.
33 Official Report, 18 January 2012, Col 808.
34 Official Report, 18 January 2012, Col 812.
56. In contrast, Ann Stewart, of the Scottish Property Federation told the Committee that, whilst completion was welcome, it should not be at the expense of businesses continuing to be able to transact swiftly and efficiently. She said—

“It would be quite dangerous to set a target date for this work: instead, it should be phased in sensibly with some easy wins that can be made without too much disruption and within Registers of Scotland’s resourcing capabilities.”

57. In oral evidence to the Committee the Keeper, whilst not in favour of the proposal to include a target date within the Bill, did agree that placing duties on either Ministers or public bodies to meet a target date was “perfectly feasible and reasonable”. She said—

“There can be advantages and disadvantages in having targets. If they are in the bill, disadvantages could arise if things go wrong and the targets are not met. Furthermore, not enough research has been done into what a reasonable target might be, and into the balance between cost and advantage.”

58. The Committee agrees that maintaining one land register is a more efficient system. Given the very slow progress of land registration since the 1979 Act was introduced, the Committee recommends the setting of a target and interim targets, even if aspirational, on the face of the Bill.

**Accuracy of the Land Register**

*Use of Ordnance Survey (OS) maps – scale*

59. Section 2(b) of the Bill provides that the Land Register is to include “the cadastral map”. Section 11(5) indicates that the cadastral map “must be based upon the base map” and section 11(6) proposes that “the base map” is “(a) the Ordnance Map or (b) another system of mapping, being a system which accords with such requirements as the Scottish Ministers may, by order, prescribe”.

60. Currently, the plans used in the Land Register are based on the Ordnance Map, and while section 11 of the Bill allows the Keeper to change providers, the Committee heard from a number of witnesses that this is not something which is likely to happen in the near future due to costs and the lack of an alternative provider.

61. In evidence to the Committee a number of concerns were expressed about the scale and accuracy of the Ordnance Survey maps used and the Keeper’s reliance on them for land registration.

62. In oral evidence, Gary Donaldson of Millar & Bryce indicated that there were ongoing issues with the scale of the Ordnance Survey maps. He said—

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38 Land Registration etc. (Scotland) Bill, page 5: http://www.scottish.parliament.uk/parliamentarybusiness/Bills/44469.aspx
“Ordnance Survey has invested heavily and is improving the accuracy of the maps, but there is an inherent problem with the scale of data capture. That is not necessarily the keeper’s problem.”\(^{39}\)

63. A number of witnesses outlined problems encountered due to the larger scale used for mapping rural areas. Ross MacKay of the Law Society of Scotland told the Committee that in rural areas the tolerance level was greater than in urban areas 1:5,000 and that this “will inevitably lead to disputes.”\(^{40}\)

64. This was a view echoed by Ken Swint of the Scottish Law Agents Society who told the Committee that the scale of mapping for the Highlands area was even worse: “The mapping in Highland areas is done on a scale of 1:10,000”\(^{41}\)

65. Alan Cook of the Scottish Property Federation told the Committee that the increase in the development of wind farms requires rural areas to be mapped to a greater degree of accuracy. He said—

“The problem has arisen particularly because of the increasing appearance of wind farm developments in rural areas. Suddenly, we need a more precise level of detail in the mapping in order to understand the boundaries of ownerships, but Ordnance Survey is not performing the necessary function to enable us to achieve that.”\(^{42}\)

66. The difference between physical and property boundaries was explained by Graham Little of the Ordnance Survey—

“... Ordnance Survey maps show not property boundaries—that work clearly falls within Registers of Scotland’s expertise, not ours—but physical features on the ground that might or might not be property boundaries ... the Ordnance Survey map is a map of topography, not a map of title”.\(^{43}\)

67. In oral evidence to the Committee, John King from the Registers of Scotland accepted that there were issues in relation to the scale of Ordnance Survey maps, especially maps of rural areas. He stated—

“We have more of a challenge in mountain and moorland areas, which are covered on the 1:10,000 map. Figures from Ordnance Survey suggest that only about 1 per cent of titles in Scotland are affected by the 1:10,000 scale map, so although it covers a significant landmass, the impact on property titles is more contained. That is helpful to us because it means that we can take a more involved approach to mapping in those areas.”\(^{44}\)

Supplementary plans

68. As a direct result of the scale of the maps being used by the Keeper, disputes are arising between landowners. Ross MacKay of the Law Society of

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\(^{40}\) Official Report, 11 January 2012, Col 752.
\(^{41}\) Official Report, 11 January 2012, Col 755.
\(^{43}\) Official Report, 18 January 2012, Col 799 and 807.
\(^{44}\) Official Report, 25 January 2012, Col 862.
Scotland told the Committee that this is especially the case in urban areas. He said—

“Regrettably, there is an issue with the scale of the plans that are used by the registration system. The smallest scale is 1:2,500. As is made clear, there is a tolerance level of plus or minus 0.3m or 0.4m ... That tolerance level—which is used by Ordnance Survey maps—can be enough to trigger disputes”.

69. Other witnesses reiterated this view with Ken Swinton of the Scottish Law Agents Society suggesting that more use be made of supplementary plans—

“The underlying mapping is the issue. In some cases, the answer would be for the keeper to use supplementary plans drawn from the title deeds.”

70. One possible option is for rural land to be mapped in more detail in individual cases. In oral evidence to the Committee the Keeper explained that this is done when required. She stated—

“Where we are not happy with the scale of mapping in rural areas, we have the facility to get Ordnance Survey to go out and map the area to a more detailed scale. We can also send out our own surveyor to look at issues on the ground if we cannot get the information that we need to make an accurate registration.”

71. Graham Little of the Ordnance Survey confirmed that they can provide supplementary information if there is a request to do so—

“Where there is a requirement for land registration, Registers of Scotland will often commission us to supply that information. I am speaking about small items of change that may not be relevant to many map users, but may be relevant to land registration.”

Technological advancements in surveying methods

72. Due to advances in technology it is possible to survey land to a greater level of accuracy than the OS maps provide. This point was accepted by Graham Little of the Ordnance Survey who explained that ideally the OS maps would be aligned with modern accuracy standards, but that costs and resources were an issue. He said—

“Ordnance Survey has been collecting data for many decades—indeed, one could say centuries—and our customers have been using that information for a similar period. We do not have the luxury of being able to wave a magic wand and suddenly bring everything up to modern specifications for positional accuracy.”

49 Official Report, 18 January 2012, Col 800.
73. A specific issue with the OS maps is that, being mapped on a horizontal plane, they do not always correspond to the measurements on the ground. One way of overcoming this difficulty would be to include the actual measurements on the title plan in the Land Register. Graham Little, Ordnance Survey, agreed that this was a possibility—

“It is quite possible, of course, to put the true measured dimension in the title, if there is a desire to do so, should there be a radical difference between the horizontal and the true slope distance.”

74. John King of the Registers of Scotland acknowledged the need to include new technologies “and think about how we apply them to the Ordnance Survey map to supplement what is already there.”

75. The Keeper indicated that any improvements to mapping would lead to increased costs for the consumer. She said—

“Ministers set the level of fees that we can charge and we must balance our books year on year, although there are no annuality issues. The cost of any improvements would be passed on to the users of the service.”

76. The Minister indicated that he was aware of mapping issues raised, in particular mapping of rural areas and indicated that a working group had been established to consider how to improve maps used by the Keeper. He said—

“The keeper has therefore recently set up a mapping group with Ordnance Survey, the RICS and the Law Society to deal with mapping issues …I have given you our broad response, but we are happy to work further with the committee on this important and complex issue to ensure that we serve rural Scotland as we do urban Scotland.”

77. The Committee heard that a lot of disputes happen because there are not always maps associated with titles in the Register of Sasines and that this will not be the case in the future when only the Land Register is used. Ross MacKay of the Law Society of Scotland told the Committee that—

“… the difficulty at the moment is that many titles are based on old sasines, which have no maps at all”.

78. Despite the shortcomings of the Ordnance Map, the Committee accepts that, due to cost implications and the lack of a suitable alternative, it will continue to be used by the Keeper. It is clear that maps are a key part of the information kept and are not being used simply as “reference material”. The Committee feel that if there is to be confidence in the content of the Land Register, it is essential that it contain the most accurate and reliable

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53 http://www.ros.gov.uk/professional/registration/plans_working_group/index.html
54 Official Report, 8 February 2012, Col 972.
information possible and therefore it asks that the Keeper take all necessary steps to ensure that the information is both accurate and reliable. Although there are continuing issues with the scale of the maps, the Committee is of the view that there are steps that the Keeper should take, such as taking a more involved approach to mapping mountain and moorland areas, making more use of supplementary plans as well as the facility to map rural areas in more detail, to increase confidence in the mapping information in the Register.

79. The Committee recommends that supplementary plans, where they provide more accurate mapping information, should be used as a matter of course. This should include maps from the Register of Sasines when property switches from it to the Land Register. Plans on Sasine deeds which are to a larger scale than the OS map should be routinely preserved and appear as supplementary plans on the title sheet.

80. The Committee is concerned that the mapping of rural areas to a larger scale is continuing to cause difficulties and disputes and therefore recommends that the Keeper use supplementary plans and map rural areas to a greater degree of detail as much as possible.

81. The Committee also recommends that the Keeper, as a matter of course, include the dimensions of the map on the title deed where there is a marked difference between the horizontal and the true slope distance.

82. The Keeper should also take all necessary steps to include the use of the latest technology to ensure accuracy of the Land Register.

83. Property on the Land Register is to continue to be identified by means of a plan. As there is no longer a requirement for that plan to be based on the Ordnance Map, the Committee recommends that the Keeper should be proactive in continuing to seek better mapping methods and alternatives.

84. The working group on mapping issues is asked to take the Committee’s mapping recommendations into consideration in its deliberations on how to improve the mapping information within the Land Register. The Committee also asks the Scottish Government to provide feedback on the progress of the working group as soon as possible.

Electronic conveyancing and documents

85. The Registers of Scotland Annual Report and Accounts 2010/11 state that: “Effective IT remains key to RoS operating effectively and providing improved services to customers.”\textsuperscript{56} Section 95 of the Bill provides Ministers with the power to “make provision to enable the recording or registration of electronic documents in any register under the management and control of the Keeper.”\textsuperscript{57}

\textsuperscript{56} http://www.ros.gov.uk/pdfs/ar_1011.pdf
\textsuperscript{57} Land Registration etc. (Scotland) Bill, Section 95. http://www.scottish.parliament.uk/parliamentarybusiness/Bills/44469.aspx
ARTL – Automated Registration of Title to Land

86. In December 2004, the Registers of Scotland entered into a 10 year partnership with BT to provide IT services. In 2007 they introduced Automated Registration of Title to Land (ARTL), a system of electronic registration designed to make registration “quicker, more efficient, and cheaper”. Whilst support for the move to the use of electronic documents and conveyancing is clear, witnesses raised a number of issues about the ARTL system.

87. A number of witnesses questioned whether ARTL was “fit for purpose”. Ian Ferguson of the Scottish Law Agents Society thought that a new system was needed. He said—

“Things such as remortgage transactions are being covered. It is almost not being used for any other purpose: buying and selling is a dead duck at present because the system is not, in my view, fit for purpose. It needs to be changed because it is a mess and it is not working properly. It is too clunky and difficult to work with”.

88. This view was shared by Ross Mackay of the Law Society of Scotland who said—

“Such a system will require robust IT systems. Individual solicitors will have their own systems, and that is fine, but Registers of Scotland’s IT system is not adequate at the moment … a new system has to be created. When it is ready and it is as simple to use as paper, practitioners will use it.”

89. Others told the Committee that they did not use ARTL at all as it did not cover enough transactions and was not robust enough. Fiona Letham of Dundas & Wilson told the Committee—

“Because it can be used only on rare occasions, it does not speed up the process, due to unfamiliarity and issues that I have heard about that result from information technology capability not being robust enough”.

90. In oral evidence the Keeper told the Committee that ARTL was fit for “some purposes”, whilst acknowledging that uptake had been lower than anticipated. She stated—

“ARTL was designed to be used primarily for relaying and discharging of standard securities when the remortgage market was at its height ... so the business that it was designed to cover is no longer there, which explains why the number is reduced.”

91. In supplementary written evidence, Registers of Scotland provided information on the number of applications processed through ARTL, by type of

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58 [http://www.ros.gov.uk/artl/what_is_artl.html](http://www.ros.gov.uk/artl/what_is_artl.html)
63 Registers of Scotland, supplementary written submission, Annex A.
application. This showed that, from 2007 to 2011, from a total of 52,412 applications, only 1,804, or 2% of the total, were for dispositions (i.e. for transfers of land). The table below provides more information.

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92. The Financial Memorandum states that moving to electronic registrations should reduce costs to solicitors. The Committee heard that this should then in turn reduce costs to consumers. However, this assertion was questioned in oral evidence by John Scott of the Law Society of Scotland. He said—

“… for most transactions, by far the biggest outlay that the buyer will make is payment of the stamp duty land tax.”

93. In written evidence to the Committee, Registers of Scotland indicated that it was their intention to continue using the digital signature aspect of ARTL and provided costs of the full system to date—

“The costs are set out for the ARTL system and the Public Key Infrastructure (PKI) electronic signature system that underpins it. RoS considers that the PKI system for ARTL will be capable of being substantially re-used for any successor system … **Total costs** are £6,663,816.”

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64 Official Report, 11 January 2012, Col 766.
65 Registers of Scotland written evidence.
Consumer confidence

94. Both oral and written evidence raised questions as to the ability of Registers of Scotland to provide a robust IT system. In a written submission First Scottish Group warned that—

“The changes required to allow all the proposals in the Bill to be implemented are very significant and on the evidence to date it seems highly unlikely that the Keeper will be in a position to provide a robust system.”

95. In a recent report, the Auditor General cautions about the “continuing uncertainty” of IT projects between Registers of Scotland and their IT provider through the Strategic Partnership Agreement (SPA) and recommends a regular review process. He said—

“The auditor has accepted the results of the impairment review but has identified that the future of some projects being developed under the SPA remains uncertain and has recommended that another specific project designed to provide automated registration of title to land is regularly reviewed to ensure RoS continue to value it at an appropriate level.”

96. In answer to the question “how the conveyancing community can have confidence in the systems that the Registers of Scotland develops?”, the Keeper told the Committee that—

“The current IT director took up his place last summer and he is creating a team that will have the skills to develop or commission the systems that we need. We are also in discussion with our current supplier about changes to the contract, where it goes, and whether it lasts for the full 10 years ... As keeper, my concern is to ensure that the organisation has a proper intelligent client function so that, in future, we get systems that people are desperate to use, love using, and offer real value for money.”

Future IT system

97. There were a number of criticisms from practitioners that the consultation was not wide enough and that there was not enough testing of the ARTL system prior to its introduction. The Committee heard that for any future system lessons needed to be learned from ARTL if “buy-in” from practitioners was to be achieved. Gary Donaldson of Millar & Bryce stressed that an inclusive process would improve any new product. He stated—

“Good stakeholder engagement is essential to ensure that performance issues are addressed as they arise ... Feeding back issues and those issues being addressed are key to ensuring that successful delivery can be scaleable.”

98. This view was shared by others, including Graeme McCormick of Conveyancing Direct, who indicated that consideration should be given to the

66 First Scottish Group, written submission, page 2.
impact on costs to small businesses, and widespread testing undertaken. He said—

“You cannot introduce systems that will cost small businesses an absolute fortune. Any system will have to be compatible and properly stress tested. The problem with ARTL is that-despite what Registers of Scotland will say—it was not properly stress tested. The 10 most active domestic conveyancing firms in the country should be asked to test systems properly in order to ensure that they work in different kinds of transactions”.

99. There was support for both these proposals and whilst safeguards would be paramount witnesses felt that the current ARTL system was safe and seemed confident that any new system would be also. In written evidence, the Scottish Property Federation supported the proposals. However, they cautioned that “it will be important to ensure safeguards and examine lessons to be learned from the ARTL process”.

100. The Committee heard evidence that making the use of ARTL compulsory would exclude lay people from undertaking their own conveyancing, and on this ground rejected this idea.

101. In oral evidence to the Committee, the Minister gave a commitment to explore with the Keeper the issues raised in relation to the ARTL system. He stated—

“I understand that evidence has been given to the committee by solicitors to the effect that the ARTL system has limited application, and that some have said that it is not fit for purpose. In the light of the questions from committee members and the evidence that you have heard, I will ask the keeper to explore further the issues with me, and we will come back to the committee when we have had an opportunity to do that.”

102. The Committee acknowledges the widespread support for the proposal for e-registration and welcomes the opportunity for Registers of Scotland to make registration easier and more accessible. The Committee agrees, however, that the ARTL system in its current form is inadequate for the task and welcomes the Minister’s commitment to discuss the ARTL upgrade with the Keeper.

103. The Committee is concerned that the uptake of the ARTL system has been disappointingly low and believes that to ensure value for money, and the success of any future system, user “buy-in” will be essential. To harness the current enthusiasm for e-registration, the Committee recommends that before the introduction of an upgraded or new system, the Keeper should from the very start of the design process both consult and test widely.

104. The Committee is concerned about the associated risks and costs of the proposed upgraded IT system to support e-registration and would seek

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71 Scottish Property Federation, written submission, page 1.
72 Official Report, 8 February 2012, Col 989.
reassurances from the Keeper that any new IT contract would contain the necessary obligations to protect the public purse from future losses. The Committee agrees with the Auditor General’s view that ARTL be kept under review for value purposes and awaits the outcome of the Public Audit Committee’s inquiry with interest.

Electronic Documents
105. The Bill also allows documents which currently require to be in paper form to be generated and signed electronically. Sections 92-94 amend the Requirements of Writing (Scotland) Act 1995 by providing that, in addition to a ‘traditional’ paper document, it will be permissible to use an electronic document which is signed by means of an electronic signature. Section 96 further allows for the introduction of e-registration in any register under the management and control of the Keeper.

106. The Committee supports the move towards electronic documents as long as the necessary safeguards are in place.

Prescriptive Claimants
107. Section 42 of the Bill aims to put on a statutory footing the Keeper’s current practices and procedures in relation to consideration of a non domino dispositions. The Bill provides that certain conditions must be satisfied. These are—

(a) that for a continuous period of 7 years immediately preceding the date of application the land to which the application relates has not been possessed by the proprietor or by any person in right of the proprietor, and

(b) that the land has been possessed openly, peaceably and without judicial interruption by the disponer or by the applicant for a continuous period of 1 year immediately preceding the date of application (or first by the disponer and then by the applicant for periods which together constitute a continuous period of 1 year immediately preceding that date).

108. There is a further time period of 10 years possession after registration before ownership is conferred and the title guaranteed.73

109. In addition, the Keeper must also be satisfied that the proprietor has been notified of the application or, if no owner can be identified, that the application has been intimated to the Crown.

110. The Committee heard arguments both for and against the inclusion of prescription in the Bill. Current legislation is silent on how a non domino dispositions should be dealt with, and section 42 provides clear rules for the first time which tighten up current practice.

111. The Committee heard arguments both for and against the use of a non domino dispositions. Those from the legal profession were unanimously in favour of provision for such dispositions being included in the Bill. In oral evidence, Ross Mackay of the Law Society of Scotland told the Committee that prescriptive acquisition can be a useful tool for developers. He said—

73 Prescription and Limitation (Scotland) Act 1973, section 1(1).
“It is a useful pragmatic tool for people to be able to go to the keeper and say, “Can we get title to that bit?” so that they can round off the development site-or round off something that has been de facto for many years without causing concern.” 74

112. The Keeper reiterated this view in her evidence to the Committee. She stated—

“Our view is that a non domino titles are a useful tool in property law and conveyancing in Scotland for a variety of reasons, including both the jigsaw that the previous panel talked about and bringing land back into productive use.” 75

113. Others expressed an opposing view telling the Committee that, historically, prescriptive claims had been used to gain land unfairly. In written evidence, Andy Wightman stated that land should not necessarily be given to the first person to make a claim. He said—

“... despite such tightening of the rules, the question remains as to whether such first-come, first-served land seizure is desirable in the first place and whether alternative arrangements should be made to deal with land that has no apparent owner.” 76

Land not possessed for the previous 7 years

114. Many witnesses raised questions about how to prove that land had not been possessed for the required 7 years prior to an application. This would be particularly difficult for those who may not have prior knowledge of an area. Fiona Letham of Dundas & Wilson told the Committee this would impact on developments. She asked—

“... how would a developer be able to prove that an owner had not been there for seven years ... The seven-year requirement could lead to long delays for developments that would otherwise happen and be of great economic benefit.” 77

115. In written evidence, Brodies asked that the 7 year requirement be removed from the Bill. It stated—

“How could one prove that, for example, the verge of a road has not been possessed for 7 years and has been abandoned? ... We would suggest that the requirement to prove 7 years’ abandonment should be removed from the Bill.” 78

116. In oral evidence to the Committee, John King of the Registers of Scotland acknowledged that in some cases providing proof would be challenging. He said—

74 Official Report, 11 January 2012, Col 780.
76 Andy Wightman, written evidence, page 2.
78 Brodies, written submission, page 2.
“It becomes more difficult when somebody who is interested in acquiring an area of land has little knowledge of its history or there is no known history. In such cases, we will be asked what evidence we expect. We recognise that it will be a challenge for us to provide guidelines in those circumstances.”

117. These criticisms, it appears, have been accepted by the Scottish Government. In oral evidence to the Committee, the Minister for Energy, Enterprise and Tourism said that he had listened to the arguments and was minded to remove the requirement from the Bill. He said—

“In the light of the concerns that have been raised, I have decided to remove that particular duty from the bill.”

118. Given the strength of the arguments heard against its inclusion, the Committee welcomes the Minister’s commitment to removing section 42(3)(a) from the Bill.

Land possession for 1 year

119. The Committee heard very little dissent on the proposal for 1 year’s possession immediately prior to an application. Witnesses felt that, on balance, it provided the right length of time to be in possession of land prior to registration.

120. The Committee is of the view that, if a non domino dispositions are to continue to be allowed, then there is a clear need for them to be put on a statutory basis. It is satisfied that 1 year is a sufficient length of time to be in possession of land prior to registration. However, it would recommend that the Registers of Scotland keep this timescale under review and if in practice it was not long enough, we would ask the Scottish Government to consider extending the period by exercising its powers under section 42(8) of the Bill.

Notification

121. Section 44 requires that when there is a prescriptive application the Keeper must notify the proprietor or, if none can be identified, the Crown. This is in addition to the identical obligation imposed on the applicant by section 42(4). There were questions raised about how notification might work. The Committee heard that, if the owner was known, then there should be no need for an a non domino disposition, as the applicant would deal directly with the owner.

Advertising

122. In his written submission, Andy Wightman suggested advertising unowned land to give those who may have a legitimate claim the opportunity to do so. He said—

“All claims to "unowned" land should be lodged with the Keeper and then advertised publicly on the Registers of Scotland website for a minimum period of one year.”

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80 Official Report, 8 February 2012, Col 964.
81 Andy Wightman, written submission, page 3.
123. Gavin Henderson of the Registers of Scotland told the Committee that this was possible as the Keeper has the power to include advertising as a form of evidence that the true owner has been sought. He said—

“In theory, there is no problem with an advertising provision. It would work. The question for the keeper, for registration purposes, would be whether there was evidence that sufficient advertising had been done.”\(^{82}\)

124. Graeme McCormick of Conveyancing Direct supported advertising land as a more transparent approach to acquisition. He stated—

“I see no reason why this could not be advertised. We should be as transparent as possible with these things. We must also remember that the keeper has a general duty of care. I see no reason why, when the keeper gets such an application, she cannot then refer it to the QLTR [Queen’s and Lord Treasurer’s Remembrancer] for his or her comments.”\(^{83}\)

125. However, other witnesses felt that there were already enough checks in place and that advertising was not necessary. Tom Axford of Scottish Water told the Committee that he questioned—

“whether advertisement would be necessary, given the increased checks and balances that are going into the system.”\(^{84}\)

126. John King of the Registers of Scotland cautioned that in certain circumstances advertising could result in competing claims for land. He stated—

“Where there is a contentious development, there will occasionally be somebody who, on the face of it, has a legitimate reason for applying for an anti domino disposition. When the application becomes known locally, it is not unusual for us to receive competing applications for a non domino dispositions. Operationally, that places us in a difficult position, as we cannot adjudicate between them.”\(^{85}\)

127. The Committee heard evidence for and against different forms of advertising. In oral evidence Alan Cook of the Scottish Property Federation thought that a neighbour notification scheme could be used—

“We would not have any problem in principle with a wider process—such as advertising, neighbour notification or putting notices on lamp posts—that would give people the maximum opportunity to put their hands up and say that they had an interest in the area. However, we would have to ensure that it did not stand in the way of what we would regard as reasonable use of the process.”\(^{86}\)

\(^{83}\) Official Report, 11 January 2012, Col 784.
\(^{84}\) Official Report, 18 January 2012, Col 834.
128. Ann Stewart of the Scottish Property Federation cautioned that there would need to be clarity about the purpose of any advertisement. She said—

“We would need to be clear whether the object of the exercise was not to disenfranchise the true owner or whether it was to give anybody who might be interested in having a nice little patch of land, thank you very much, the opportunity to do so. Those are two different matters.”

Buying land from the Crown

129. Another option that the Committee considered was for the Crown to sell the land. The Committee has been advised that there is no such thing as “unowned land” as any land without an owner becomes the property of the Crown. In oral evidence, Ross Mackay of the Law Society of Scotland told the Committee that if a notice went to the Crown it could use it as an “opportunity to treat the land as a “ransom strip and seek compensation for it”.

130. Andy Wightman suggested in oral evidence that the statutory obligations and duties of the Crown could be revised to make its role in relation to land more proactive and transparent. He said—

“We should provide guidance and guidelines, some of which would be to do with the fact that, if there is a public interest in the land, the Crown Office should act as a public body—as the state—and do something proactive with it.”

131. In oral evidence to the Committee, the Minister for Energy, Enterprise and Tourism indicated that he was not in favour of either advertising or auctioning land. He said—

“It [advertising] might also encourage speculative claims that would not otherwise be made … I find the proposal that there should be auctions quite extraordinary. Are we really suggesting that the person with the deepest pockets should be able to claim and secure ownership of land in Scotland?”

132. The Committee agrees that it is not in the public interest for areas of land to lie unused. Land should not be given to the first claimant through prescriptive acquisition as there may be others who have a legitimate interest. Therefore we recommend that the Scottish Government consider the inclusion of a more public process of advertising land when there is an application for prescriptive acquisition. We consider that where multiple claims to land are regarded as having equal merit the general principle should always be that land should be put to the use which creates the greatest benefit to the community. We recommend that the Scottish Government consult on the options for putting this principle into practice.

89 Official Report, 18 January 2012, Col 821.
90 Official Report, 8 February 2012, Col 966.
91 Murdo Fraser and Mike Mackenzie recorded their dissent to this paragraph.
Common land

133. The Committee heard that there is an issue in relation to the public being unaware that they can register common land in Scotland. In his written submission, Andy Wightman says that “as a result it stands vulnerable to prescriptive claims”. In oral evidence he suggested a statutory power for the management of common land resting with local authorities, similar to the procedure in England and Wales. He said—

“I propose a more straightforward means of registering common land as a protective order that says, “We assert that this piece of land is common land. It belongs to the parish and should not therefore be subject to any claim of title until due process has been followed”.”

134. Gavin Henderson of Registers of Scotland told the Committee that the notification provisions within the Bill should avoid any future “hostile takeover” of land. He stated—

“The keeper would have to satisfy herself that the true owner had been notified, which may mean finding out who the common owners are and notifying them. Failing that, if it was reasonable to presume that there was no other owner, the Queen’s and Lord Treasurer’s Remembrancer would be notified. There is a relatively robust process for ensuring that the people who own the land are notified and have the ability to veto the sale, rather than there being-in Mr Wightman’s language-hostile takeover of the edges of common land.”

135. In his written submission Andy Wightman proposes advertising land publicly for a minimum period of 6 months—

“The Land Register recognises commons as a class of property and admits applications for registration from any member of the public residing in the civil parish in which the land is situated. For so long as the application is pending, no other private claims will be entertained by the Keeper. The application will be advertised publicly on the Registers of Scotland website for a minimum period of six months and circulated to the local authority, community councils and published in local newspapers. The publicity should include the name of the claimant and their grounds for the claim, the extent of the land being claimed, a report on investigations into its legal history, and an invitation to lodge rival claims.”

136. The Committee agrees with the objective sought by Mr Wightman, namely the protection of common land. However, the Committee also notes the alternative view that commonties are a form of private land, and that an alternative means of securing Mr Wightman’s objective may be more appropriate. The Committee calls on the Scottish Government to respond to

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95 Andy Wightman, written submission, page 4.
the basic principle that there is a need to achieve legal protection for common land, and examine possible options for achieving this.

137. In particular, the Committee asks the Scottish Government to express a view on:

a) whether there is merit in the Bill being taken as an opportunity to repeal the Division of Commonties Act 1695;

b) whether a duty should be placed on local authorities to identify and register a title to all commonties in the area for which they are responsible; and

c) how each commonty could be held for a public use which is consistent with its nature.

Offence relating to applications for registration

138. Section 108 of the Bill introduces a new offence relating to the content of applications for land registration. The offence is committed where a false or misleading statement is made or material information is not disclosed, and where the accused either knows of the false statement or omission or is reckless as to it. The Committee heard that section 108 had not been part of the Bill as produced by the Scottish Law Commission and had not been consulted upon. In both written and oral evidence, strong arguments were made against the inclusion of this section in the Bill mainly on the grounds of the breadth of the provision, the criminalisation of recklessness, and the offence already being covered by existing legislation.

139. A number of witnesses from the legal profession made clear that in their view the offence was not necessary. In oral evidence Ian Ferguson, Scottish Law Agents Society, told the Committee—

“The policy memorandum acknowledges that a common law crime of fraud is already being used for the matter.”

140. The Law Society of Scotland agreed, adding that the offence was disproportionate. It stated that—

“The Society is of the opinion that the proposed provision is not necessary for two reasons, (1) the current criminal law, both at common law and under statute, is sufficient to prosecute the mischief complained of, and (2) the introduction of this offence is disproportionate to the level of threat presented.”

141. In contrast Integrity4Scotland told the Committee in written evidence that additional measures are required to tackle fraudulent behaviour. It said—

97 Law Society of Scotland, written submission, page 1.
“It would appear that in the past it has been all too easy for an applicant for title registration or their agent to fill in the application form certifying that to the best of their knowledge and belief there is nothing which would prejudice the applicant’s right to have their title registered when evidence exists on the ground which shows that that is not the case.”

142. In oral evidence to the Committee, the Solicitor General for Scotland, Lesley Thomson QC, indicated that the offence was a necessary addition to help tackle serious and organised crime. She said—

“I see the offence in section 108 as another opportunity to add to the existing legislation and offences as part of the effort to disrupt and detect organised criminality … the offence goes further than that, because it includes the element of recklessness.”

143. The Law Society of Scotland also had concerns that the provision was too wide in scope. It stated—

“The concern is that it will possibly affect the innocent solicitor. There is no reference in the section to fraud—it is not mentioned at all—and it boils down to making an arguably misleading statement on a “reckless” basis.”

144. In oral evidence to the Committee, the Minister for Energy, Enterprise and Tourism gave a commitment to look at the scope of the offence prior to stage 2. He said—

“… if there is to be an offence, it must be correctly stated and should not go further than is necessary and appropriate … There are safeguards in section 108 and, if they need to be tightened up, we are happy to look at that.”

145. The Committee heard conflicting views on whether the term “reckless” had a clear meaning in Scots law. In written evidence, the Law Society of Scotland stated that—

“The term is not settled in Scots law, and may differ dependent on the offence pursued.”

146. However, in oral evidence the Minister for Energy, Enterprise and Tourism told the Committee the provision was necessary to combat mortgage fraud in particular and stated that “reckless” is a known and used term. He said—

“… despite the Law Society’s objection to the term or concept of recklessness, it is a well-established part of law.”

147. The Keeper told the Committee that—

98 Integrity4Scotland, written submission, page 3.
100 Official Report, 11 January 2012, Col 774.
101 Official Report, 8 February 2012, Col 987.
102 Law Society of Scotland, written evidence, page 5.
103 Official Report, 8 February 2012, Col 975.
“... section 108 has been included in the bill on the advice of the police force, those who are responsible for dealing with serious crime and the Lord Advocate.”

148. ACPOS provided written evidence that the offence would help it deal with serious organised crime as well as acting as a deterrent. It stated—

“The existence of the new provisions in the Land Registration Bill should also act as a deterrent to solicitors and other professional enablers involved in fraud, where criminality by a client is either known or suspected. By reducing the amount of false or misleading information submitted to the Land Registry, the system would become a more accurate and valuable resource for investigators.”

149. In its written evidence, the Law Society of Scotland highlights that—

“...the proposed wording of Section 108 (1) is not sufficient to give solicitors or other applicants sufficient notice of the types of behaviour, action or inaction which may result in criminal penalties being levied or indeed deprivations of liberty ensuing.”

150. In oral evidence, Fiona Letham of Dundas & Wilson agreed and told the Committee that if the provision were to remain it would need to be tightened up. She said—

“...we have to exercise all due diligence, and we have to take all such steps as could reasonably be taken to ensure that no offence will be committed, but we do not have any guidance on what those steps should be.”

151. The Keeper told the Committee this was not necessary as solicitors would already know what to do to avoid being caught by the provision. She stated—

“I think that solicitors understand what they would have to do, and those who are honest—the vast majority of solicitors in Scotland—will have no problem with the provision ...”

152. In oral evidence to the Committee, the Solicitor General for Scotland, Lesley Thomson QC, indicated that whilst the use of the affirmative procedure to outline guidance to solicitors was a decision for the Minister, she would discuss with the Law Society of Scotland what additional guidance and advice could be provided to solicitors, should the Bill be passed. On the proposal to consult on section 108, the Solicitor General for Scotland stressed how important it is “that every single opportunity is taken to prevent serious and organised criminality” and was therefore not in favour of a consultation on the provisions.

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105 ACPOS, written submission, page 1.
106 Law Society of Scotland, written submission, pages 5.
153. The Committee notes the firm view given by both the Minister and the Solicitor General for Scotland that this new offence is required to combat fraud. However, the Committee also notes the strong objections from the legal fraternity to the inclusion of this offence on the grounds that it is disproportionate, it is unclear what steps solicitors would need to take to avoid committing this offence and that it is unnecessary as the offence is already covered by existing legislation.

154. Whilst the Committee is content that section 108 remains in the Bill, the Committee welcomes the Minister’s commitment to look again at how it is worded and the Committee recommends that the Scottish Government amends the section to make it clear that it relates to fraud and does not cover genuine mistakes.

155. Furthermore, the Committee recommends that the Scottish Government makes the commencement of the powers in section 108 subject to the affirmative procedure in order to allow Parliament the means for further scrutiny and that, in any case, he provides guidance to solicitors on what is expected of them, consults on the section 108 provisions and reports back to the Committee after the consultation has been completed.

156. Should the Parliament decide that the new offence is to remain in the Bill, the Committee recommends that the Scottish Legal Complaints Commission be asked to provide statistics on land registration offences in its annual report.

Duty to take reasonable care

157. Section 107 of the Bill provides the Keeper with the power to claim compensation if the Register was to contain inaccurate information as a result of the content of an application being wrong. Legal practitioners agreed with this in principle, but raised concerns about the ‘duty of care’ lasting until completion of the registration process, which can sometimes be years. Fiona Letham, Dundas & Wilson suggested that the time period be reduced. She said—

“I understand that the proposal now is that the duty of care should last until completion of the registration process. Given the length of time that some applications can take to be processed, that could be many years after the solicitor has dealt with the transaction, which would put quite an onerous duty on a solicitor.”

158. Ms Letham recommends that the time period be reduced to that outlined in the Commission’s original proposal—

“… the duty of care to end either at the time of settlement of the transaction on the part of the grantor of the deed and their solicitor, or when the registration application is submitted, if it is the purchaser and their solicitor who are making the application.”

159. The Committee notes the issues raised and asks the Scottish Government to consider these during Stage 2 of the Bill.

Errors in the Land Register

160. The success of the Land Register depends crucially on the accuracy of first registrations. The Committee heard from a number of witnesses about the high number of errors that they have experienced in land certificates and the impact of these increasing as a result of an increase in first, and potentially complex, registrations. This view was disputed by the Keeper.

161. The Committee heard conflicting evidence about both the accuracy of land certificates and the error rate by the Registers of Scotland. On the one hand, users of the current system told the Committee of their experience of a lot of errors, both minor and material. Whilst on the other, the Keeper provided data which showed error rates were relatively low.

162. Graeme McCormick, Conveyancing Direct, told the Committee that—

“every week I see at least two land certificates that contain a material error. A system that is robust should not be like that at all.”

163. Fiona Letham, Dundas & Wilson, agreed but indicated that solicitors also have a role to play in ensuring accuracy. She said—

“We definitely see land certificates with errors, and my view is that, at the end of the day, the solicitor has a responsibility as part of a conveyancing transaction to check the land certificate and sort out errors then.”

164. The Committee heard from Ross MacKay of the Law Society of Scotland that there had been an increase in the number of errors by the Keeper over the last 10 years and that she should be more proactive in resolving them at an early stage. He stated—

“The keeper should be more proactive in dealing with errors. She should be more responsive to agents, pointing things out and dealing with them as quickly as possible on an informal basis, short of full rectification of the certificate.”

165. In oral evidence, John Scott of the Law Society of Scotland indicated that the Keeper had introduced quality control measures to improve error rates. He said—

“I understand that she has introduced a system of improving quality control for land certificates, which involves sampling certificates and double-checking their accuracy.”

114 Official Report, 11 January 2012, Col 750.
166. Graeme McCormick of Conveyancing Direct told the Committee that a lot of the errors are basic in nature and could be avoided by checking adjoining properties during the processing of new registrations. He said—

“We find problems with the extent of the plans and the description of properties, in relation to shared properties, the existence of servitude rights and so on. Such problems arise because the keeper is not checking the titles of adjoining properties”\textsuperscript{116}

167. By contrast, the Keeper told the Committee that the number of errors made by the Registers of Scotland was “very low”. John King, Registers of Scotland, told the Committee that the aim is a 98.5% accuracy rate with regards to clerical errors and that this tends to be met and indicated that sometimes it is more a difference of opinion rather than an error. He stated—

“There are more than 1.4 million registered titles, and we receive more than 250,000 applications a year. We also receive between 250 and 350 applications a year to rectify inaccuracies in the register … Outwith the figure of between 250 and 350, land certificates or charge certificates are returned to us in which we have made administrative error—for example, there may be a spelling mistake, or we may have missed out a middle name. Our 98.5 per cent target rate relates to clerical administrative errors.”\textsuperscript{117}

168. In written evidence, First Scottish Group highlighted that the 250-350 figure provided did not include either informal corrections or errors brought to the attention of the Keeper by search companies, known as DA1s, which were significant. It said—

“Most errors tend to be discovered on a re-sale which would be beyond one year from the registration date. These figures are not kept but have a major impact. First Scottish alone submit an average of 20 DA1s per day to the Keeper for correction. This would equate to 4260 per year.”\textsuperscript{118}

169. In oral evidence to the Committee, the Keeper confirmed that there is a provision for rectification of the registers but not for all errors, for example typographical errors and that if a fee in relation to these type of errors by Registers of Scotland was introduced it would have an impact on fees. She stated—

“There is a provision for us to pay legal costs if the register needs to be rectified … if we had to pay a fee for the type of errors about which John King talked, it would have to be passed on to fee payers in general.”\textsuperscript{119}

170. The Committee appreciates that there will be errors in any system of land registration. However, given the importance of accuracy in the Land Register and the potential impact on consumers, it feels that every measure should be taken to ensure that errors are kept to a minimum. It agrees that both practitioners and the Registers of Scotland have a responsibility to

\textsuperscript{116} Official Report, 11 January 2012, Col 751.
\textsuperscript{117} Official Report, 25 January 2012, Col 871-872.
\textsuperscript{118} First Scottish Group, written submission, page 3.
\textsuperscript{119} Official Report, 25 January 2012, Col 875-876.
ensure registration and land certificate information is accurate and therefore recommends that the Keeper put in place appropriate measures to improve quality control.

171. The Committee recommends that to reduce basic errors at first registration related to the description of properties, shared properties and the existence of servitude rights, the Keeper should review current procedures and consider whether introducing a policy of checking adjoining properties for all registrations would be appropriate.

172. The Committee believes that it is essential that the public has confidence in the accuracy of land certificates and would therefore caution not to increase the pace of completion of the Land Register at the expense of its quality.

Rectification and dispute resolution

173. Sections 78 to 81 of the Bill provide for rectification measures where the Keeper becomes aware of a manifest inaccuracy in a title sheet or in the cadastral map. These provisions have been welcomed in principle. However, the Committee heard evidence that “manifest” sets the bar too high with the result that fewer disputes would be resolved by the Keeper and more people would have to undertake expensive and potentially prolonged litigation.

174. The Committee appreciates that any resolution of disputes needs to be by a proper judicial process which is ECHR compliant. However, it heard compelling evidence about the potentially significant costs to consumers of having to go to either the Sheriff Court or the Court of Session to resolve land ownership issues, sometimes through no fault of their own. Ross MacKay of the Law Society of Scotland suggested that the Lands Tribunal for Scotland could be used to consider boundary and land ownership cases, due to its expertise in this area and as it may be able to resolve disputes more quickly. He said—

“The Lands Tribunal for Scotland already deals with title issues although, at the moment, it does not have a locus in dealing with a boundary dispute over who owns what. At the very least, there is scope for giving the tribunal a remit to look into that sort of thing. That would still be judicial, but the tribunal is quasi-judicial and the process is simpler and much speedier. There would still be a cost to it, but it would be a lot less than the cost of going to the Court of Session”\(^\text{120}\)

175. Ian Langlands of the RICS agreed that a speedy process for dealing with these issues would be welcome, especially as surveying being carried out in the future to a more accurate level could lead to more challenges and appeals against mismatches in the Land Register. He stated—

“If it is permissible to have surveys of the level of precision that my practitioners can provide and match them with historical data, there will be mismatches of the kind that we are talking about. I agree, and the RICS

\(^{120}\) Official Report, 11 January 2012, Col 756.
Scotland, that there is a potential risk of lots of challenges and appeals against those mismatches, and it would be helpful if there were some form of mechanism to speed up the process."^121

176. In response to a request from the Committee on whether these types of disputes could be added to the remit of the Lands Tribunal for Scotland, the Hon. Lord McGhie, President of the Tribunal, responded that it would be possible. However, he cautioned that there could be resource implications. He said—

“However, I can say in general terms that disputes involving legal issues relating to registration are currently within our jurisdiction in terms of the existing 1979 Act. We have had to deal with a number over the years. They have raised a wide variety of issues. The present proposals may cover material of the same nature. There is, accordingly, no reason from our point of view why the Tribunal should not deal with them … However, in formal terms I should say that nothing is within our remit unless some statutory provision expressly says so.”^122

177. As Lord McGhie points out, the Lands Tribunal already has jurisdiction to hear appeals against a decision of the Keeper. What is now suggested is that the Tribunal should be able to hear disputes between ordinary citizens as to registered land.

178. The Minister for Energy, Enterprise and Tourism confirmed in oral evidence that he will consider the role of the Lands Tribunal for Scotland prior to Stage 2. In a letter to the Committee, he stated—

“I have asked the keeper to explore with the Lands Tribunal in advance of stage 2 whether anything more can be done to ensure that the Lands Tribunal resolves disputes, especially boundary disputes.”^123

179. The Committee agrees that there is a need for a resolution process short of the courts so that disputes affecting title to registered land can be dealt with more quickly and possibly more cheaply. The Committee believes that the Lands Tribunal for Scotland is uniquely positioned to undertake this role and welcomes the Minister’s commitment to consider how it can be used to adjudicate over such disputes.

Withdrawal and amendments etc. of application

180. Section 33(1)(b) provides that, except with the consent of the Keeper, a person who makes an application “may not substitute it or amend it”. There were concerns expressed that this provision would impact negatively on the ability to resolve minor issues and errors quickly.

181. In its written submission, Dundas & Wilson indicated that this provision should only be used when there is a serious error or omission. It stated—

^122 Lands Tribunal for Scotland written response.
^123 Official Report, 8 February, Col 971.
“We consider that it is reasonable for the one-shot principle to be used where an error or omission is so serious as to result in rejection of an application within one or two days after receipt by the Keeper, but we have significant concerns about it potentially being used to cancel an application many months after the application was accepted by the Keeper.”

182. In supplementary evidence, the Law Society of Scotland requested that a “reasonableness test” be applied before a withdrawal or rejection is decided. It wrote—

“The Society is concerned that this section as drafted would give the Keeper unfettered discretion to reject an application in the event of any error or omission, no matter how minor. The Society considers that a reasonableness test should be included and that the Keeper should be obliged to pay compensation in the event of a wrongful rejection.”

183. The Committee believes that it is essential that the information contained within the Land Register is accurate. In light of this, it feels that it is reasonable for the Keeper to reject applications only where there is a serious error or omission and to continue to apply an informal approach to resolve minor issues.

Advance notices

184. Sections 55 to 61 of the Bill introduce a system of “advance notices” for conveyancing transactions, which will remove the risk of losing title to a property between the settlement date and the registration date. This risk is currently underwritten by a letter of obligation granted by the seller’s solicitor and underwritten by professional indemnity insurance. There was a lot of support, especially from the legal profession, for the introduction of advance notices as quickly as possible and for these to replace the existing practice of solicitors providing letters of obligation.

185. In oral evidence, Ann Stewart of the Scottish Property Federation told the Committee that industry practitioners were very supportive of advance notices. She said—

“There has always been a gap between completion and registration, and that gap can be fraught with risk … It would certainly improve confidence among purchasers and lenders if they had a clear indication of some kind of protection for the risk period, even if that period is sometimes very short.”

186. Whilst there was clear support for advance notices there were a number of questions raised about how these would work in practice.

187. Ross Mackay of the Law Society of Scotland sought clarification that advance notices would be included in the application record. He stated that—

124 Dundas & Wilson, written submission, page 2.
125 Law Society of Scotland, supplementary evidence, page 2.
“… if advance notices are to be worth anything, they will have to appear on the record in an easily searchable format so that when someone is about to buy a property, the advance notice will be flagged up.”

188. In oral evidence to the Committee, the Keeper confirmed that advance notices would be searchable as part of the Registers Direct system. She said—

“We will develop systems that will enable advance notices to be shown. Things get loaded on overnight, and they will be on our registers direct system.”

189. Others sought clarification on whether one or two advance notices would be required for certain transactions. In oral evidence, Fiona Letham of Dundas & Wilson said—

“… we would prefer the legislation to be clear about whether one advance notice or two would be required in a situation in which someone is purchasing property and granting a mortgage over it.”

190. To assist practitioners in adopting advance notices, Ann Stewart of the Scottish Property Federation requested that guidelines be provided to clarify the effect of an advance notice. She said—

“If a disposition— in other words, the document that transfers title—were protected by an advance notice and another disposition had gone in previously, when the proper disposition hit Registers of Scotland the earlier one would be regarded as not having been registered, whereas the effect with standard securities is that both would stay on the register but the priority of their ranking might change.”

191. In answer to questions about the effect of advance notices, Gavin Henderson of the Registers of Scotland told the Committee that—

“If there is an advance notice that protects a deed and a later deed comes in that is not protected by an advance notice, the deed with the protecting advance notice will prevail—that is the whole point.”

192. With regards to what advance notices will look like, Ross Mackay of the Law Society of Scotland requested that guidance be provided. He stated that—

“On a technical point, no style of advance notice is given in the bill. It just says there should be an advance notice but it does not say who will prepare it.”

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193. Section 57(1) states that an advance notice has effect for a period of 35 days. In its written submission, the Scottish Property Federation requested that this be changed to 30 business days in order to—

“... align the period of Advance Notice to England’s 30 business days. Our reasons for this is that as the majority of Scottish commercial property is owned and invested in by UK institutions or trusts it would be helpful to avoid differences where they may not appear to be absolutely necessary.”

Costs and fees
194. The Registers of Scotland estimate that advance notices will result in a substantial increase (74%) in the number of deeds registered and that the fee for an advance notice would be no more than £10. It stated that—

“The cost of advanced notices will be met through the fees that will be charged specifically for this new service ... it is expected that the fee for advance notices will not be less than cost recovery or more than £10.”

195. The Committee welcomes the introduction of the advance notice provisions. However, the Committee notes that whilst the explanatory notes provide examples of how these will work in practice, there still seems to be some confusion and therefore we recommend that the Scottish Government provides further guidance to assist understanding. It would also be helpful if the Minister was able to provide the clarity required by some of those who gave evidence on whether one or two advance notices would be required.

196. The Committee is aware that the Scottish Law Commission considered using the term “working days” and decided that “days” was a simpler concept. The Committee agrees that it would be helpful to avoid inconsistencies with systems used elsewhere in the UK and asks the Scottish Government to review the period of 35 days.

Tenements and other flatted buildings
197. The Policy Memorandum states that “Flats within tenements are often described in conveyancing deeds without reference to a plan.” The Committee heard that this can cause issues for the conveyancing profession. To resolve these issues Graeme McCormick of Conveyancing Direct recommended the use of floor plans. He said—

“We need, for tenement properties, a system of floor plans that shows the footprint of properties. Many builders now use such a system for flatted developments, and that gives certainty.”

198. In oral evidence to the Committee, Alan Cook of the Scottish Property Federation agreed and requested that a clear protocol be provided. He said—

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133 Scottish Property Federation, written submission, page 1.
134 Financial Memorandum, paragraph 364 and 440.
135 Policy Memorandum, paragraph 52.
“I agree that there is quite a lot of scope for uncertainty because of the use of terms such as “left” and “right” to describe which flat is which. I am not aware of any protocol that is supposed to be followed in expressing that. If there was a clear protocol that had to be followed, that would perhaps overcome that particular problem.”

199. In response to this suggestion, John King of the Registers of Scotland told the Committee that, although this was not a big issue, standardised description for flatted properties would be welcomed. He said—

“We would certainly welcome a standardised property description for flats, particularly for the older tenements in Scotland’s cities.”

200. The Policy Memorandum states that the inclusion of a plan “could add considerable additional costs onto transactions”. However, the Committee heard that as costs would be in line with the amount paid by those who were purchasing non-tenement properties at first registration this should not be an issue.

201. The Committee agrees that a standard description of tenement properties would be a simple way to help avoid future conveyancing disputes. It recommends that the Scottish Government provides description guidance for flats and tenements and also considers the inclusion of plans when registering these types of properties.

Shared plots

202. Sections 17 to 20 of the Bill are intended to change the Keeper’s current practice of including in the title sheet for an individual property any shares in common property that relate to it and to have a separate title sheet for the shared plot. This would avoid the problem of overlapping cadastral units (and title sheets).

203. The Committee heard evidence both for and against the introduction of this new system, with some witnesses feeling it was unnecessary and that it added complexity, with others indicating it could help identify common ownership.

204. In oral evidence, Ann Stewart of the Scottish Property Federation told the Committee that she did not see any need for the introduction of shared plot title sheets. She said—

“… as a practitioner, I am not sure that the absence of a separate title sheet that shows shared areas is a problem.”

205. Gary Donaldson of Millar & Bryce, told the Committee he welcomed the provision. He stated—

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139 Policy Memorandum, paragraph 53.
“... we often receive queries about establishing common ownership. From our point of view, a separate title sheet would assist in identifying that ownership.”  

206. In written evidence, Brodies requested clarification of the circumstances where a shared plot can be revoked and converted to an ordinary plot. It wrote—

“We are concerned that the provision in its current form does not limit or explain the circumstances in which this can be done. We would assume that safeguards will be put in place to protect any potential proprietors of the shared plot.”

207. In its written submission, First Scottish Group raised concerns about adding complexity to the system and thus increasing the potential for errors—

“These will comprise areas of ground that are shared between proprietors, a simple example would be a driveway that is owned by two different properties. Instead of appearing on the house title of each property the driveway will have its own title sheet and will be referred to in the title sheet for the house ... This will mean that additional searches will be required to cover both the house and driveway. Naturally there will also be additional work for the Keeper’s staff and huge scope for errors in the referencing and cross-referencing of title sheets.”

208. The Policy Memorandum states that “The title sheet will reflect that this area of ground is common property.” In oral evidence to the Committee, Gavin Henderson of Registers of Scotland explained that the system should make the Land Register clearer. He said—

“... when you look at the map, you can tell which areas are shared areas and which are not. In addition, the title sheet will have a mutually enforcing cross-reference to the shared plot title sheet. We should therefore not miss out shared areas or mislead people when they look at the title sheet. They should be able to see what the shared plot title sheet is.”

209. The Committee notes the views both for and against the inclusion of this provision and recommends that the Minister respond at the Stage 1 debate to the concerns raised.

Rights of person acquiring etc. in good faith

210. Section 82 gives ownership to a person who has acquired a property from a non-owner in good faith, as long as certain conditions have been met. These include a requirement that the seller, or the seller and buyer in sequence, should have been in possession of the land “for a continuous period of at least a year”.

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142 Brodies, written submission, page 1.
143 First Scottish Group written evidence, page 1
144 Policy Memorandum, paragraph 55.
145 Official Report, 8 February 2012, Col 972.
146 Land Registration etc. (Scotland) Bill: Section 82 (3) (a)
The Committee considered whether or not 1 year’s possession struck the right balance between the interests of the acquirer and the person who actually owns the property.

211. Ross Mackay of the Law Society of Scotland told the Committee that 1 year seemed fair. However, he cautioned that it may cause solicitors difficulties in practice. He said—

“As a matter of principle, I think that the commission has come up with a fair balance in trying to protect an owner who has lost out because of fraud or something similar and to ensure that they can get their house back, provided that they do it within a year.”

212. In his oral evidence to the Committee, Tom Axford of Scottish Water disagreed, stating—

“Our concern is that that period is quite short for landowners of major areas of land across Scotland, including us, particularly if we are talking about transfers of access roads, which are difficult to ascertain—we have had to deal with that. The registration process can also take six to nine months to be completed.”

213. The Committee feels that in the majority of circumstances, 1 year’s possession is sufficient. However, we feel that it may not be long enough in all circumstances, especially where large amounts of land or pieces of land spread out across the country are owned, for example by utility companies, and would therefore ask the Scottish Government to consider increasing the timescale.

Beneficial interests and ownership

214. The Committee heard that by only registering the name of the owner, the Land Register does not provide enough transparency about ownership and that this lack of information can assist criminal activity such as money laundering and tax evasion.

215. In written evidence, Andy Wightman proposes that additional information would be available if the company registering as owner was registered in a member state of the EU. He wrote—

“My proposal is simply to make it incompetent to register title to land in Scotland’s Land Register in any legal entity not registered in a member state of the EU. This provides compliance with Treaty of Rome obligations and means that any US or Japanese company that wishes to buy land and build a factory can happily do so—they simply need to set up an EU entity to do it.”

147 Official Report, 11 January 2012, Col 768.
216. In oral evidence to the Committee, the Minister for Energy, Enterprise and Tourism indicated that the inclusion of this restriction on land registration could negatively affect investment. He stated—

“I am not in favour of such a proposal, even if it is within the scope of the bill—I have not looked into that question, but I suspect that it would be answered in the negative—because there would be a significant risk that introducing such a system would have a negative effect on investment by companies that are registered outwith the EU.”

217. The Committee notes the comments made by some of those who gave evidence that there needs to be greater transparency of ownership and the proposal for companies to be registered in the EU before they can register land in Scotland. We have some sympathy with the principle that it should be possible in most circumstances to find out who has ownership of a particular piece of land.

218. However, we are not convinced that companies should need to be registered in the EU to register land in Scotland.

219. We consider that the Scottish Government should reflect further on options for ensuring that the land registration system reduces the scope for tax evasion, tax avoidance and the use of tax havens, and that the Government should explain prior to Stage 2 what additional provisions can be included, whether in the Bill or otherwise, to achieve this objective.

Accessibility of the Land Register

220. The Committee heard evidence that the public do not find it easy to access information in the Land Register. It therefore considered whether the provisions in the Bill will make the Land Register more accessible to the public.

221. There was support for information online to be more accessible as the current system, Registers Direct, is directed at practitioners. In written evidence, Andy Wightman suggested the introduction of an on-line search facility for the public. He stated—

“Moreover, there is no online facility for the public to use to conduct their own search. Registers Direct is an online service but demands an account be set up and a high level of familiarity with the structure of the Registers (particularly Sasines) to use effectively. By contrast, the Land Register in England and Wales has a box where one can enter a postcode and a checkout where you pay for the result.”

222. The Committee heard from the Keeper that although previously there had been too much emphasis on the legal fraternity, more public access was an aspiration. She said—

150 Official Report, 8 February 2012, Col 984.
“My view is that we are a public body—a public service organisation—so citizens need to know about the service that they get from us ... We would like to see an online system that the public can access and from which they can find out information easily. At the moment, they would have to come through our customer service centres, as the registers direct system is designed for use by businesses ...” 152

223. The Committee believes that a policy intention of the Bill should be to make access to information on land ownership easier for members of the public. It recommends that the Scottish Government considers how the information held by the Registers of Scotland can be made more publicly accessible, including the use of an online facility. The Committee suggests that if there is to be a fee for public access that it be kept as low as possible.

MISCELLANEOUS ISSUES

224. There were a number of requests made to the Committee, in both written and oral evidence, to amend the Bill. **These are outlined below and we would ask the Minister to consider them and make clear his intentions about them during the Stage 1 debate.**

225. Section 1(5) outlines the steps the Keeper should take to protect the Register. The Committee was asked if the list could be extended to include "(d) inaccuracy, and (e) fraud".

226. Section 39 provides the Keeper with the discretion to decide who to notify when an application is accepted, rejected or withdrawn. In its written submission the Law Society of Scotland recommends that—

"… notice of rejection or withdrawal of an application should be given to any other applicants affected by such a rejection or withdrawal and that this should not be at the Keeper’s discretion."\(^{153}\)

227. In written evidence\(^ {154}\) to the Committee, the Crown Estate requested a number of additions to the Bill which the Committee asks the Scottish Government to consider.

228. The Law Society of Scotland requests in its written submission the inclusion of the following 2 provisions within the Miscellaneous and General Section of the Bill to address particular problems which have arisen—

"Firstly, there should be clarification that s.160 of the *Bankruptcy & Diligence etc (Scotland) Act 2007* does not alter the common law position and accordingly that Inhibitions registered against a seller after missives are concluded remain ineffective as the seller is already contractually bound to dispose of the property. This would remove the uncertainty caused by the Keeper’s current policy of excluding indemnity in these circumstances.

Secondly there should be clarification that s.26 of the *Conveyancing and Feudal Reform (Scotland) Act 1970* will operate to remove from the Title Sheet any remaining prior ranking or *pari passu* securities following a sale on repossession, even if the calling up procedure did not comply with the interpretation of the statutory requirements in the Supreme Court decision of *RBS v Wilson* in November 2010."\(^ {155}\)

229. In its written submission, Scottish Land & Estates requests the following change—

"Sections 42(8), 42(9), 44(7) and 44(8). If the Scottish Ministers are to make an Order changing the number of days within which a Notice of Objection can

\(^{153}\) Law Society of Scotland, supplementary evidence, page 1.

\(^{154}\) Crown Estate, written submission, page 2.

\(^{155}\) Law Society of Scotland, supplementary evidence, page 5.
be received, it is recommended that landowners (perhaps through stakeholder bodies) should be consulted as well as the Keeper.\textsuperscript{156}

230. In its written submission, Brodies recommends the following change to section 36 of the Bill. It asked whether the Scottish Government would—

“… welcome a similar facility to that used in England whereby the time of registration is noted in a title as well as the date of registration? This would assist with any issues relating to order of presentment.”\textsuperscript{157}

\textsuperscript{156} Scottish Land & Estates, written submission, page 4.

\textsuperscript{157} Brodies, written submission, page 2.
231. In accordance with Rule 9.6.2, the Subordinate Legislation Committee considered the delegated powers and provisions in the Land Registration etc. (Scotland) Bill as introduced and reported to the Economy, Energy and Tourism Committee as lead committee. A copy of the report by the Subordinate Legislation Committee is attached in Annexe A of this report.

232. The Subordinate Legislation Committee sought further clarification from the Scottish Government on a number of proposals and drew the responses to the attention of the lead committee.

233. In relation to the power in section 61(1) to modify the application of Part 4 of the Bill, the Subordinate Legislation Committee considers that this power should not be drawn more widely than is appropriate to give effect to the intended policy.

234. In relation to the power in section 93(2), so far as it inserts new section 9E(1)(b) of the Requirements of Writing (Scotland) Act 1995, the Subordinate Legislation Committee considers this to be a potentially significant power, going beyond minor technical matters in relation to the authentication and alteration of electronic documents.

235. In relation to the powers in section 103(1), the Subordinate Legislation Committee has concerns as to the general scope of this power in relation to information to be made available by the Keeper and access to the Keeper’s Registers, and whether in light of that response it could be drawn more narrowly to give effect to the intended policies.

236. The Committee notes the Subordinate Legislation Committee’s report and is content to agree with its recommendations. We welcome the Minister’s commitment to amend the procedure for regulations made under inserted section 9E(1)(b) to the affirmative procedure.
FINANCE COMMITTEE

237. The Finance Committee adopted a 'level 1' approach to scrutiny of the Financial Memorandum for the Land Registration etc. (Scotland) Bill and did not, therefore, take oral evidence on the Bill or produce a report. A copy of the evidence received by the Finance Committee is attached in Annexe B of this report.
CONCLUSION ON THE GENERAL PRINCIPLES OF THE BILL

238. The Committee considers that land registration is important to Scotland and welcomes this comprehensive Bill, which provides a much needed update and extension of the existing legislation. There are, however, a number of areas within the Bill where some improvements could be made and the Committee invites the Minister to consider these. There are also a number of issues where greater clarity is required and the Committee invites the Minister to provide this in the Stage 1 debate. Following our discussions with the Minister, the Committee welcomes the changes that the Minister has already agreed to make.

239. In conclusion, the Committee recommends to the Parliament that the general principles of the Bill be agreed to.
ANNEXE A: REPORT FROM THE SUBORDINATE LEGISLATION COMMITTEE

Subordinate Legislation Committee

4th Report, 2012 (Session 4)

Land Registration etc. (Scotland) Bill

The Committee reports to the Parliament as follows—

INTRODUCTION

1. At its meetings on 10 and 24 January 2012, the Subordinate Legislation Committee considered the delegated powers provisions in the Land Registration etc. (Scotland) Bill at Stage 1. The Committee submits this report to the Economy, Energy and Tourism Committee as the lead committee for the Bill under Rule 9.6.2 of Standing Orders.

OVERVIEW OF THE BILL

2. The Land Registration etc. (Scotland) Bill was introduced in the Scottish Parliament on 1 December 2011. It is a Government Bill which restates and amends the law on land registration. This has the objectives of making use of the Land Register easier for all concerned, and to facilitate the transfer of all land (eventually) from the Register of Sasines into the Land Register.

3. The Scottish Government provided the Parliament with a memorandum on the delegated powers provisions in the Bill (“the DPM”)158.

4. In the consideration of the memorandum at its meeting on 10 January, the Committee agreed to write to the Scottish Government to raise questions on a number of the delegated powers.

5. This correspondence is reproduced in the Annexe.

6. The report considers each of the delegated powers on which questions were raised in turn, and provides the Committee’s conclusions thereon.

7. The Committee determined that it did not need to draw the attention of the Parliament to the delegated powers contained in the following sections (as they are listed in the DPM) -

   sections 111(1), 14(1)(b), 22(1)(d), 33(2), 34(1), 39(5), 40(5), 42(7), 44(6), 59(2), 78(5), 11(6)(b), 27(6), 36(3) and 37, 42(8), 44(7), 52(4), 57(6), 66(3), 93(2) (inserting sections 9B(1)(b), 9B(2)(c), 9C(2) and 9G(3) of the Requirements of Writing (Scotland) Act 1995); 95(3), 96(1) and (2), 106(1), 109(4), 113(1), 118 and 119(3).

158 Land Registration etc. (Scotland) Bill. Delegated Powers Memorandum. Available at: [link]

Delegated powers provisions

8. The report addresses those delegated powers which relate to the land registration rules first, and then other powers to make subordinate legislation. This follows the ordering of the Bill sections in the DPM.

Section 77(4) - Powers to prescribe in land register rules the rate of interest payable on claims under warranty

Power conferred on: the Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: negative procedure

Background
9. Section 77 sets out rules in connection with the quantification of compensation for losses incurred, through a breach of Keeper's warranty of title to a registered interest in land. Section 77(2) sets out 3 possible dates (depending on the circumstances) from which interest runs on the compensation amount payable by the Keeper, until it is paid.

10. The power in section 77(4) allows Scottish Ministers to provide, in the land register rules, for the rate of interest payable by the Keeper.

Section 80(7) - Powers to prescribe in land register rules the rate of interest payable on claims for compensation as a result of rectification of the register

Power conferred on: the Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: negative procedure

Background
11. Section 80 concerns compensation payments by the Keeper for losses in consequence of rectification of the Register. Section 80(5) provides that interest is payable on the compensation. Section 80(7) gives the Scottish Ministers power to provide in the land register rules for the rate of interest payable by virtue of section 80(5).

Section 91(4) - Power to prescribe in land register rules the rate of interest on compensation for realignment of rights

Power conferred on: the Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: negative procedure

Background
12. Section 91 concerns the quantification of compensation payable by the Keeper for losses incurred, as a result of the operation of realignment of property
rights under the Bill. Part 9 contains provisions allowing for that realignment, in certain circumstances.

13. Section 91(2) provides that interest is payable on the compensation. Section 91(4) allows the Scottish Ministers to provide, in the land register rules, for the rate of interest.

Comment on the powers in sections 77(4), 80(7) and 91(4)

14. The Committee asked the Scottish Government to explain why it is considered that the negative procedure is a suitable level of Parliamentary scrutiny of the exercise of these powers, rather than the affirmative procedure, given that specification of the level of the interest rate in each case could have significant financial effects for persons entitled to be paid the interest and for the Keeper of the Registers.

15. The response to the Committee explains that the Government’s policy in this area is that interest should be available to a person due payment of a compensation sum under the Bill, to acknowledge the fact that during the period between a loss being sustained and the payment being made the person has been unable to benefit from the sum in question. The intention is not that the payment of interest should act as a penalty on the Keeper. Therefore the rate of interest is unlikely to make a significant financial impact on the overall compensation payment. In addition it is not appropriate to tie the rate of interest to a rate (such as the judicial rate of interest) which does not change frequently according to market conditions. The rate must be flexible enough to change to reflect the interest a person may have been able achieve by, for example, depositing the sum in a savings account. As a result the rate of interest will reflect that available in the market, and could be subject to regular amendment.

16. The Committee accepts from this explanation that a delegated power is required to enable the Scottish Ministers to vary the interest rate. However the power is framed as a general power to specify any interest rate, which is wider in scope than the intended policy as explained in the Government’s response. It is intended that the specified interest rate shall reflect market conditions, to properly compensate persons over time, and not be a penalty rate. The Committee considers that in principle these delegated powers should not be drawn more widely in scope than is practicable to give effect to the intended policy.

17. In relation to the application of negative procedure for the exercise of these powers, the response indicates that this procedure is justified as being (in the Government’s view) the best use of Parliamentary time. On the other hand, the Committee has regard to the substance of these powers to specify any interest rate. The specification of the particular rate could have significant financial effects for persons entitled to be paid the interest, and for the Keeper of the Registers. This is particularly the case where the power is drawn to allow any rate to be specified.

18. The Committee therefore draws to the attention of the lead committee the response from the Scottish Government in relation to the powers to specify an interest rate in sections 77(4), 80(7) and 91(4). The Committee
considered that these powers should not be drawn more widely than is appropriate to give effect to the intended policy.

19. The Committee considers that these powers have significant enough effects that the affirmative procedure would be a suitable level of scrutiny.

Section 47(5) and 47(6) - power to prescribe days, on or after which recording of certain deeds in the Register of Sasines will have no effect

<table>
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<td>Power exercisable by:</td>
<td>Order</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>affirmative procedure</td>
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Background

20. Section 47(5) allows the Scottish Ministers to prescribe the day on or after which the recording of a standard security (mortgage) over land in the Register of Sasines will have no effect. Section 47(6) allows the Scottish Ministers to prescribe the day on or after which the recording of any deed in the Register of Sasines will have no effect.

21. Section 47(10) provides any day prescribed under section 47(5) or 47(6) is to be a day no earlier than the day when the Keeper's discretion relating to voluntary registrations under section 27(3)(b) is removed. Ministers must consult the Keeper before making an order.

22. Section 47(12) allows for different provision to be made under section 47(5) and 47(6) for different areas.

Comments

23. In relation to the powers in section 47(5) and (6), the Committee indicated to the Scottish Government that the DPM explains that affirmative procedure is considered appropriate, because the closure of the Register of Sasines to new deeds is likely to affect various stakeholders.

24. The Committee asked if this objective would be better achieved in the interests of stakeholders by providing in section 47 for a requirement to consult the relevant persons before making an order, as well as the Keeper of the Register. The Committee also sought clarification of which stakeholders are being referred to.

25. The Committee sought clarification as to why affirmative rather than negative procedure is considered to be an appropriate level of scrutiny, given that the scope of these powers is limited to prescribing the relevant dates.

26. In response, the Government has confirmed that it will consider, in advance of Stage 2, whether it is appropriate to add a requirement to consult relevant persons with an interest in the Register. It is confirmed that the stakeholders affected by the closure of the Register of Sasines will be anyone who submits or may submit an application for recording to that Register, or otherwise interacts with that Register. This will include (but not be limited to) banks and other lenders, local authorities, conveyancing solicitors and private searching firms. Given the
number of potential stakeholders, the Scottish Government does not consider it appropriate to list the stakeholders to be consulted on the face of the Bill. The Committee would agree it does not appear necessary to list each and every consultee, but does consider that consultation prior to setting the date for closure of the Sasine Register may better protect the interests of stakeholders.

27. In relation to the use of affirmative procedure, the response emphasises that the closure of the Register of Sasines has been considered of sufficient importance to warrant the level of scrutiny given by the affirmative procedure, when the power is exercised. This has adopted the suggestion of the Scottish Law Commission.

28. The Scottish Government has undertaken in response that, in light of the consideration noted above on consultation, it will consider whether the addition of a requirement to consult would mean that negative procedure is more appropriate.

29. The Committee welcomes this re-consideration. It appreciates that in reviewing the delegated powers in the Bill, it is not in a position to assess in detail the significance and effects of specifying the particular dates for the closure of the Register of Sasines, in relation to standard securities and subsequently for any deeds. The Committee notes that the Register of Sasines was established in 1617. It would not therefore disagree with any finalised proposal of the Government and the Scottish Law Commission that affirmative procedure may be an appropriate level of scrutiny for the exercise of these powers. On the other hand, the principle of closure of the Register is set out in the Bill, and the scope of these powers is limited to prescribing the relevant dates.

30. The Committee will return to consider these powers after Stage 2.

31. The Committee therefore reports to the lead Committee that the Scottish Government has confirmed it will consider, in advance of Stage 2—

(a) whether it is appropriate to add a requirement to consult relevant persons with an interest in the Register of Sasines, in relation to the powers in section 47(5) and (6), and

(b) in light of that consideration, whether affirmative or negative procedure is the more appropriate level of scrutiny for the exercise of these powers.

Section 55(4) - Power to make provision about the description of unregistered subjects in an advance notice

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<td>Power exercisable by:</td>
<td>Regulations</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>affirmative procedure</td>
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</table>

Background
32. This section allows the Scottish Ministers to make provision concerning the detailed description of land plots or leases, in “advance notices”, where a plot or
lease is not yet registered in the Land Register. The Bill introduces the new system of “advance notices” in sections 55 to 61.

33. This new system protects the grantee of a deed during the time between taking delivery of it (in exchange for the money) and the registration of the deed. This period is the “gap risk”, as the grantee is vulnerable in this period to the registration of competing deeds or the bankruptcy of the grantor of the deed. The entry of an advance notice referring to a registrable deed ensures that during the next 35 days no disposition or competing advance notice can beat that deed in any “race to the register” to obtain the title to the property.

Comments
34. The Committee drew to the attention of the Scottish Government that the DPM explains that affirmative procedure is considered an appropriate level of scrutiny for the exercise of this power because “the power will be of interest to stakeholders and it is important for the running of the system.” This power shall be used to make technical provision on matters of conveyancing description.

35. The Committee therefore asked if the objective could be better achieved in the interests of stakeholders by providing in section 55 for a requirement to consult the relevant persons before making the regulations, as well as the Keeper of the Register? The Committee also asked for clarification why affirmative rather than negative procedure is considered the appropriate level of scrutiny, and why the standard of conveyancing description for advance notices could not initially be set out in the Bill?

36. The Government response explains that the advance notice scheme in the Bill was widely consulted on prior to introduction of the Bill, and it is not considered appropriate to provide for further consultation on the same area. In particular it is possible that the type of description for Sasine advance notices or minor parts of it will change over time, and in light of changing technology. It is not considered appropriate to require consultation every time the power is exercised.

37. The Committee accepts that approach in relation to consultation, taking into account that this is a power to make technical provision on matters of conveyancing description. The Committee also accepts the explanation why it is not considered appropriate to include the initial conveyancing descriptions for unregistered subjects in the Bill.

38. The Scottish Government response confirms, however, that they have reconsidered the appropriate level of scrutiny and the best use of parliamentary time, in light of the potential for frequent amendment. The Government now considers that negative procedure would be a more appropriate procedure than affirmative procedure in the circumstances. The Committee accepts this approach, taking into account that the power will be used to specify technical matters.

39. The Committee reports in relation to the power in section 55(4) that it considers that the negative procedure would be an appropriate level of scrutiny for the exercise of this power. The Scottish Government has
confirmed this view in its response. The Committee assumes this will be taken forward by suitable amendment at Stage 2.

Section 58(6)(b) - Power to provide certain documents are unaffected by advance notices

**Power conferred on:** the Scottish Ministers  
**Power exercisable by:** Order  
**Parliamentary procedure:** Negative procedure

**Background**

40. Section 58(6)(a) provides that the effect of an advance notice does not apply to specific documents registered under specific Acts. This concerns notices of potential liability for maintenance costs of former and new owners of property. Section 58(6)(b) allows the Scottish Ministers to specify other types of deeds to be similarly unaffected.

**Comments**

41. The Committee asked the Scottish Government in relation to this power-

   (a) Could it be explained why this power requires to apply to any types of deed and cannot be more narrowly drawn, for instance by specifying significant types (such as dispositions) which cannot be excluded from the advance notice system?

   (b) As it appears this power is capable of excluding such significant types with a significant effect on Part 4 of the Bill, could the Government reconsider whether the affirmative procedure could be more suitable for the exercise of this power?

42. The Government response explains that it is difficult or impossible to specify all the types of deeds which should not in future be excluded from the advance notice system. The Committee accepts this explanation, taking into account that it involves technical matters of conveyancing.

43. The response to the Committee acknowledges that the use of this power is potentially significant (in relation to its effect on the advance notice system in the Bill). The Scottish Government has re-considered that the power in section 58(6)(b) should be subject to the affirmative procedure. The Committee accepts this approach.

44. The Committee therefore reports in relation to the power in section 58(6)(b) that it considers that the affirmative procedure would be an appropriate level of scrutiny for the exercise of this power. The Scottish Government has confirmed this view in its response. The Committee assumes that this will be taken forward by suitable amendment at Stage 2.

Section 61(1) - Power to amend application of advance notices scheme in relation to certain deeds
Power conferred on: the Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Negative procedure

Background

45. Section 61(1) provides that the Scottish Ministers may modify the application of Part 4 of the Bill in relation to any deed of a kind specified in the Order. For example this might enable a particular type of deed to be capable of being protected by an advance notice, where that otherwise wouldn’t be possible by virtue of the provisions in Part 4.

Comments

46. The Committee asked in relation to this power (a) for an explanation why it requires to apply to any kinds of deed and cannot be more narrowly drawn, for instance by specifying significant kinds (such as dispositions) for which any order could not modify the application of provisions in Part 4.

47. The Committee also asked, as it appears that this power is capable of extending to such significant types of deed with a significant effect on Part 4 of the Bill, (b) whether the Government might re-consider whether the affirmative procedure could be more suitable for the exercise of this power.

48. In relation to (a) and the scope of this power, the Scottish Government has responded that there are numerous types of deed in relation to which the Government has no intention of altering the principal application of Part 4 of the Bill. It is considered by the Government to be appropriate that the power is available to make technical changes to the application of Part 4, in relation to those deeds where experience shows those changes to be necessary. In addition new deeds may be created by legislation which would then have to be added in turn to any list.

49. The Committee notes therefore from the response that it appears this power is drawn wider in scope than is required to deliver the intended policy. The intention is to permit technical changes in relation to specific types of deed, if experience shows this is required over time, or to add new deeds to the advance notice system in Part 4. However section 61 enables the Scottish Ministers by order to modify the application of Part 4 (in any way) in relation to any type of deed specified in the order, after consultation with the Keeper. This is capable of allowing Part 4 to be very significantly modified, in relation to significant types of deeds, such as dispositions or other types transferring land and buildings.

50. The Committee considers that this power should be drawn no more widely than is appropriate to deliver the intended policy, and the Scottish Government should therefore re-consider the scope of this power in advance of Stage 2 of the Bill.

51. In relation to the application of negative procedure, the Government response indicates that it has carefully considered part (b) of the Committee’s question. However it remains of the view that negative procedure is the appropriate level of Parliamentary scrutiny. The explanation for this relates to the intended scope of the power, as above. The power is intended primarily to be used
to extend the advance notice system to deeds that currently could not be covered by an advance notice (such as unilateral deeds created by statute). In relation to deeds already covered, it is envisaged that any modification will be of a technical nature, and only where experience has shown it to be required. The response indicates that no-one would be detrimentally affected by the use of the power.

52. The Committee considers that this power is widely framed, and it appears from the Government’s response to be drawn wider than the intended policy requires. The Committee cannot follow why any modification of Part 4 by order in relation to dispositions, for example, could not possibly detrimentally affect certain persons. For example section 58 sets out new rules for the priority of deeds registered under the advance notice system, to determine which registered deed has legal effect in priority. It appears that modification of these rules in relation to particular types of deeds might adjust the rights of the persons involved. While the present Government may have no intention of causing a detrimental effect, in the Committee’s view the potential for causing such an effect remains.

53. The Committee therefore considers that the power in section 61 is significant in allowing the modification of Part 4 of the Bill in relation to any kinds of deeds. The Committee has not accepted the explanations in the DPM and the response to the Committee in justification of the choice of negative procedure as the appropriate level of Parliamentary scrutiny for the exercise of this power.

54. The Committee therefore draws to the attention of the lead committee the response from the Scottish Government in relation to the power in section 61(1) to modify the application of Part 4 of the Bill. The Committee considers that this power should not be drawn more widely than is appropriate to give effect to the intended policy.

55. The Committee also considers that this power has significant enough effects in permitting modifications of Part 4 of the Bill, that the affirmative procedure would be a suitable level of scrutiny.

Section 93(2), inserting section 9E(1) of the Requirements of Writing (Scotland) Act 1995 - Further powers related to electronic documents

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<td>Power exercisable by:</td>
<td>Regulations</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>Negative procedure, but affirmative where regulations amend or repeal any enactment</td>
</tr>
</tbody>
</table>

Background

56. Section 93(2) inserts a new section 9E into the Requirements of Writing (Scotland) Act 1995. Inserted section 9E(1) provides that the Scottish Ministers may make provision in regulations as to the effectiveness or formal validity of, or presumptions to be applied to:

- alterations made before or after execution to an electronic document;
- authentication, by or on behalf of the granter, of such a document;
- authentication, by or on behalf of a person with a disability, of such a document; and
57. It appears that those provisions in relation to alterations, authentication by persons with disabilities and annexations, propose to extend to electronic documents provisions which are already contained in the 1995 Act for traditional documents. The new section 9E(1)(b) will enable the Scottish Ministers in regulations to make provision as to the effectiveness or formal validity of, or presumptions to be made with regard to, the authentication (by or on behalf of the granter) of an electronic document.

58. Inserted section 9E(2) provides that regulations under section 9E(1) may make incidental, supplemental, consequential, transitional, transitory or saving provisions considered necessary in light of regulations made under 9E(1).

Comments

59. The Committee indicated to the Scottish Government that it appears that the power contained in new section 9E(1)(b) of the Requirements of Writing (Scotland) Act 1995 could be used to prescribe significant matters—for example requirements for the validity of electronic wills or electronic contracts for land transactions. The Committee therefore asked why the Government has considered that negative procedure is the appropriate level of Parliamentary scrutiny of such regulations, rather than prescribing initial requirements in the Bill, or applying the affirmative procedure.

60. The Scottish Government has responded to the Committee that that power is intended to relate to “minor technical matters in relation to the authentication and alteration of electronic documents, for example amending an electronic document to fix a spelling error in a company name, which the Government considers are appropriately subject to negative procedure.” The response also indicates that there are other amendments to the 1995 Act proposed in the Bill which are subject to the negative procedure, and so the fact that this power is also negative will allow the Scottish Ministers the scope to make one set of regulations in the area of electronic documents. The response also indicates that “the minor nature of the matters at hand mean it is not appropriate to set out initial requirements in the Bill.”

61. The Committee has not found that explanation to be convincing, in relation to the power in the new section 9E(1)(b), to enable the prescription of the requirements for the validity, effectiveness and presumptions to be made with regard to, the authentication of electronic documents. It considers that the substance of this power should be considered. For example, it appears capable of being used to prescribe any validity requirements for electronic wills or electronic contracts for land transactions. Changes of that nature would be significant legal changes, not minor and technical matters.

62. The Committee accepts that it appears such matters would likely be to a level of detail and technicality that subordinate legislation will be a suitable means of prescribing them, in principle.

63. The Committee therefore draws to the attention of the lead committee the response from the Scottish Government in relation to the power in section 93(2), so far as it inserts new section 9E(1)(b) of the Requirements of
Writing (Scotland) Act 1995. That paragraph enables the prescription by regulations of validity or authentication requirements for electronic documents. The Committee considers this to be a potentially significant power, going beyond minor technical matters in relation to the authentication and alteration of electronic documents.

64. The Committee considers that this power is significant enough that the affirmative procedure would be a suitable level of scrutiny.

Section 103(1) - Power to make provision regulating availability of information and access to the Keeper's registers

**Power conferred on:** the Scottish Ministers  
**Power exercisable by:** Order  
**Parliamentary procedure:** affirmative procedure

**Background**

65. Section 103(1) enables the Scottish Ministers to make provisions regarding what information has to be made available by the Keeper, the manner of doing so, and access to any of the Keeper's Registers. This is capable of covering information in or as to the Registers, and other information held by the Keeper (such as for instance statistics and reports).

**Comments**

66. The Committee asked the Scottish Government to explain, given the apparent significance of this power in relation to information to be made available by the Keeper and access to any of the Keeper's Registers, why the provision is framed as a general, discretionary power. It would have been possible to provide that an order could make provision on matters described by specified headings, in connection with such information and access. It also asked for an explanation why initial provision on these matters could not be made in the Bill.

67. The Scottish Government has responded that the provision is in general terms, as the power extends to all of the Keepers Registers, for which different levels and types of access will be appropriate, due to the different structure, nature and underlying legislative foundations of the various Registers. The principle that the Land Register is a public register is set out in section 1 of the Bill, and section 100 provides for the issue of extracts and certified copies from parts of the Land Register.

68. In relation to the intended scope of the power, the response indicates – "section 103 allows Scottish Ministers to make provision about the manner of wider access, which is a matter of detail. At present the electronic land registration system of Registers of Scotland restricts the way the Land Register may be indexed and therefore the way it may be searched. This power will allow Scottish Ministers to give consideration to the flexibility of the future IT system. It is not possible or appropriate to set out more detail on the face of the Bill until the capabilities of any future IT system are known."

69. The Committee appreciates that a delegated power may be necessary, to make further provision on detailed matters which may not be appropriate for
further primary legislation, as regards information to be made available to the Keeper and access to any of the Keeper’s Registers. The Committee also accepts that the power appears to cover significant matters, and this indicates that the affirmative procedure may be appropriate for the exercise of the power.

70. However in light of the Government’s response, the Committee has concerns as to the wide and general nature of this power, and whether it could be drawn more narrowly to give effect to the intended policy/policies. The power extends to any of the Keeper’s Registers, and so relates to the statutory framework for each Register. The response to the Committee has indicated that it is intended that the power covers residual matters of detail.

71. The Committee also notes that, when read with the ancillary provisions in section 113, it is possible that an order under the general powers in section 103 could make provision as regards access to any of the Keeper’s Registers (for example) and section 113 might be used to make supplemental provision to that. Such provision is capable of modifying any enactments, including this Bill itself (once passed).

72. The Committee therefore draws to the attention of the lead Committee the response from the Scottish Government in relation to the powers in section 103(1). The Committee has concerns as to the general scope of this power in relation to information to be made available by the Keeper and access to the Keeper’s Registers, and whether in light of that response it could be drawn more narrowly to give effect to the intended policies.

73. The Committee recommends that the Scottish Government should consider this further in advance of Stage 2.
ANNEX

Scottish Government Response to Subordinate Legislation Committee

Land Registration etc. (Scotland) Bill at Stage 1

1. I refer to your letter of 10 January 2012 regarding the Land Registration etc. (Scotland) Bill, in which you sought explanations for a number of matters related to the Delegated Powers Memorandum. As requested I set out the Scottish Government response.

Section 77(4) - Powers to prescribe in land register rules the rate of interest payable on claims under warranty

Section 80(7) - Powers to prescribe in land register rules the rate of interest payable on claims for compensation as a result of rectification of the register

Section 91(4) - Power to prescribe in land register rules the rate of interest on compensation for realignment of rights

SLC Question

2. The SLC asked the Government to explain why it is considered that the negative procedure is a suitable level of Parliamentary scrutiny of the exercise of these powers rather than the affirmative procedure, given that specification of the level of the interest rate in each case could have significant financial effects for persons entitled to be paid the interest and for the Keeper of the Registers.

Scottish Government Response

3. The Scottish Government policy in this area is that interest is available to a person due payment of a sum under the Bill to acknowledge the fact that during the period between a loss being sustained and the payment being made the person has been unable to benefit from the sum in question. The intention is not that the payment of interest should act as a penalty on the Keeper. Therefore the rate of interest is unlikely to make a significant financial impact on the overall compensation payment. In addition it is not appropriate to tie the rate of interest to a rate (such as the judicial rate of interest) which does not change frequently according to market conditions. The rate must be flexible enough to change to reflect the interest a person may have been able achieve by, for example, depositing the sum in a savings account. As a result the rate of interest will reflect that available in the market and could be subject to regular amendment. The Scottish Government's view is that, in order to provide for best use of Parliamentary time, negative procedure is appropriate. This fits with the level of scrutiny suggested by the Scottish Law Commission in their draft Land Registration (Scotland) Bill accompanying their Report on Land Registration.
Section 47(2) and 47(3) - power to prescribe days, on or after which recording of certain deeds in the Register of Sasines will have no effect

SLC Question

4. The Delegated Powers Memorandum explains that affirmative procedure is considered appropriate because the closure of the Register of Sasines to new deeds is likely to affect various stakeholders.

(a) Would this objective be better achieved in the interests of stakeholders by providing in section 47 for a requirement to consult the relevant persons before making an order, as well as the Keeper of the Register? Which stakeholders are being referred to?

(b) Could it be further clarified why affirmative rather than negative procedure is considered to be an appropriate level of scrutiny, given that the scope of these powers is limited to prescribing the relevant dates?

Scottish Government Response

5. The Scottish Government will consider, in advance of Stage 2, whether it is appropriate to add a requirement to consult relevant persons with an interest in the Register. The stakeholders affected by the closure of the Register of Sasines will be anyone who submits or may submit an application for recording to that Register or otherwise interacts with that Register. This will include but not be limited to, banks and other lenders, local authorities, conveyancing solicitors and private searching firms. Given the number of potential stakeholders, the Scottish Government does not consider it appropriate to list the stakeholders to be consulted on the face of the Bill.

6. The Scottish Law Commission suggested that affirmative procedure was appropriate for this power. The Scottish Government felt that what could be done under the power is of sufficient importance to warrant the level of scrutiny given by affirmative procedure. However, in light of the consideration noted above regarding consultation the Scottish Government will consider whether the addition of a requirement to consult would mean that negative procedure is more appropriate.

Section 55(4) - Power to make provision about the description of unregistered subjects in an advance notice

SLC Question

7. The Delegated Powers Memorandum explains that affirmative procedure is considered appropriate because “the power will be of interest to stakeholders and it is important for the running of the system.” On the other hand, it appears that this power shall be used to make technical provision on matters of conveyancing description.
(a) Would this objective be better achieved in the interests of stakeholders by providing in section 55 for a requirement to consult the relevant persons before making the regulations, as well as the Keeper of the Register? Which stakeholders are being referred to?

(b) Could it be further clarified why affirmative rather than negative procedure is considered the appropriate level of scrutiny, and why the standard of conveyancing description for advance notices could not initially be set out in the Bill?

Scottish Government Response

8. The stakeholders affected will be those using advance notices. This will include, but not be limited to, people buying houses (or their solicitors) and lenders registering standard securities. The Scottish Government view is that the advance notice scheme in the Bill was widely consulted on prior to introduction of the Bill and it is not appropriate to provide for further consultation on the same area. In particular it is possible that the type of description for Sasine advance notices or minor parts of it will change over time and it is not considered appropriate to require consultation every time the power is exercised.

9. The description required for Sasines advance notices is likely to change in light of changing circumstances and technology. For example, if it becomes practical to identify a tenement flat by exact co-ordinates rather than general description it may be appropriate to include this information in a Sasine advance notice. For this reason it is not possible to set out the standard of description for a Sasine advance notice on the face of the Bill. By way of contrast Land Register advance notices will always describe the property by reference to the title number. The Scottish Government considers the description of subjects in a Sasine advance notice to be an important part of the advance notice system. However, the Scottish Government have reconsidered the appropriate level of scrutiny and the best use of Parliamentary time in light of the potential for frequent amendment. The Government now consider negative procedure would be a more appropriate procedure than affirmative procedure in the circumstances.

Section 58(6)(b) - Power to provide certain documents are unaffected by advance notices

SLC Question

10. The committee asks

(a) Could it be explained why this power requires to apply to any types of deed and cannot be more narrowly drawn, for instance by specifying significant types (such as dispositions) which cannot be excluded from the advance notice system?
(b) As it appears this power is capable of excluding such significant types with a significant effect on Part 4 of the Bill, could the Government re-consider whether the affirmative procedure could be more suitable for the exercise of this power?

Scottish Government Response

11. The two types of deed referred to in section 58(6)(a) are unique types of registrable notice. They represent the exception to the norm and are excluded from the advance notice system because application of the provisions would defeat their purpose. Clearly if dispositions were excluded this would defeat the purpose of the whole advance notice system. However, the view of the Scottish Government is that it is not practical to list all the deed types which cannot be excluded from the operation of the advance notice system. This would involve listing dispositions, standard securities, deeds of real burdens or conditions, deeds of servitude, minutes of agreement and many others. There would also be a need to ensure that new types of deed were added to the list if appropriate. The view of the Scottish Government is that, given the number of deeds which cannot be excluded there is no benefit in picking out one particular type of deed.

12. Negative procedure was selected because the use of the power is unlikely to be controversial. While this remains the Government’s view we accept that the power is potentially significant. In light of this the Scottish Government now considers the power in section 58(6)(b) should be subject to affirmative procedure.

Section 61(1) - Power to amend application of advance notices scheme in relation to certain deeds

SLC Question

13. The Committee asks

(a) Could it be explained why this power requires to apply to any kinds of deed and cannot be more narrowly drawn, for instance by specifying significant kinds (such as dispositions) for which any order could not modify the application of provisions in Part 4?

(b) As it appears this power is capable of extending to such significant types of deed with a significant effect on Part 4 of the Bill, could the Government re-consider whether the affirmative procedure could be more suitable for the exercise of this power?

Scottish Government Response

14. There are numerous types of deed in relation to which the Government has no intention of altering the principal application of Part 4 of the Bill. Each of these
deeds is significant to the granter and grantee of that deed. However, it is considered appropriate that the power is available to make technical changes to the application of Part 4 in relation to those deeds where experience shows those changes to be necessary. In addition new deeds may be created by legislation which would then have to be added in turn to any list.

15. The Scottish Government has carefully considered part (b) of the committee’s question. However, the Government remains of the view that negative procedure is the appropriate level of Parliamentary scrutiny. The power is primarily to be used to extend the advance notice system to deeds that currently could not be covered by an advance notice (such as unilateral deeds created by statute). As explained, in relation to deeds already covered, it is envisaged that any modification will be of a technical nature and only where experience has shown it to be required. No-one would be detrimentally affected by the use of the power.

Section 93(2), inserting section 9E(1) of the Requirements of Writing (Scotland) Act 1995 - Further powers related to electronic documents

SLC Question

16. It appears that the power contained in new section 9E(1)(b) of the Requirements of Writing (Scotland) Act 1995 could be used to prescribe significant matters – for example, requirements for the validity of electronic wills or electronic contracts for land transactions. Why is it considered that negative procedure is the appropriate level of Parliamentary scrutiny of such regulations, rather than prescribing initial requirements in the Bill, or applying affirmative procedure?

Scottish Government Response

17. The power relates to minor technical matters in relation to the authentication and alteration of electronic documents, for example amending an electronic document to fix a spelling error in a company name, which the Government considers are appropriately subject to negative procedure. In addition section 9E(4) provides if regulations amend primary legislation they will be subject to affirmative procedure. There are also other amendments to the 1995 Act in the Bill subject to the negative procedure. The fact that this power is also negative will give Scottish Ministers scope to make one set of regulations in this area. Finally the minor nature of the matters at hand mean it is not appropriate to set out initial requirements in the Bill.

Section 103(1) - Power to make provision regulating availability of information and access to the Keeper’s registers

SLC Question

18. The Committee asks:
(a) Given the significance of this power in relation to information to be made available by the Keeper and access to any of the Keeper's Registers, why is the provision framed as a general, discretionary power, rather than providing that an order shall make provision on matters as described by specified headings, in connection with such information and access?

(b) Why could initial provision on these matters not be made in the Bill?

Scottish Government Response

19. The provision is in general terms as the power extends to all of the Keepers registers for which different levels and types of access will be appropriate due to the different structure, nature and underlying legislative foundations of those other registers.

20. The principle that the Land Register is a public register is set out in section 1 of the Bill. The public are therefore guaranteed access to the Land Register. Section 100 of the Bill makes more detailed provision about extracts, which will be one of the ways people will access the Register. Section 103 allows Scottish Ministers to make provision about the manner of wider access, which is a matter of detail. At present the electronic land registration system of Registers of Scotland restricts the way the Land Register may be indexed and therefore the way it may be searched. This power will allow Scottish Ministers to give consideration to the flexibility of the future IT system. It is not possible or appropriate to set out more detail on the face of the Bill until the capabilities of any future IT system are known.
ANNEXE B: EVIDENCE RECEIVED BY THE FINANCE COMMITTEE

SUBMISSION FROM HOMES FOR SCOTLAND

Please find below answers to the questions raised by the Finance Committee from Homes for Scotland:

1) Did you take part in the SG consultation exercise for the Bill and if so did you comment on the financial assumptions made?
Homes for Scotland submitted a short response on specific proposals but did not comment on the financial assumptions made.

2) Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?
N/A

3) Did you have sufficient time to contribute to the consultation exercise?
Yes

4) If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum?
The Bill does not have any direct financial implications for Homes for Scotland. The Bill is likely to have financial implications for our home building member companies through changes to conveyancing practices but these are yet to be measured. The Financial Memorandum states (para 373) that there will be an initial extra cost to the registration process and we assume that this is the cost that will be passed to the public. It would however seem likely that this cost would be met by home building companies. This would be a ‘new’ cost that is not yet payable at the moment.

Note - It may be helpful to point out that it was our understanding that the shared plot title sheets would not be included at the next stage, yet costs to the ROS for processing them has been included within the Financial Memorandum at £436k.

5) Are you content that your organisation can meet the financial costs associated with the Bill?
There are no direct financial consequences for Homes for Scotland. Our members are yet to estimate the financial impact so we are unable to provide comment at this time.

6) Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?
Homes for Scotland does not feel in a position to comment.

7) If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?
Homes for Scotland does not feel in a position to comment.
8) Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? Homes for Scotland does not feel in a position to comment.

Kindest regards

Karen Trouten
Head of Policy & Research
Homes for Scotland
ANNEXE C: MINUTE OF MEETINGS

1st Meeting, 2012 (Session 4), Wednesday 11 January 2012

Decision on taking business in private: The Committee agreed to take item 4 and all future reviews of evidence taken in private.

Land Registration etc. (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—
John Scott, Solicitor, and Ross MacKay, Solicitor, Law Society of Scotland;
Fiona Letham, Professional Support Lawyer, Dundas & Wilson;
Graeme McCormick, Founder and Managing Director, Conveyancing Direct;
Ken Swinton, Senior Lecturer in Law, Abertay University, Council Member,
and Ian Ferguson, Solicitor, Partner Mitchells Roberton Solicitors, Council Member, Scottish Law Agents Society.

Murdo Fraser declared he is a member of the Law Society of Scotland and Mike MacKenzie referred to an entry in his Register of Interest and declared himself as a personal friend of Mr McCormick.

Land Registration etc (Scotland) Bill The Committee reviewed the evidence heard earlier in the meeting.

2nd Meeting, 2012 (Session 4), Wednesday 18 January 2012

Land Registration etc. (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—
Andy Wightman;
Iain Langlands, Chartered Surveyor, Royal Institution of Chartered Surveyors;
Graham Little, Head of Service Delivery, Data Collection and Management, Ordnance Survey;
Richard Blake, Legal Adviser, Scottish Land and Estates;
Tom Axford, Corporate Secretary & Head of Legal, Scottish Water.

Land Registration etc. (Scotland) Bill (in private): The Committee reviewed the evidence heard at today's meeting.

3rd Meeting, 2012 (Session 4), Wednesday 25 January 2012

Land Registration etc. (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—
Alan Cook, Chairman, and Ann Stewart, Member, SPF Commercial Committee & Professional Support Lawyer, Scottish Property Federation;
Gary Donaldson, Business Development Manager, Millar & Bryce;
Sheenagh Adams, Keeper of the Register, Gavin Henderson, Land Registration Bill Team Leader, and John King, Director of Registration, Registers of Scotland.

Land Registration etc. (Scotland) Bill (in private): The Committee reviewed the evidence heard at today's meeting
Land Registration etc. (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—Fergus Ewing, Minister for Energy, Enterprise and Tourism, Scottish Government; Gavin Henderson, Land Registration Bill Team Leader, Registers of Scotland; Matthew Smith, Land Registration Bill Team Officer, and Valerie Montgomery, SGLD Principal Legal Officer, Scottish Government.

6th Meeting, 2012 (Session 4), Wednesday 22 February 2012

Land Registration etc. (Scotland) Bill The Committee took evidence from—Lesley Thomson Q.C, Solicitor General for Scotland; Ernie Shippin, Deputy Head of Serious and Organised Crime Division, and Danny Kelly, Principal Depute, Policy Division, The Crown Office.

Land Registration etc. (Scotland) Bill (in private): The Committee considered its draft Stage 1 report.

7th Meeting, 2012 (Session 4), Wednesday 29 February 2012

Land Registration etc. (Scotland) Bill (in private): The Committee considered and agreed a draft Stage 1 report. The Committee thanked Professor Reid for his assistance advice.
ANNEXE D: ORAL AND OTHER ASSOCIATED EVIDENCE

1st Meeting, 2012 (Session 4), Wednesday 11 January 2012

Official report
John Scott, Solicitor, and Ross MacKay, Solicitor, Law Society of Scotland;
Fiona Letham, Professional Support Lawyer, Dundas & Wilson;
Graeme McCormick, Founder and Managing Director, Conveyancing Direct;
Ken Swinton, Senior Lecturer in Law, Abertay University, Council Member, and Ian Ferguson, Solicitor
Law Society of Scotland
Conveyancing Direct
Scottish Law Agents Society

2nd Meeting, 2012 (Session 4), Wednesday 18 January 2012

Official report
Andy Wightman;
Iain Langlands, Chartered Surveyor, Royal Institution of Chartered Surveyors;
Graham Little, Head of Service Delivery, Data Collection and Management, Ordnance Survey;
Richard Blake, Legal Adviser, Scottish Land and Estates;
Tom Axford, Corporate Secretary & Head of Legal, Scottish Water.
Andy Wightman
Scottish Water

3rd Meeting, 2012 (Session 4), Wednesday 25 January 2012

Official report
Alan Cook, Chairman, and Ann Stewart, Member, SPF Commercial Committee & Professional Support Lawyer, Scottish Property Federation;
Gary Donaldson, Business Development Manager, Millar & Bryce;
Sheenagh Adams, Keeper of the Register, Gavin Henderson, Land Registration Bill Team Leader, and John King, Director of Registration, Registers of Scotland.
Scottish Property Federation
Registers of Scotland

5th Meeting, 2012 (Session 4), Wednesday 8 February 2012

Official report
Fergus Ewing, Minister for Energy, Enterprise and Tourism, Scottish Government;
Gavin Henderson, Land Registration Bill Team Leader, Registers of Scotland;
Matthew Smith, Land Registration Bill Team Officer, and Valerie Montgomery, SGLD Principal Legal Officer, Scottish Government.
6th Meeting, 2012 (Session 4), Wednesday 22 February 2012

Official report

Lesley Thomson Q.C, Solicitor General for Scotland;
Ernie Shippin, Deputy Head of Serious and Organised Crime Division, and Danny Kelly, Principal Depute, Policy Division, The Crown Office.
Land Registration etc (Scotland) Bill: Stage 1

11:01

The Convener: Item 3 is our first evidence session on the Land Registration etc (Scotland) Bill. I remind members of my entry in the register of interests: I am a member of the Law Society of Scotland, albeit not currently practising as a solicitor.

I welcome John Scott and Ross MacKay from the Law Society of Scotland; Fiona Letham from Dundas & Wilson; Graeme McCormick from Conveyancing Direct; and Ken Swinton and Ian Ferguson from the Scottish Law Agents Society. I thank you all for coming and for submitting written evidence in advance. If you want to say something by way of introduction in support of your written evidence, I am happy to give you that opportunity. Does anybody want to start? Mr Scott?

John Scott (Law Society of Scotland): No.

The Convener: You were nodding—that is why I picked on you.

John Scott: I was acknowledging you.

The Convener: If nobody wants to say anything, I am happy to go straight to questions. Mr Brodie will start us off.

Chic Brodie (South Scotland) (SNP): Good morning. Given the nature of the bill, how much priority would you give to completing the land register by having all land in Scotland transferred to it? What advantages do you believe will come from achieving that? Would it be acceptable to have a system of payment for an accelerated programme of completion of the register that increased the overall level of fees that are paid for all types of registration?

The Convener: Who would like to start off?

Ross MacKay (Law Society of Scotland): I will kick off. The Law Society of Scotland is neutral from a truly legal point of view on the benefits of accelerating completion of the land register. Speaking personally, I think that there are clear economic benefits from doing so. Scotland is already well advanced in having a computerised database of land ownership. It goes without saying that, in the digital age, having a complete record of land ownership in Scotland would have economic benefits in relation to data management, the identification of wasted assets such as land not being occupied and so forth.

Graeme McCormick (Conveyancing Direct): I am old enough to have been around when land registration was introduced in 1981 in Renfrewshire, where I practised in those days. At that time, Registers of Scotland expected land registration to be completed within 10 years—30 years afterwards, we are barely halfway through. Although land registration can assist and accelerate part of the conveyancing process, it does not really affect how quickly a transaction can be completed. Most transactions are completed in a minimum of four, six or eight weeks. In general, that is plenty of time.

We must remember that, from a practical point of view, when dealing with a property that was originally a new-build property, a tenement property or a former local authority or public sector property, generally it is possible to get most of the information that is required regarding title conditions that might not be with the bundle of titles for the property if a land certificate is available for an adjoining property that has been registered. Solicitors use many mechanisms to get over the problems that can exist with urban properties, in particular, that have not been registered.

I do not see it as the be-all and end-all that the land register be completed. To be honest, I am quite happy with the way in which the system is working at the moment, with certain provisos. There are improvements that can be made, but I do not think that it is necessary to reinvent the wheel to make them.

Chic Brodie: On that point, you say in your submission:

“In my opinion the purpose of legislation is to make life better.”

However, you are saying that you are happy with the current situation.

Graeme McCormick: No. Although I say that the purpose of legislation is to make life better, I am not convinced that the bill has been designed to make life better. As I said in my submission, the important thing from a consumer’s point of view is that, if they are a buyer, they get their keys on time and, if they are a seller, they get their money on time. The system and everyone who is involved in it must work towards that. The reason why people pay solicitors, surveyors and all the rest is that they expect to get a professional service. Most people are not concerned about the mechanics; they want the job to be done.

Chic Brodie: I understand that, but you went on to say that the bill

“offers this Committee and this Parliament the opportunity to develop the land registration system to be more equitable, robust, clear, efficient and in the public interest while greatly improving the conveyancing process”.

Chic Brodie: I think you have made a very clear point there.
I am struggling with the position that you have outlined today.

Graeme McCormick: If you look at the issues that I raise further on in my submission, I make certain suggestions about how the system could be improved, given the experience that my firm has had of problems with the land register.

I go on to say that I check all the title deeds for all our clients who purchase properties and I draft the new titles—that is part of my job in my firm. I reckon that every week I see at least two land certificates that contain a material error. A system that is robust should not be like that at all. My guesstimate is that there are probably at least about 40,000 titles that have already been registered in which there are errors. As far as I am aware, the land register does not have a system of automatically reviewing titles to check them. It is only when errors are pointed out by solicitors and others that an attempt will be made to address them.

In my submission, I have identified issues and made suggestions for remedies so that they can be discussed, because I think that if we legislate to improve the life of our citizens—which I believe is what the primary purpose of legislation should be—we should make it easier for people to buy and sell property and should ensure that it is a robust system. Just accelerating the land register system per se will not improve things.

Chic Brodie: I understand that.

Currently, only 21 per cent of the landmass of Scotland is covered by the land register. That means that a vast amount of property—property on the remaining 79 per cent of the landmass—is not registered. We are talking about property that is not urban and which is not tenements or houses. In terms of equitability, do you agree that it would be helpful in several ways, not least economically, if we knew who owned 100 per cent of the land of Scotland?

Graeme McCormick: Property searchers can find that out for us anyway.

Chic Brodie: Under the existing register.

Graeme McCormick: I suggest that, if the committee has not already done so, it should consider inviting some of the professional searchers to speak to it. Most of them usually have experience of working with the land register as employees of Registers of Scotland, so they have vast experience of how that system works.

It is possible to find out who owns what in Scotland, and that is the way in which conveyancing has been done for years.

Chic Brodie: Things are not necessarily cut and dry. The system leads to disputes over who owns what land.

Graeme McCormick: But land certificates do not guarantee robustness now. Sometimes we have to look behind them, despite the suggestion that land registration was a means by which prior titles could be dispensed with.

I do not want to hog the limelight, as I seem to be doing, but I will give a brief example. We had a client who was selling a property. According to the land register, the title was in the joint names of her and her late husband. That was it. We said to the client that, if she did not have confirmation from the sheriff court, we would have to apply to it to get confirmation to allow her to sell her husband’s share of the property. It was purely by chance that the original title deed that the local authority had granted in favour of her and her husband was with the land certificate when it eventually came from her lender. There was a survivorship destination in that title deed, whose effect was that there was no requirement to apply to the sheriff court for confirmation, thus saving the client hundreds of pounds.

The land register had an error, as the proper proprietorship or ownership of the property was not inserted in the land certificate. We would probably never have discovered that if the original deed, which was supposed to be superseded by the land certificate, had not been with the land certificate when we got the title deeds from the lender.

Chic Brodie: I do not know whether any other panel members wish to comment on the completion of the land register.

The Convener: I do not think that anybody has really responded to your second question, which was about the level of fees. There has been a suggestion that, in order to try to complete the register, the keeper of the registers of Scotland should look at increasing the level of fees payable. I am interested in thoughts on that.

Fiona Letham (Dundas & Wilson): I will go back to the first question. I am from Dundas & Wilson, which is one of the large commercial firms. We do not deal with residential conveyancing at all; all our work is corporate and commercial.

We support the moves to complete the land register. I agree with what Graeme McCormick said. We definitely see land certificates with errors, and my view is that, at the end of the day, the solicitor has a responsibility as part of a conveyancing transaction to check the land certificate and sort out errors then. I accept that that does not always happen, but it would in an ideal world.
As I said, we support the moves to complete the land register. We deal with many situations in which we have to look at very old titles that are recorded in the register of sasines, and it is very difficult to tell what a property’s boundaries are. In commercial transactions, we quite often deal with piecing together sites where a number of different titles make up a property.

Trying to explain to clients why we are looking at deeds that do not have attached plans because they are too old can be very difficult. They predate the days of photocopying, and trying to explain why we cannot definitively say what the title comprises can be very difficult. Obviously, once everything is moved into the land register, based on the Ordnance Survey map, we will have nice, clean title plans. It will all be accessible online through the registers direct system, which we think is a massive advantage.

This has not been a massive issue until now, but the land register has been operational for the whole of Scotland for nearly 10 years, and we are finding that, as people come through the university system, they are less familiar with sasine conveyancing. Only those of us who are a bit longer in the tooth have a lot of experience of that.

The principle of removing two parallel systems is good, as some people are inevitably more familiar with one system than the other. Ultimately, the issues relating to overlaps and gaps that Graeme McCormick has talked about will be removed once the land register is completed and we have the cadastral map of the whole of Scotland, but unfortunately we are in a lengthy transitional phase before we get there.

On fees, however—

**Chic Brodie:** Pardon my naivety but, on your comment about solicitors finding problems and correcting the land register, how proactive should the keeper be in ensuring that the register is up to date?

11:15

**Fiona Letham:** I would like the keeper to do more. Inevitably, however, there is the possibility of human error.

There is a responsibility on both sides. I would like the keeper’s staff to carry out more checks before land certificates are issued but, equally, the solicitor who handles the transaction has a responsibility to double-check that at the end of the day the certificate is correct.

**Chic Brodie:** Thank you.

**The Convener:** I believe that you were going to talk about expenses, Ms Letham.

**Fiona Letham:** We do not support any move to increase fees. A number of our clients who deal with property in England are surprised to find that the fees for registering high-value properties in Scotland are significantly—indeed, 10 times—higher than they are there. I appreciate that it makes sense to have a scale based on the value or price of a transaction but, if fees are going to be increased—and I have to say that, with regard to complex transactions, I am concerned about proposals to allow the keeper to charge on a time-and-line basis rather than according to a scale—it might well put off some of our clients who could be dealing with very complex titles.

Ultimately, there is a benefit not just to the individual client who has to pay for the transaction but to others who transact with that property in future; indeed, there are general economic benefits in having all property registered. I would like the English system to be introduced, in which the submission of a voluntary registration is perceived as a benefit and the person in question pays a fee lower than that if the application had been triggered by a transaction. Although that is not necessarily going to happen, I know that the proposals in the bill permit it and that it could be put in place.

**The Convener:** Your reference to universities reminded me that I had omitted to welcome our committee adviser, Professor Kenneth Reid, who is very helpfully assisting the committee in its scrutiny of the bill.

Does anyone else have any views on the question of fees?

**Ross MacKay:** I support Fiona Letham’s view that, if the proposal is about enhancing voluntary registration and saying to the Scottish public, “Register your title now because it’s to your benefit,” there needs to be a carrot in the shape of reduced fees. If we ask the public to register voluntarily and then hit them with a big fee in the process, their response will be, “Thanks, but no thanks.” The keeper has to consider the economics of all that, but there is a macroeconomic picture to be considered of the benefits of large-scale voluntary registration set against the cost to the keeper’s office of facilitating that, and I suspect that that is not a question for the keeper.

**The Convener:** But the bill provides for the keeper to register titles proactively.

**Ross MacKay:** That is correct.

**The Convener:** I presume, then, that the keeper will charge the proprietor to cover the costs of that work. What is your view on that?

**Ross MacKay:** The bill provides that at some stage in the future—many years in the future, I
think—we will have what is effectively a compulsory transfer system. Eventually, there will be a tipping point at which, I hope, the land in Scotland that is still in sasines will be forced to convert to land registration. Of course, that has happened in other jurisdictions across the world, but I suspect that it will happen beyond my career.

As for voluntary registration, the keeper is quite rightly looking to expand the areas where submission of a deed triggers first registration. For example, conveyance by gift, which at the moment does not require registration, will now be a trigger. As a result of such moves, the land register system will expand incrementally, which is something that I fully support. In those cases, the standard transaction fee should apply. I do not think that there should be an increased fee for voluntary registration; indeed, as Fiona Letham pointed out, a carrot in the form of reduced fees would enhance the process.

**Ken Swinton (Scottish Law Agents Society):** Our concern about fees relates to a situation in which a title is at present in sasines and the owner wishes to remortgage. Under the bill, that might be a trigger event, depending on whether those particular provisions are activated, and we doubt whether it is proportionate to increase the costs of a remortgage transaction for those who remortgage and slow the transaction down by requiring a first registration.

As Ross MacKay said, there is a tipping point. However, in the financial memorandum, the keeper talks about it being 30 to 40 years before the sasine register is closed. We see no particular advantage in accelerating the process and we are not in favour of charging enhanced fees to accelerate it.

**Graeme McCormick:** On fees for remortgages, in the past few years, an awful lot of remortgages have been done almost en bloc. One firm of solicitors is appointed to act for a lender and, in most cases, the borrower does not bother to appoint a separate solicitor. The economics are that the lender or broker looks for an all-in package and does not differentiate between the fee that the solicitor charges and the land registration and search dues and so on. We must be conscious of that. If we are to have mandatory land registration of a title on a remortgage, we must consider whether there will be a charge according to the value of the property or just a single payment regardless of the value of the property. That obviously affects the economics and the all-in charges that are likely to be made. We must be aware of such issues.

My personal view is that there should be a one-off charge for voluntary registration of, say, £60 or something like that. In urban Scotland, most of the titles are very similar. Titles in urban Scotland are pretty bog standard. That is because of our history. We had a lot of social or public sector housing, tenement flats and then developments by companies such as Barratt, Wimpey and Miller. Basically, they used the same style of title, burdens and title conditions, regardless of whether the property was in Inverness, Glasgow, Edinburgh or wherever.

**The Convener:** Do other members want to come in on the completion of the register or fees?

**Mike MacKenzie (Highlands and Islands) (SNP):** I should begin by noting my interests as per my entry in the register of interests. I should also point out that Mr McCormick is a personal friend, although we have never dealt with each other professionally.

We have heard about the extent of the errors by the keeper, which I find a wee bit shocking. The aim of the bill is to encourage more property in Scotland to be registered more quickly. I am concerned that, if the bill encourages more registrations, the anticipated extra work that the keeper will have to do with the available resources might give rise to even more errors. From the point of view of a purchaser or seller of property who is unfortunate enough to be the victim of an error, should more consideration be given to a process for resolving errors that is short of a court remedy? I am interested in all the witnesses’ opinions on that.

**Ross MacKay:** It is fair to say that the number of errors by the keeper has increased in the past 10 years, for a variety of reasons. The organisation is under pressure financially, in staffing and cost terms. It now has a target to turn round registrations, particularly first registrations, much more quickly to reduce its historical backlog. I am sure that all the witnesses will have cases of it taking five or six years to complete the registration process, if not longer. With the pressure to do that more quickly, human error creeps in. If there is a simple typographical or minor error, the keeper will rectify that quickly, but there can sometimes be errors, as in Graeme McCormick’s example, that could cost the client money if they do not come to light at an early stage. The keeper should be more proactive in dealing with errors. She should be more responsive to agents, pointing things out and dealing with them as quickly as possible on an informal basis, short of full rectification of the certificate. To be fair to the keeper, I say that in my experience she is amenable to such an approach. It is inevitable that human error will creep in—it is as simple as that. That must be recognised.

**John Scott:** To be fair to the keeper, I understand that she has introduced a system of improving quality control for land certificates, which involves sampling certificates and double-
checking their accuracy. Measures are in place to address the issue.

Ken Swinton: We should get into perspective the scale of the problem that panel members mentioned. In our members’ experience of errors in land certificates, the issue is not necessarily the title or the burdens but matters such as omission of special destinations or omission of the fact that a property is shared between two owners, although that is stated in the deed. In some cases, pertinent are omitted from the land certificate. The problem is not the actual base title but the ancillary bits, particularly in the proprietorship section.

The Convener: For the benefit of non-lawyers on the committee, will you tell us what a pertinent is?

Ken Swinton: It is something that goes with a title that does not have a separate title of its own. Someone might have shares of other parts of property—we might come on to that in relation to shared plots. There might be other rights attaching to the property, which pass automatically with the property without the need for separate title. For example, in a tenement flat, a share in the drying green at the rear might be a pertinent.

The Convener: Thank you.

Graeme McCormick: If we are to progress with land registration, I suggest that we concentrate on areas where land registration is fairly far advanced, such as urban areas. That will give land register staff the opportunity to check existing land certificates for flats that are registered in a tenement when they register other flats in the block for the first time. That is a practical thing that can be done.

I regret that I must take issue with what has been said. We find problems with the extent of the plans and the description of properties, in relation to shared properties, the existence of servitude rights and so on. Such problems arise because the keeper is not checking the titles of adjoining properties. We can go into the registers direct site to pay the £3 and can just go in and find them and check such things for £3; she does not need properties. We can go into the registers direct site the keeper is not checking the titles of adjoining tenement when they register other flats in the same building. That is a practical thing that can be done.

Fiona Letham: We see errors. Many tend to be minor, typographical errors, which we would want to be tidied up but which would not cause a significant problem in a transaction, but from time to time we find the more serious errors that Graeme McCormick talked about.

That is not a reason not to complete the land register. The benefits of completing the land register far outweigh the problem of resourcing the keeper’s staff adequately to ensure that such errors reduce.

Mike MacKenzie: I am concerned that the OS plans are less accurate in some areas of the country than we would want them to be. In the experience of the panelists, does the issue cause material problems with titles? Given that the drafting standards are lower in rural areas, are there greater problems in rural areas with accuracy of plans and maps, which cause potential purchasers and sellers problems when they come to light for the first time in the registration process?

11:30

Ross MacKay: Regrettably, there is an issue with the scale of the plans that are used by the registration system. The smallest scale is 1:2,500. As is made clear, there is a tolerance level of plus or minus 0.3m or 0.4m. That is not a lot but, unfortunately, in an urban area, it is enough to trigger a neighbour dispute.

My firm acts for various legal expenses insurers. As often as not, when we are involved in connection with a boundary dispute that becomes a neighbour dispute, it is hard to tell which starts first. Part of the difficulty is that, because of the scale of the maps, people are arguing over inches.

The land certificates are perfectly fine in terms of the plans, but they are not definitive with regard to boundary measurements and features. That has always been a feature of land registration—the certificates do not say, “The boundary is the centre line of the wall,” or whatever. That tolerance level—which is used by Ordnance Survey maps—can be enough to trigger disputes that I am sure you have all encountered in your constituencies. However, that is the system that we are stuck with. It would be wonderful to have a geospatial system whereby titles are mapped to the inch, but that is not going to happen. The system is the responsibility of the Ordnance Survey, and those are the tolerance levels that are used. The plans that the keeper extracts from the Ordnance Survey Survey will never be inch perfect. Although the technology might exist, I suspect that the cost implications would be enormous. We have the system that we have, and it involves certain tolerance levels. Obviously, as you said, in rural areas, the scale becomes 1:5,000 or more and the tolerance levels increase, which will inevitably lead to disputes.

Mike MacKenzie: Will the fact that there is an implicit intention to migrate to a new and hopefully better map—this cadastral map that is based on an index map—lead to further and greater problems? Do you therefore feel that the legislation should try to encompass some mechanism, short of the courts, to try to resolve
the disputes, given that going to court to do so can be expensive and onerous?

Ross MacKay: You are talking of dispute resolution rather than conveyancing. As the keeper will say, she is not a court of law. It is not for her to resolve a boundary dispute in a situation in which she has issued two land certificates that are identical and show no problem but, because there is an inadequate level of detail, the neighbours have fallen out over where the line is, where the extension is going to go, where a tree is and so on.

If neighbours fall out, it would be great if there were some kind of arbitration or mediation service that could try to resolve the issues, but I do not think that that service would be provided by the keeper. I think that the office of the keeper will say firmly that it is its job to register titles as presented and that, if there is some latent issue there, that is for the neighbours to resolve. Unfortunately, under our current system, if they cannot resolve it personally, they end up going to court, which is hugely expensive—usually out of all proportion to the value of the land in question.

Mike MacKenzie: Given that the keeper indemnifies titles, do you anticipate that, particularly in rural areas, where the drafting tolerance of the maps seems to be much greater than it is in urban areas—I think that it is about 4m or so—there will be a bit of a rush to get the first registration on land around which there might be a bit of ambiguity at the moment? Do you think that, as we go further down the road towards completion, errors in the Ordnance Survey plan that are not evident at the moment will manifest themselves in ways that will be, in certain circumstances, fairly dramatic?

Ross MacKay: I would say that improved mapping will avoid that difficulty, on the whole. There will always be problems with maps, but the difficulty at the moment is that many titles are based on old sasines, which have no maps at all. As we all know, that is where the difficulties come in—one person has owned 8 Acacia Avenue for 40 years, based on a description from 1850 and, as there is no plan, one must be created. The land registration system will give certainty as to what 8 Acacia Avenue encompasses, which has to be beneficial. It will also give the larger and more complex estates the benefit of knowing their extent; that will become definitive once and for all. If there is a dispute on the back of that, it will be resolved, come what may. It will be beneficial to end the uncertainty of ownership of large swathes of land across Scotland by transferring to the land register. However, there will still be disputes, come what may.

Rhoda Grant (Highlands and Islands) (Lab): I want to go back to an issue that was briefly touched on earlier, which is the registration of burdens or indeed rights of access and the like. In his paper, Graeme McCormick says:

“the Keeper refuses to mark the Title Sheet or Burdens section with any reference to these rights”.

Is that for the person who has the right or for the property that the right is over? Is it both that are not marked?

Graeme McCormick: Generally speaking, it is both. We have the law of prescription whereby a right can be obtained or an obligation or burden can be imposed because of use, generally over 20 years. That has just been done. For example, in some villages in the north-east of Scotland there are no rights of access to the individual cottages, but the people obviously have had the right of access and practical access to the properties for 20, 50 or 100 years or more. Their title deeds, however, do not say that they have the right of access, so the keeper will not put on the land certificate that there is a right of access to those cottages even though the access to the cottages goes over land that is owned by someone else and is not publicly maintained.

A few years back, it used to be that you could get two individuals who lived next door, for example, and had no interest in the ownership of the property, to sign affidavits saying that they had lived in the adjoining property for 30 years and that the access had always been there. At that time, the keeper would mark the access on the land certificate. However, during the past few years, we have found that she has generally refused to do so.

That causes problems. If the solicitor who is acting for the purchaser does not know the area or what has happened in the past, one of the first issues that they will see is that the property does not have a right of access. In that case, if the keeper is not prepared to put something on the land certificate, invariably the purchaser’s solicitor will insist on the seller’s solicitor obtaining title indemnity insurance, which can cost £200 to £300, and the seller will have to pay. That is money for old rope because there will never be a claim against it, but that is what they will have to do. It is ridiculous.

Ian Ferguson (Scottish Law Agents Society): There is another method of sorting the problem. In such a situation, the solicitor could raise a court action declaring that there is a right of access over a specified piece of ground from use of more than 20 years, and they could lodge affidavits in accordance with that. Something can then be put on the land certificate. When the court declares on the case, it can be put to the keeper and she will give effect to it. However, it is a very expensive route to get to that point.
There were informal procedures whereby affidavits were accepted by the keeper but, because her fingers were burned by one or two people telling porkies, she decided that it was not a good idea to base her system on such a procedure. People can tell lies, so she has left it for the solicitor to raise the court action, or possibly to take the cheaper route of getting indemnity insurance.

Chic Brodie: How much would the court route cost?

Ian Ferguson: I am not a court practitioner, but I would have thought that a minimum of £600 to £700 plus VAT and outlays to begin with would be a good guess.

Ken Swinton: We are in danger of confusing a variety of different issues, one of which is the ability to create a servitude right of access by exercise for a prescriptive period where nothing appears on the register. That is one problem, and it will remain a problem whether the bill goes through or not.

The second problem is the mapping. The mapping in Highland areas is done on a scale of 1:10,000. I do not know whether you have access to the Scottish Law Commission’s report but, at the back of volume 2 of that report—from page 639 onwards—there are examples of mapping at various scales, which illustrate the problem. I was asked to give an opinion on a title dispute over a garage in Highland Perthshire where the mapping was on a scale of 1:10,000 and it was impossible to see where the garage lay in relation to the map. Both titles were in the register, but there was nothing to determine whose garage it was. It was the strangest garage. I went to visit it. It was a very long garage and had doors at either end, so both proprietors could gain access from the opposite ends of it. Even a site visit did not resolve that issue.

Simply changing the name to a cadastral map will not change the underlying mapping. The keeper must get the mapping from somewhere, and if the Ordnance Survey has mapped the area only at 1:10,000, the keeper will be no better off through the change in the legislation and terminology. The underlying mapping is the issue. In some cases, the answer would be for the keeper to use supplementary plans drawn from the title deeds. The issue in the case that I had to deal with was resolved by going back to the titles in the register of sasines, where there were plans on a scale of 1:250, which disclosed exactly what the situation was.

Mike MacKenzie: I am grateful for that answer. I have, unfortunately, been involved in several such situations. It seems strange that, when we have the technology to survey things far more accurately, we are still relying on title registration plans that are not drawn to a reasonable standard of accuracy and that will give rise to problems and disputes. It disappoints me that the keeper seems to be complacent about that and to think that people can go to court to resolve their differences. That can be very expensive and time consuming, and it can cause a lot of delay and grief. Given that this is a wholesale revision of the situation, it disappoints me that the opportunity has not been taken to introduce some helpful mechanism to resolve the disputes that will inevitably occur.

This all seems to stem from the idea that it would be good to get all of Scotland registered. Most people would agree with that principle, but I am concerned that that impetus will give rise to a lot more first registrations, which will put more stress on the keeper and may lead to more mistakes, some of which will be serious and some of which will not be so serious. There seems to be a missed opportunity, so far, to provide some mechanism for the resolution of errors and so on.

The Convener: We understand that a quasi-judicial system has been set up in England to resolve such disputes, which means that people do not have to incur the expense of raising a formal court action. In contrast, the default position that has been taken by the keeper seems to be that, if there is a problem, people should go to court, sort it out and then come back. Do you have a view on whether such a system would be appropriate? Would it be economically viable to establish such a system in Scotland?

Ross MacKay: The Lands Tribunal for Scotland already deals with title issues although, at the moment, it does not have a locus in dealing with a boundary dispute over who owns what. At the very least, there is scope for giving the tribunal a remit to look into that sort of thing. That would still be judicial, but the tribunal is quasi-judicial and the process is simpler and much speedier. There would still be a cost to it, but it would be a lot less than the cost of going to the Court of Session. My colleagues dealt with a bizarre boundary dispute over a matter of inches in the mining village of Bonnyrigg, outside Edinburgh. The case went to the Court of Session, where the default claim for damages was £2,000 but the court costs were in excess of £20,000. That is ludicrous. There should be a tribunal to resolve such disputes. I appreciate that the keeper is not there to act in a judicial capacity, but there should be something short of the courts for the resolution of disputes that are simply about boundaries but which mean a lot to individuals, so that they can be dealt with quickly and the problem can be knocked on the head.
Ken Swinton: Any system of dispute resolution in relation to property must be compliant with convention rights, and in particular article 1, protocol 1 of the European convention on human rights and article 6 in relation to a fair hearing. I would not wish it on the keeper to determine disputes; it is an administrative function and must be dealt with in a tribunal that is sufficiently judicial and independent to satisfy the convention rights.

Rhoda Grant: I have a short question about registration mistakes. Would a solicitor acting for someone registering for the first time not have the ability or perhaps the responsibility to ensure that the first registration was correct and to look again at what the keeper had drafted and at the title deeds, which would put the required checks and balances into the system? Would it be possible for that to be built into the process?

Graeme McCormick: That is what we are supposed to do as solicitors. When a land certificate comes back from the registers, we are supposed to look at it and check it. However, there are two or three qualifications to that. The first one is that the idea of the family solicitor being used by generations of the same family to do conveyancing has disappeared to a large extent. People are inclined to use a different solicitor when they come to sell the property from the one they used to purchase the property—that happens quite a lot. Quite often, the solicitor who acted in the purchase is either dead or no longer practising, or something similar to that. As a result, the solicitor acting for the client when they are selling has basically got to deal with what they are shown on the land certificate and accept that as the gospel truth. That is one problem.

Further, if the solicitor who acted for the client on the purchase did not check matters, we still have a practical problem if a mistake has not been picked up and there is no recourse to the solicitor who previously acted for the client. The seller’s solicitor must deal with that.

The other point is that we now have a system of land registration that is flawed and has been flawed from day one. However, there are things such as a P16, which is basically a certificate that you obtain before you complete a transaction in order to check whether the boundaries on the ground correspond with the boundaries in the title deed. You get that certificate and, if the keeper says that the boundaries appear to correspond, a solicitor acting for a purchaser on a first registration has more confidence in proceeding to pay the price.

However, the land registration process does not get into gear until the price is paid. A problem can arise during the land registration process that can take years before being raised by the keeper. The purchaser may have paid the money and the solicitor may have looked at everything that they are supposed to look at, but then, lo and behold, something crops up that the keeper raises. That can put people in a dreadful position because the application can be cancelled or withdrawn in some cases. Most people have a mortgage on the property, so the lender will be screaming that they do not have a security over the property, and so on. We are dependent on the land register to give us a far better steer than it does in such cases. That is an area that should be looked at. The keeper could look at more complex applications even for urban properties and not just for rural properties. I know that there is a title investigation service, but there is a separate charge for that. If you are buying or selling a property for £100,000, you do not expect to have to pay the keeper hundreds of pounds for that service. There must be some proportion in that regard.

The Convener: I am conscious that time is getting on and that we have a lot of ground still to cover, so we will move on to electronic conveyancing and registration.

Stuart McMillan (West Scotland) (SNP): The Scottish Law Agents Society highlighted in its submission that it welcomes the provisions to extend the ARTL system, but Mr McCormick’s comments on that were somewhat different, to say the least. I have a few questions on the ARTL system for the whole panel. I am one of the non-lawyers on the committee, so I have never seen or used the system. Before I ask any questions, can we have a brief description of what the system is supposed to do?

Ross MacKay: ARTL is short for automated registration of title to land. It is a computerised system that has been created by Registers of Scotland whereby the transfer deeds—the disposition and the security—are created online between the buyer’s solicitor and the seller’s solicitor and are, on completion, submitted to Registers of Scotland. It allows the registration process to be completed instantaneously. In the “traditional” paper system, a paper deed is signed by the seller and handed over in exchange for the price on the day of completion, and then posted to the keeper to be registered. That paper process takes about four to six weeks for an existing register title.

The ARTL system is great in principle: it allows for very speedy automatic registration as the title sheet can be updated within 24 hours. It is not e-conveyancing, which is a phrase that is used, because that would cover the whole process from start to finish. The ARTL system focuses only on the last part of the process, which is the creation.
of a transfer document and its registration electronically.

Ian Ferguson: There are various problems with the system, of which the committee should be made aware. As a practical conveyancer, I fully intended to use ARTL to a great extent, and I said in my firm that everyone should use it where they could. However, we cannot impose it on the other side, and they will frequently say that they do not want to use it. That is because the system can cause delays: people are unfamiliar with it so they get thrown out and their password is revoked, and they have to go back in. You have no idea how frustrating it can be.

The practicality is that most people use ARTL for discharges—where that can be done; some lenders will not do it—or for mortgages. Things such as remortgage transactions are being covered.

It is almost not being used for any other purpose: buying and selling is a dead duck at present because the system is not, in my view, fit for purpose. It needs to be changed because it is a mess and it is not working properly. It is too clunky and difficult to work with.

I am stating the practical position so that members know that ARTL is no magic wand that has solved problems. I have to say that I am disappointed by it, given that I was enthusiastic to try to make it work. I have been thwarted—it never really seems to happen.

Various transactions are not covered by ARTL: I have suggested to the keeper that we have a “Tell me, don’t show me” principle, whereby we could tick a box to say that we have seen all the links in title. At present, if we have not done that, such transactions cannot be operated through the system. Many of the transactions that I carry out, including confirmations, trust appointments, deed appointments or court appointments require links in title. We need those to go through, and we could just tick a box somewhere so that could happen, but at present the system just does not work for swathes of transactions. It is a great disappointment to us, and the problem will be solved only if a new system of some sort is introduced when there is money.

Fiona Letham: Dundas & Wilson has not yet signed up to ARTL. We have not prioritised it for exactly the reasons that Ian Ferguson has mentioned. There are so many types of transactions for which it cannot be used that we feel we would be able to use it only on very rare occasions. I have seen a demonstration of it, and I agree with Ian about all the problems, which I have also heard about from colleagues in other firms.

Because it can be used only on rare occasions, it does not speed up the process, due to unfamiliarity and issues that I have heard about that result from information technology capability not being robust enough. The system can, apparently, be very slow to operate because it can hang, crash and so on. I have heard that it slows the process down, rather than speeding it up.

We do not yet have much detail about the proposals for electronic conveyancing and registration. A lot of work would have to be done on that, but there is an opportunity to replace the ARTL system with something much broader that would work for the majority of transactions. We would support such a change. In this day and age, we should go down the e-conveyancing route, including electronic contracts, which there is currently no possibility of doing. Our having electronic deeds of every type, rather than just being limited to transfer deeds as we are now, is an aim that should definitely be pursued through the bill and which we should work towards achieving as soon as possible.

Ross MacKay: The Law Society of Scotland is looking very closely at the idea of e-missives or e-contracts. ARTL deals with the keeper’s role of registering deeds, but the creation of the contract is done between lawyers. The Law Society fully supports the idea of e-missives. We are looking to create a digital signature framework for our members—I hope very shortly—so that they will all be able to create e-missives once the bill is passed and we will have the public key infrastructure framework available to facilitate that, but that is way beyond registration. Registration may not be part of the process, but the development of e-contracts is certainly welcome.

Graeme McCormick: An original purpose of land registration was that at some point in the future a solicitor would not be required to do the conveyancing, but since then almost any reform or change has made it increasingly difficult for the punter to think that they could ever do it themselves. In the ARTL system, solicitors get personal identification numbers. Will PINs be given to punters? No.

I am also happy to try e-conveyancing, but we must bear it in mind that if, somewhere down the line—in 30, 40, 50 or 100 years—we try to have a system whereby solicitors, conveyancers or whatever are not required to do bog-standard transactions, we will have been constantly moving away from the intent of the original land registration system: we will have moved further away from the economic interests of the consumer.

Stuart McMillan: We are led to believe that an IT upgrade of the ARTL system is coming in. Are you aware of what is planned? Will it benefit the
system and you, as practitioners? Will it have any effect on the bill?

John Scott: Our understanding is that there is no prospect of a major upgrade of the ARTL system for at least three or four years. I am not aware of an imminent upgrade.

Stuart McMillan: Mr McCormick’s submission states that, of the 1,200 legal businesses in Scotland, 95 per cent are small businesses and various case management systems are in operation. Can you provide a rough figure for how many there are? You mentioned that they do not all work with the ARTL system.

Graeme McCormick: I have no idea. Some solicitors buy case management systems off the shelf, some have bespoke ones and some have a mixture of the two, or goodness knows what else.

A few years ago, Registers of Scotland decided, in its wisdom, that the application form should be in PDF format. As a result, I had to spend £10,000 upgrading our case management system so that things could be integrated in our system and not done separately. Things are integrated now—the fields are defaulted, and all the rest of it—so we cut down on repetition. That may say as much about the case management system that we had before as it does about what Registers of Scotland was up to.

12:00

You cannot introduce systems that will cost small businesses an absolute fortune. Any system will have to be compatible and properly stress tested. The problem with ARTL is that—despite what Registers of Scotland will say—it was not properly stress tested. The 10 most active domestic conveyancing firms in the country should be asked to test systems properly in order to ensure that they work in different kinds of transactions.

Stuart McMillan: If the ARTL system were to become compulsory, with a long lead time, would it be feasible to introduce, as you suggest, an element that would involve firms working with the keeper on stress testing? Could the number of firms involved be increased so that any system that was to be introduced, or that may be compulsory in the future, would be better future proofed and easier for small businesses in particular to install and implement?

Graeme McCormick: If such a process could be developed, that would be fine. However, ARTL really is a dead duck. As far as I know, Registers of Scotland is in an agreement with BT and will not be able to extricate itself until 2014, or something like that. I am not technical; I simply look for something that works, and ARTL does not work. That is the problem.

Chic Brodie: I take Mr McCormick’s point about small businesses, but I want to ask a question from a taxpayer’s point of view. Can we find out how much has been invested in the ARTL system? I appreciate your openness, but the system appears not only to be “a dead duck”, but to be money down the drain.

The Convener: The keeper will be here to give evidence, so we can pursue that point then.

Chic Brodie: Can we ask the question before the keeper comes?

The Convener: Yes—we can ask in advance to ensure that we have information before the keeper comes.

Stuart McMillan: My final question follows on from comments on ARTL and its limited scope. The early part of Mr McCormick’s submission talks about difficulties—not involving ARTL—in registering tenemental properties and shared plots. If issues relating to such properties are difficult when ARTL is not used, would it be possible to use the current ARTL? Would that be difficult or cumbersome, or would it be easy? Would any particular issues arise?

Graeme McCormick: The problem with descriptions of tenements is not a problem with ARTL.

Stuart McMillan: No.

Graeme McCormick: When land registration was introduced, it was done on the cheap. Basically, the keeper said, “We’ve got to work with what we have.” If a property was described as “the leftmost flat on the third floor” or as “the second door from the left on the first floor”, the keeper just had to deal with that, so that is what went in the property section. However, because of bad drafting by solicitors in the past, complications arise. People get mixed up with compass points, and goodness knows what else. From where do you take your right or left? Is it from where you look up the stairs from the front close, or not?

We need, for tenement properties, a system of floor plans that shows the footprint of properties. Many builders now use such a system for flatted developments, and that gives certainty.

John Scott: Just for clarification, I point out that at the moment a land certificate for a tenement property shows on the plan the footprint of the tenement block rather than the floor plan of the individual flat.

The Convener: John Park will ask about e-missives.
**John Park:** From the perspective of not only consumer engagement but efficiencies within your organisations, is a move to electronic documents achievable? What practical and—which is perhaps more important—legal issues have to be considered?

**Ross MacKay:** The legal issues are relatively straightforward. When the electronic communications legislation came in several years ago, it permitted the use of e-contracts in everything apart from contracts relating to land. In a way, the proposal in the bill rectifies that omission; in the simplest terms, all it will do is allow solicitors to create by e-mail a contract for buying and selling property. However, allowing the use of such modern means of communication will avoid the difficulties that arise from paper having to cross the country.

Basically, the system will be solicitor owned—communications with regard to creating the contract will be between, for example, me and Fiona Letham—and the Law Society will create protocols for that. As I have said, the Law Society will also create the supporting public key infrastructure in order to ensure that any offer I might send off to Fiona will contain my digital signature, and any response that I receive from Fiona will contain hers. I hope that the process will be relatively simple and straightforward.

Of course, that leads us on to the question of how we build such an approach into case management systems. However, that is a separate issue that relates to the practice of, and commercial arrangements between, firms. The problem is that there is no national supplier of such systems—although I have no doubt that, once the contracts are created, suppliers will get into the marketplace to try to sell their products to firms. In the end, that will all boil down to an industry standard.

**Graeme McCormick:** When I started in the 1970s—in the days before faxes, e-mails or anything like that—missives for the purchase or sale of domestic property were generally concluded within 24 or 48 hours. Now even a simple missive for the purchase or sale of a domestic property is rarely concluded within 10 days. E-commerce, e-missives or whatever they are called are not necessarily going to change things up. What would speed things up and give more certainty to the system would be improved processing of mortgages.

**John Park:** That is an interesting point, but it would take not just this committee but a parliamentary session to sort it out.

I am worried by previous comments about how the existing system has not been used. Would any system supporting e-leases, e-missives and that sort of stuff have to be established, which would require a marketplace to exist, or could individual practices or organisations carry that out themselves?

**Ross MacKay:** Are you talking about the ARTL system?

**John Park:** I am talking about moving in the direction of e-missives and e-leases.

**Ross MacKay:** With all such things, the facility needs to be created and practice for its use then develops. It strikes me as bizarre that one can buy a photocopier or holiday electronically but not a house, so in that respect a move towards ARTL must be a big step in the right direction.

Graeme McCormick is right in the sense that technology is not a magic wand; it will still take time to formalise contracts. The facility to send them instantaneously by e-mail and to save 24 hours by not sending them through the post will not make a huge amount of difference. However, such a facility will be used more and more regularly and it can tie in to the process of moving beyond just creating the contract, going into the conveyancing and then on to registration.

Such a system will require robust IT systems. Individual solicitors will have their own systems, and that is fine, but Registers of Scotland’s IT system is not adequate at the moment. That seems to be recognised, whatever the rights and wrongs of the situation. I, like other witnesses, have tried ARTL. I can do on paper in five minutes what takes me half an hour electronically. That is wrong, so a new system has to be created. When it is ready and it is as simple to use as paper, practitioners will use it. That is the bottom line.

**John Park:** Do you have any sense of what it would mean for individual consumers who are trying to engage with practices and the system? Would such a system mean an improvement in that respect? You are seeing it from the viewpoint of trying to provide a service. I recently spoke to someone who had taken out a loan electronically. They told me how wonderful it was just to have to tick a box, type their name into the system and so on. They said that it was a lot easier than waiting for correspondence to come. Do you have any...
sense that an electronic system would improve your engagement with the consumer?

Ken Swinton: I do not think that an electronic system would have any impact on consumers because consumers do not have a digital signature; we have not invested in the infrastructure to give every citizen in Scotland a digital signature. To come back to the point that Graeme McCormick raised earlier, only those who possess a digital signature will be able to engage in the process.

Anything that is done will have to comply with European e-commerce and e-signatures directives. The e-signatures directive requires a public key infrastructure system, which is what Ross MacKay has been speaking about. Someone needs to be the authority that registers people to issue digital signatures. At the moment in relation to ARTL, in the absence of a certification authority, the keeper has become the default certification authority. One of the questions about the extension of ARTL and its use for e-missives was around the fact that the keeper has no authority to do anything other than in relation to registration of deeds. The keeper is therefore not able to authorise anyone to issue a digital signature for missives.

The European directives do not require that land transactions fall within the e-system, but we clearly want to move towards that. Most of the cost of transactions comes about because solicitors add value—we hope—to the process of transferring property. Whether we use an e-system or paper will not really affect the cost of a transaction, and other factors affect the speed of a transaction. I am sure that it is sometimes very important to conclude missives quickly for commercial reasons, and an e-system will enable that, which is where I think it will have an impact. However, for the general citizen buying and selling a property or remortgaging, it will have little or no impact.

The e-system is optional, so people will be able to use paper deeds as long as they want to. I do not think that there is any proposal to force people down the route of an e-system at this stage.

Also, if every citizen was given a digital signature, there would be a danger that it would all become too easy. It is all very well that it is easy to book an easyJet flight, but being able to dispose of property with the ease with which people can book an easyJet flight might have disadvantages.

The Convener: On cost, I was interested to see that the Scottish Law Commission’s report that preceded the bill has an economic impact assessment that says that

“Based on the innovations that have already taken place in the conveyancing market, it is not difficult to see how e-enablement could reduce typical legal costs by 50%”.

Is that a proposition that you accept?

12:15

Graeme McCormick: I accept it perhaps in relation to some solicitors, but not to myself. I am not looking for business when I say this, but my firm is fee driven. A couple of years ago, I conducted an exercise in which I e-mailed every firm of conveyancing solicitors in Scotland and asked them for a quote. Half of them replied. There was a factor of six between the lowest quote and the highest quote for the same sort of transaction, but many firms of solicitors offer conveyancing at fixed fees or at what I would call modest fees. The cost of domestic conveyancing has plummeted in real terms over the past 20 years, so the legal fee is not the problem.

As I said, it is often ancillary items that are the issue. Are there local authority consents? Is a National House-Building Council certificate missing? Is there an architect’s certificate? Does the central heating work? We have all become engineers and all those matters come into play now. I suppose that those things give added value, but people generally look for them for a fixed fee. I do not make a lot of money out of each transaction and I would find it quite difficult to shave 50 per cent off the fees that I charge, but maybe others are more successful than I am.

The Convener: Maybe Dundas & Wilson could afford to cut its fees. Sorry, that was a rather unkind comment. Does anybody else want to say anything about cutting costs through e-commerce?

Fiona Letham: We hope for commercial transactions that there would be some efficiencies and some effect on fees, but I do not think that the impact would be as significant as it might be hoped to be in the residential sphere, because so much else is involved in the transaction that e-enablement is a much smaller part of it.

Ross MacKay: All that we would save by doing the transaction electronically would be the cost of a stamp, because all the advice and the service behind it will remain the same. We still have to tell the client what the letter means and send the client a copy of the letter. The estimate of a 50 per cent saving is somewhat optimistic.

John Scott: It is fair to say that, for most transactions, by far the biggest outlay that the buyer will make is payment of the stamp duty land tax.

The Convener: Thank you. Unless members have other questions on e-missives and so on, we will move on to security of title.

John Wilson (Central Scotland) (SNP): Good afternoon. The Government’s proposals in the bill include the provisions in section 82 on security of
title. The provisions lay down some markers to identify the rights of people who sell property and, I hope, thereby protect property purchasers.

What is the panel’s view on the proposals? Do they go some way to addressing the issues that come to us? An example is that one of my constituents said that two members of her family tried to sell her house when she was out of the country visiting other family members. Will the proposals help to protect individuals when family members try to sell their property when they are not in the country or, as in the example that is given in the committee’s briefing, fraudsters identify an empty property and try to sell it on, knowing that the real owner is not in the country?

Ken Swinton: Under the current legislation, title flows from the land register, so the fraudster who disposes of the property confers on the new proprietor a title—or at least it flows from the land register. The shorthand that is used to comment on the current system is that it is said to give too much, too soon, so a system that slows down the process and allows the true owner to assert their right to the property on their return to the country is clearly welcome and aligns the land registration system more closely with property law.

The other part of the equation that must be balanced against that is the need for the security of transactions and for people to be able to transact on the faith of what is in the register. The existing legislation has one solution to that, which is that the new proprietor keeps the property and the real owner is compensated for their loss. However, that system is seen to have defects, and it promotes physical possession of the property over anything else. Our view is that the move towards deferring the indefeasible nature of the title is an improvement on the current system.

Ross MacKay: I have a problem with the current system as well. The Scottish Law Commission looked at it closely and at great length in its report. It referred to the question of "the mud or the money", which is a bit odd. In the current system, as soon as you get the title in the register—bang, that is it. As long as you have the keys as well, that is it. You are the owner and are secure and no one can kick you out. If there has been fraud in the background, it is a case of saying, "Very sorry," and the former owner getting whatever indemnity that they can get from the keeper or another source, but they cannot get the house back. The commission has recognised that that situation is wrong.

The commission’s proposal is to bring in a one-year cooling-off period whereby, if you buy a property and occupy it for a year, your title will be secure and free from challenge. That will introduce difficulties in practice, though, and we have not really thought it through. A practising solicitor buying a property who was offered a title when the owner had owned the property only for, say, nine months would have to have a discussion along the lines of "Well, can you prove that there is nothing else behind you and that you have occupied the property for that period of time?" We will have to think through the practical issues.

As a matter of principle, I think that the commission has come up with a fair balance in trying to protect an owner who has lost out because of fraud or something similar and to ensure that they can get their house back, provided that they do it within a year.

John Wilson: The difficulty is the level of compensation to be given to the true owner of a property for its loss. How far can we equate the true value of all that they have lost by a fraudulent or other act by an individual or individuals with the value of the loss of the property?

We might think that the period of a year to which Ross MacKay referred is long enough, but there are people who do voluntary work overseas, for example, and who sometimes sign up to volunteer for two years or longer. How would we protect their property rights if someone identified their house as an empty property, found out locally that the owner was working with Voluntary Service Overseas in Cambodia, say, and decided that there was an opportunity for them to sell the property because the owner would not be back for at least 18 months? With a one-year rule, the new owner would get title to the property.

What level of compensation would the true owner get? Would it be only for the value of the property at the point of sale or would it be a meaningful value that also took account of goods that they might have lost through the sale?

Ross MacKay: The level of compensation is almost a separate issue—in effect, there would have to be a claim. I imagine that the keeper’s indemnity insurers would look at what loss had been suffered, and one would hope that that would include not just the bricks-and-mortar value of the house but the inconvenience and other ancillary losses that had been suffered. However, that would almost be like an insurance question when a claim is made. When you make a claim, you put everything into the equation and see what you can get out.

I suspect that whether the one-year period is adequate would have to be a policy decision. Your point about the one-year period is quite right, though. Another such example is that someone in the armed forces could be away on a tour of duty for two years, so they could lose out if someone fraudulently took their house away from them. The
commission considered the issue and felt that, on balance, one year should be sufficient time in the vast majority of cases for an owner to be aware that someone had wrongly moved into their house.

Such an approach is not scientific; the commission simply feels that it strikes a fair balance between protecting the true owner and protecting the buyer in good faith, who will at least know that they own their property. If there is no time limit, the concern is that, even though the buyer has a registered title, there is always the risk of someone whom they do not know coming along and kicking them out. We need to strike a balance between protecting the innocent owner and having certainty with regard to the land register and the purchaser.

Ken Swinton: Solicitors are also gatekeepers as far as money laundering is concerned. We cannot guarantee that identity fraud will not happen but, under our professional rules, the general money laundering regulations and the Proceeds of Crime Act 2002, we have a duty to identify individuals who come to us as clients. In other words, we are required to identify the person and ensure that they tie up with the address. No system is perfect, but this one has a number of safeguards that, over the years, have become increasingly onerous.

John Wilson: I am tempted to ask how many solicitors have been charged and found guilty under money laundering legislation. I would like to think that no practising lawyers or solicitors in Scotland have been in that situation, but I am sure that that information will emerge in evidence.

I have just been passed a note saying that presently the true owner of a property has up to 10 years to reclaim it. Disputes over compensation, who owns the property and who has the title to it tend to arise when the property is resold quickly and the new owner takes ownership. Will the one-year time limit diminish current rights, under which a person can reclaim a property up to 10 years after it has been sold?

Ken Swinton: The current legislation does not set out such a period for a title registered in the land register. In other words, as soon as the title is registered, the purchaser becomes the proprietor. If they are in possession, are in good faith and have not been fraudulent or careless, they will keep the property; irrespective of how it happens, the keeper cannot amend the registration. The situation is different with titles in the register of sasines, which are conditional on 10 years’ possession. No new purchase can end up with a sasine title, and an existing sasine title would transfer into the land register.

Any decision on the period is a policy decision and any such period will to some extent be arbitrary. It has been thought appropriate to set out a one-year period in the bill, but one could make a case for a longer or shorter period. Ultimately—I do not think that any of the panel will say anything else—it is up to the Parliament to decide what is an appropriate period.

People who go abroad can take precautions against the possibility of identity fraud or losing property by, for example, getting a neighbour or friend to keep an eye on the property—or, for those with real concerns, setting up a webcam to see who is in it. We do not design systems on the basis of absolute worst-case scenarios; instead, we have to design a system that suits most situations. The counterbalance to that is the transactional security of subsequent transactions but, as I have said, where the balance lies is ultimately a matter for the Parliament.

John Wilson: Given the earlier discussion on electronic conveyancing, I am interested in the prospect of solicitors advising people to set up a webcam to keep a regular eye on their properties.

Ross MacKay: There has been a big discussion about the reliance on Google earth and Google maps and how they might be brought into the system. I am not being facetious; the issue is being discussed seriously. After all, many people rely on those facilities to identify where a house is and what it looks like. There is a question whether the keeper can pay copyright fees to bring all that into titles, but I think that that is for another day.

12:30

Graeme McCormick: I have just a couple of points. First, we use Google maps to look at properties and examine them against land certificate plans and things like that.

Secondly, my view is that if somebody buys a property in good faith and gets a land certificate, their ownership of the property should not be disturbed, but compensation should be given to the person who has been defrauded of the property. However, there are things that the land register could do—I mentioned a couple in my submission.

The bill does not appear to address the problem of money laundering and identity fraud, but Registers of Scotland and the law enforcement agencies are arms of government, so they should talk to each other and provide information. They should also take solicitors into their confidence by providing information about whether individuals whom solicitors might be acting for have form and about who they are connected with. Because we run a risk-based business, if we were given such information, we could decide whether we wanted to act for people on that basis. Generally, we do not have such information about people. For
example, we probably have relations who we think are upstanding but are not—you just cannot tell. Currently, there is not that kind of to and fro of advice.

There might be a suspicion that solicitors should be able to get such information about people, but I remind everyone that solicitors are actually officers of the court, so we have a greater responsibility than most citizens have. If we fall foul of the court, we should probably suffer more than other citizens would.

There is an opportunity through the bill to squeeze an awful lot of individuals out of the system and prevent them from being able to own or deal with property in Scotland. We probably spend almost half the time that a transaction takes in dealing with the question of identity fraud, mortgage fraud and so on and deciding whether we are happy. We review files constantly in the course of a transaction, but we do it with our arms tied behind our backs. We do not get any help from officialdom at all.

**John Wilson:** I have a follow-up question for the Law Society. Is it possible to find out how many purchasers of properties have made complaints to the society about lawyers and solicitors whom they feel have advised or instructed them wrongly?

**Ross MacKay:** The Law Society does not have such information, because if it is a question of a claim—I will go back a step. There are two possible routes. One could be a claim about inadequate professional service whereby someone could say that they were not properly advised that, for example, a garage did not come with a house. That claim would actually go to the Scottish Legal Complaints Commission and not the Law Society. The SLCC has been in place for the past couple of years.

On the other hand, if someone claimed that they paid for a house and garage but lost out because the garage did not in fact come with the house, that would be a claim for compensation that would be referred to the Law Society master policy insurers, who would deal with it as a negligence claim. There are two distinct points to bear in mind about how things would operate.

The Law Society does not have statistics on either of the types of complaint that I described. A complaint about an issue relating to property would be within the SLCC’s remit. If the complaint was about negligence arising from a property transaction, it would go to the insurers, so they would have that information.

**The Convener:** Stuart McMillan has a question, but I am conscious of the time so I ask him to be brief.

**Stuart McMillan:** Mr McCormick talked about the working relationship with lawyers and solicitors. Solicitors operate private businesses—they are not part of the public sector—and in Scots law and the law in general someone is innocent until they are proven guilty. It would sit uneasily with me and I am sure with most individuals if, through an information-sharing protocol or whatever, a solicitor was passed information about someone who had not been convicted, and was told, “This individual is a bit crooked, so don’t deal with him.” I accept that we should try to drum out criminals, but there would be difficulties with such information sharing in practice.

**Graeme McCormick:** I take your point, Mr McMillan, but we currently have to make such assessments. If another solicitor or other third party says to us, “You might be asked to act for Joe Soap; beware,” and we think that there is the potential that something nefarious is going on, we are supposed to refer the matter. That is the problem that we have. It is belt-and-braces stuff, and at the end of the day we are the ones who will be in the frame. It does not matter where the information comes from; we must assess the risk.

There is a knock-on effect on the public, because legal fees go up considerably if, for example, the Scottish solicitors guarantee fund, to which every solicitor has to contribute, takes a huge hit. It is in the interests of the public that we deal with the problem. The relationship between a solicitor and a client is confidential, so we will not pass information to everybody under the sun. We make a risk-based assessment as to whether we want to act for an individual. Just now we do not have all the information that will enable us to make a judgment, in many cases.

**Ross MacKay:** I appreciate Graeme McCormick’s concern. I accept that it is not really for the police to tell the keeper that there is suspicion about an individual that should be fed back to the solicitor. It would be dangerous if vague suspicions were bandied about throughout the conveyancing process.

The Law Society entered into a protocol with the Scottish Crime and Drug Enforcement Agency a few months ago on exchange of information, so that if we become aware of members who, regrettably, are involved in crime in some way we can discuss the matter confidentially with the police. Likewise, if the police become aware of concerns about one of our members they can feed information back to us. Therefore, information exchange between the society and the police, under an agreed protocol, is in place.

I reinforce the point that all solicitors are governed by money-laundering regulations. We are all obliged to have regimes in place for verifying clients’ identity and we are all obliged to
report suspicious transactions to the Serious Organised Crime Agency in London. In addition, the society has various anti-fraud initiatives in place. As you probably know, firms’ books are inspected regularly and those that are deemed high risk are inspected more regularly than others are. The inspection is thorough and will flush out a lot of concerns at an early stage.

Ian Ferguson: I will join in the debate. I have a joint role: I am here to represent the Scottish Law Agents Society but I am also a director of the Legal Defence Union, so I deal with a number of cases of solicitors who are facing inspections and having to answer queries about what they have done.

Section 1(5) of the bill says:

“The Keeper must take such steps as appear reasonable to the Keeper to protect the register from—

(a) interference,
(b) unauthorised access, and
(c) damage.”

It does not mention fraud, which is an omission; fraud should be in there. The keeper, along with solicitors, should have a responsibility in that regard that should be expressed in the bill.

Some members of the Legal Defence Union have raised with the Law Society concerns about the effect of the information-sharing protocol on confidentiality for clients. Discussions have not concluded, because the LDU is reacting to the announcement on the ISP, not having been part of the process whereby it was arranged with the Scottish Crime and Drug Enforcement Agency.

One of my major concerns, which is in our written submission, is about section 108 of the bill. That section deals with the creation of an additional offence relating to applications for registration, and is rather naive. The policy memorandum acknowledges that a common law crime of fraud is already being used for the matter. Bringing in a new offence that restates what existed before represents rather muddled thinking. Introducing such a provision will not deter fraudsters—as I said, it is rather naive to think that. Fraudsters will commit fraud anyway, no matter whether there is an additional fraud category.

To be honest, I think that the section is aimed more at solicitors. Solicitors get information from their clients and pass it on. I see them as being in the front line. When such an offence is committed, the person who is responsible for the fraud will immediately blame the lawyer, and the lawyer will get the hassle. I do not think that the section will deter anybody. We should leave the matter to the common law, which is nice and simple. I do not see the need for an extra law, and I do not think that it has been properly shown that there is a need, as is stated in the policy memorandum.

The key to why the provision is included is in paragraph 79 of the policy memorandum, which states:

“The common law of fraud already applies in relation to applications to the Keeper and is currently relied upon to secure the conviction of any person making such a fraudulent application. A key element of that offence is that knowledge of the fraud has to be proven, which is extremely difficult.”

That is the nub of the problem. The offence is difficult to prove. There is an attempt to change the basis so that lawyers have to prove that, “It wisnae me,” by showing that they have done everything. They are being second-guessed as to what ought to be done in the situation. There are no guidelines for us in that situation.

The provision is not helpful, and it should be struck out. It is not needed, the case has not been made, and it will make lawyers’ lives much more difficult. The idea of people doing their own conveyancing is certainly hit on the head. The proposal will simply not work.

I have had my say.

The Convener: Thank you. That is very helpful. We were going to ask about section 108 specifically so, as you have raised the subject, I ask the other panel members to say whether they share your views.

Ross MacKay: The short answer is yes. The Law Society has submitted its own response on section 108. The concern is that it will possibly affect the innocent solicitor. There is no reference in the section to fraud—it is not mentioned at all—and it boils down to making an arguably misleading statement on a “reckless” basis. The word “reckless” is not known in Scots law; it is not known exactly what that might be, and certainly not in the context of filling in a form. We are not aware of any cases or prosecutions that have been dropped because of a defect that the section would cure. Mr Wilson asked whether any lawyer has been convicted of money-laundering offences. The answer to that is no—the Law Society is not aware of any solicitor who has been convicted for money laundering. However, the section covers potentially innocent solicitors being caught by a fraudster. They will have been duped. They will have put in a form in good faith, but were they reckless? We do not know what that means. The section mentions the defence of due diligence, but what is that due diligence? We do not know what means. The section mentions the defence of due diligence, but what is due diligence? We do not know what steps we can put in place to protect that. At the very least, there would have to be reference to intentional crime—to the intent to commit a crime.

To repeat Ian Ferguson’s comment, the matter is already covered elsewhere. Our memo refers to
the Proceeds of Crime Act 2002, which deals with offences if people enter into any arrangement involving the acquisition or retention of criminal property. As far as I am aware, the police in Scotland have not sought to rely on that provision at any stage. We also referred to the existing Criminal Law (Consolidation) (Scotland) Act 1995, which puts an onus on anyone who is involved in submitting a form to a Government body to ensure that the statement is true and correct, but that is about knowingly and willfully making a false statement. Those tests are not in section 108, which refers to the concept of recklessness and the defence of due diligence. We do not know what they mean.

I suspect that, in practice, it will increase the complications in conveyancing practice. Solicitors will try to get their clients involved in signing the forms themselves, which will knock ARTL on the head, because ARTL can only be used internally by the solicitor. The solicitors will say that they are not filling in the forms and that the clients will have to do it. Extra work will be involved and it might also involve extra cost.

In our view, therefore, section 108 is not required. It is badly drafted and unnecessary.

12:45

John Scott: The Scottish Law Commission report on which the bill is based was in gestation for the best part of a decade and there is no mention in that report of a requirement for criminal provision to be slotted into civil statute. It was not in the draft bill on which the keeper consulted in 2010; it was slotted in last autumn at the last minute, or so it seems to us. We were somewhat surprised at that and we feel that there has not been sufficient consultation about the provision.

Fiona Letham: I agree with everything that the panel has said about this so far. I first heard about section 108 when I attended a stakeholder event that was being run by Registers of Scotland at the end of November, just before the bill was introduced. When I reported back to colleagues in my firm and in other firms, the reaction to the new offence was one of absolute horror. There were lots of questions about the types of issue that the panel has been raising. What will we have to do to make sure that, as innocent solicitors, we are not caught by the provisions? As drafted, section 108 does not make that clear. If we ask a client whether a third party uses their property, do we then have to go on a site visit to look for evidence of third-party occupation?

Sending the land registration forms to the client also came up. As drafted, section 108 does not seem to allow us to rely on information that comes from the client as a defence. As Ross MacKay said, we have to exercise all due diligence, and we have to take all such steps as could reasonably be taken to ensure that no offence will be committed, but we do not have any guidance on what those steps should be. We are very concerned that such a draconian provision that could have extremely serious consequences for innocent solicitors has been brought in, particularly because it was brought in at the last minute and was not part of the lengthy consultation process that took place in 2010. We have been put on to the back foot because it was brought in at the last minute and, as the Law Society says in its submission, it is not necessary.

If the provision is to be in the bill in any form, we feel strongly that it should be tightened up, as other panel members have suggested.

The Convener: Thank you; that is pretty clear. I have one more issue to ask about and I know that Mike MacKenzie wants to come in on it too. Section 107 would put on solicitors and their clients a civil duty of care to the keeper. Does anyone on the panel have a view on that or are you quite comfortable with that?

Ross MacKay: We are quite comfortable with that. It reflects what we understand to be the law anyway, so we have no difficulty with it. We have always assumed that, if we make an honest mistake as part of the process, the keeper may revert to us to seek compensation. As a matter of principle, we could not object to that.

Having given that acceptance of liability for negligence, if you like, it seems to go too far to try to criminalise what might be exactly the same behaviour. It just seems to be unnecessary.

Fiona Letham: There was a question on the duty of care in the Registers of Scotland consultation. We responded by saying that we did not think that the provision was necessary on the basis that common law duties of care already exist.

The length of time that those duties should last has been changed since the draft bill that the Scottish Law Commission produced. I understand that the proposal now is that the duty of care should last until completion of the registration process. Given the length of time that some applications can take to be processed, that could be many years after the solicitor has dealt with the transaction, which would put quite an onerous duty on a solicitor. Someone who did not deal with the original transaction might receive a letter out of the blue five years later while the registration application was on-going and it might not be clear that it would have an impact on the registration application. We would prefer that provision either not to be there at all or to be brought back to the commission’s proposal for the duty of care to end
either at the time of settlement of the transaction on the part of the grantor of the deed and their solicitor, or when the registration application is submitted, if it is the purchaser and their solicitor who are making the application.

**The Convener:** Does the Scottish Law Agents Society have a view on section 107?

**Ken Swinton:** We are content to adopt the Law Society’s position. On Fiona Letham’s point, if it is a common law liability, it persists until it prescribes anyway, so it is not just ended at application stage.

**Fiona Letham:** We would prefer it to be clarified.

**The Convener:** Let us not have a dispute between lawyers on the panel of witnesses.

**Ken Swinton:** That would not do.

**Mike MacKenzie:** It was interesting to hear the comments on sections 107 and 108. If there was a mistake on the part of the keeper and you were involved on behalf of your client in resolving the problems that arose from that mistake, who would pay for that? Should the keeper pay for her mistakes?

**Ian Ferguson:** I can give you the low-down on that. The keeper has no policy of making payments to people but I know that it happens. I have heard that from two solicitors, one of whom had made a claim previously. I had a solicitor who was incredibly annoyed about what had happened to him. He told me all about it and I asked whether he had sent the keeper his bill. He said that he had not, so I said that he should, and should wait and see what happens. The bill was paid almost by return. I cannot go into the details, but it was a big mess—a real mistake—that cost several hundred pounds to sort out. The Registers of Scotland will pay up informally. If it does not, and what it has done has caused someone loss, that person could probably raise an action against it.

**Ross MacKay:** The regulations require passports and so on to be provided at the start of the transaction, on day one. Someone goes to see their lawyer because they want to buy a house, and we say, “That’s great. Now, can I see your passport, driving licence, utility bill?” The regulations are somewhat vague—there is not a specific list of what we have to see. Each firm has leeway about whether it is a passport or whatever.

On day one we verify the identity of our new client. We start the process and put the offer in and so on. If at any stage during the course of that transaction we become suspicious about criminal activity, we have a duty to report our suspicions to the Serious Organised Crime Agency in London. If there are no such suspicions, we get down to business. At the end of the transaction, when the property has been bought, current practice is to submit forms 1, 2 or 3 to the keeper, as appropriate, with the deeds, for the application. There are questions about the names of parties, whether a company is insolvent and various other, technical issues. We put all the paperwork in to the keeper.

Current practice is that the form is adjusted with the selling solicitor and does not, on the whole, go to the client—the questions are asked between solicitors. If the provision is enacted, clients will almost certainly become involved in the process and be given copies of the form to fill in, or at least
be asked to certify to us that the contents are true and correct. That will be yet another level of paperwork in the process, to protect the lawyers’ backs—to be frank—so that we have done what we can do under the heading of due diligence.

Mike MacKenzie: Will the approach be effective in preventing fraud?

Ross MacKay: No. The fraudster is a criminal—I am stating the obvious—who I suspect knows the regulations better than anyone around this table does. Even with all the checks in place, fraudsters will get through the net, because they know the systems.

A big case was reported last year in which a finance company raised a compensation claim against a firm of solicitors. In effect, it was confirmed that although the solicitors were a blue-chip firm, which had carried out blue-chip verification of identity and had seen a passport and done everything else, they had been conned. It was as simple as that. In that case, the lenders, who were also conned, were seeking to recover money from the fraudsters’ solicitors—they accepted that the solicitors were innocent but were trying the argument that there was some duty involved.

The regrettable bottom line is that even with all the checks in the world, fraudsters will still get through the net. All that solicitors and society can do is to put up as many hurdles as we can to try to prevent that. We are the gatekeepers in the process, but it is inevitable that someone will get a ball in the back of the net.

The Convener: I am conscious of time, as there are other areas that we want to cover. We will move on to prescriptive acquisition.

Patrick Harvie (Glasgow) (Green): I understand that the bill’s approach is fundamentally to retain the existing mechanism for prescriptive acquisition, while attempting to secure a clearer statutory basis for the keeper’s current practice and to tighten somewhat the conditions under which an a non domino disposition can be accepted, including owner notification, where possible. Is that an accurate understanding of what the bill is doing? If so, do the witnesses support the approach?

Ross MacKay: It is beneficial to set out clearly, on a statutory basis, what the keeper does. Currently, there is ad hoc practice, which has grown up over the years. However, I think that the profession is quite comfortable with the keeper’s policy, which in effect is that, if someone is seeking to take title to a piece of land that no one owns, the keeper will ask searching questions and look for evidence as to why no one owns the land and why the situation has arisen. A flexible, pragmatic approach is taken to applications for an a non domino disposition.

Our concern is the provision on giving notice to third parties, which was not in the draft bill that the commission produced. The bill proposes that the applicant must satisfy the keeper that notice has been served on the proprietor, if he, she or it is known—that is unlikely, because if you know who the proprietor is, you will not be seeking to take title—or, secondly, on a person who is likely to be the proprietor, or, third, if such individuals are not known, on the Crown, through the Queen’s and Lord Treasurer’s Remembrancer.

We have difficulty with the provision. First, it is clear that, if the applicant knows who the owner is, they should not be taking the property; they should be negotiating with the owner to try to do a deal to acquire it, as it might have a value. Secondly, there are many cases in which it is clear that who has title to a strip of land on someone’s development site is unknown and has been lost in the mists of time. It is a useful pragmatic tool for people to be able to go to the keeper and say, “Can we get title to that bit?” so that they can round off the development site—or round off something that has been de facto for many years without causing concern. Our concern is that, if a notice went to the Crown, the Crown would see that as an opportunity to treat the land as, in effect, something of a ransom strip and seek compensation for it.

13:00

Patrick Harvie: Why should it not?

Ross MacKay: It would be detrimental for commercial entities. For example, take a situation in which someone is trying to put together a large development site with various titles and has 99 per cent of the site but cannot buy the missing 1 per cent from anyone because no one knows who owns it. That 1 per cent may be the key to the whole site so, if the developer cannot meaningfully get it, the development might not go ahead, which would have a knock-on effect for business.

In many other cases, title is sought purely to sort out a long-standing historical arrangement for individuals. Someone may have occupied a house and garden for many years but, only when they come to sell, discover that they do not have title to a particular bit of ground even though it is within their garden and fences. Because they do not know who the owner is, they cannot sell it on, so they must either move the fence or go to the keeper, tell her what the story is and ask whether she would consider giving them an a non domino title to sort things out.

At the moment, the keeper is being quite pragmatic in that regard. She will listen to the story
and take a view as appropriate, but one certainly has to satisfy her that one has done all due searches to ensure that the owner has disappeared and can no longer be traced. It is a useful tool in such situations.

Patrick Harvie: Are there any other views?

Fiona Letham: We are concerned about the time periods that are set out in the bill, which are new; they do not exist at present. The bill says that, if someone wants to submit an a non domino disposition, they must be able to prove “that for ... 7 years immediately preceding the date of application the land ... has not been possessed by” the owner. In addition, the person who wants to submit the a non domino disposition must prove that they have possessed it for the immediately preceding period of one year.

The one-year period seems perfectly fine. We do not have any problem with that, although we have questions about the level of evidence that the keeper would look for to prove the level of possession for the year. Would the applicant need to have a photograph of themselves at the property every month in that year with a locked gate to prevent other people getting into it?

The Convener: Or a webcam.

Fiona Letham: Although we have questions about that, we think that a year is sensible in principle, but we have concerns about the seven-year period.

I am not thinking about the situation that Ross MacKay mentioned of somebody who has lived in a house and occupied the garden for a long number of years but does not have title to it, because it would be quite straightforward to prove that no one else has occupied it. An a non domino disposition can be extremely useful to unlock a development site, but how would a developer be able to prove that an owner had not been there for seven years, unless the person who wants to apply for the disposition must wait until they have had possession for seven years? How else would they prove that the owner had not been there? The seven-year requirement could lead to long delays for developments that would otherwise happen and be of great economic benefit.

We should also bear in mind that the requirement is simply a test—a filter—for getting an application on to the land register in the first instance. Getting it on to the register does not give the person who has applied a good title to the property; it starts a 10-year period to get good title to it. In practice, the bill is saying that there must be a period of 17 years before an applicant gets good title, because they must prove that the owner was not there for seven years before they apply and there will be another 10 years once they have applied.

The seven-year period is excessively long and would be difficult to prove. I know of other commercial law firms that have the same view.

Patrick Harvie: Given the answers that we have heard so far, I think that there may be limited support for the argument that I will now put to the witnesses. However, we are likely to hear it put to us later in our evidence-taking sessions, so I would like to hear the witnesses’ response to it.

I will read a short extract from an article by Andy Wightman, who will give evidence later:

“Prescription and a non domino deeds have provided for widespread theft of land over the centuries by the greedy and powerful being able to get their claims in the door first and the innocent bystanders being both ignorant of the attempt and losing their land. Under the current rules, the Keeper is even prohibited from notifying the true owner that a hostile claim has been lodged.

It is time to end this abuse of the law.”

He goes on to offer an alternative approach.

“Instead of the (admittedly stricter) rules set out in the Bill, a far more public process should be adopted. Any claims to ‘unowned’ land should be lodged with the Keeper and then advertised publicly on the Registers of Scotland website for a minimum period of one year. The publicity should include the name of the claimant and their grounds for the claim, the extent of the land being claimed, a report on investigations into its legal history and the conclusions of the research conducted to identify the true owner, and an invitation to lodge rival claims. The view of the Crown should be sought and publicised as it is the ultimate owner of land and could legitimately lay claim.”

Would the witnesses like to respond to that?

Ross MacKay: The commission considered the possibility of advertising and expressed the view in its report that it would be impractical and difficult to regulate what advertising would be appropriate. The commission considered the issue for its report and felt that advertising is not necessary. In its view, it is a question of issuing notice to the proprietor, to the person who is thought to be the proprietor or, eventually, to the Crown. The commission felt that that was an adequate answer to the question of advertising.

I will not go into claims of 100 years ago. Yes, there were issues with what was done, but that was the old system. We are now talking about land registration and, having been burned over the past 20 or 30 years, the keeper has a strict policy of not accepting applications without proper investigation. She must be satisfied that searches have been done to the best of the applicant’s ability to show that the owner cannot be traced. We are talking only about several hundred applications of this type each year, which is not a large number.
That is the practical approach that the keeper has adopted. You could make the policy argument that, if no one knows who owns a bit of land, it belongs to the Crown in theory, and the Crown/Crown Estate should get the benefit of that land if it has any value. That would be fine. However, the difficulty is that that might impact on a commercial development, particularly if the land is going to the Queen's and Lord Treasurer's Remembrancer, which is the body that deals with such things, as the QLTR may take a ransom value for it. It is for Parliament to make the policy decision whether that is appropriate.

Patrick Harvie: But, surely, if an unreasonable value is being claimed, the matter could be determined fairly by some process or other. Is there not a point of principle at stake that, although it might be convenient for a commercial developer simply to acquire a piece of land that does not appear to have an owner, others may have a legitimate claim to it and it is reasonable to give others the opportunity to make that claim?

Ross MacKay: Absolutely. However, at the moment, if someone has a potentially valid claim, that should come out in a search of the title to identify that party.

Patrick Harvie: The Crown might be unaware of the situation.

Ross MacKay: Yes. The Crown would have no knowledge of that, but the “true” owner should be aware of it even if he is not occupying the land. You must bear in mind that we are talking about unoccupied ground that no one has possessed. We are not talking about someone’s house; we are talking about bits of land.

Patrick Harvie: What if, for example, a community body were to say that it had as much right to claim a piece of unoccupied land as the developer against whose unwelcome development it had been arguing for years?

Ross MacKay: That would require a policy decision. At the moment, in practice, little bits of land are identified in the residential sector that are occupied by a party quite openly. In the commercial sector, it is bits of land on brownfield sites whose owner no one can identify. To rectify the situation, title has to be granted in favour of a party, be it the owner or the developer. At the moment, as Fiona Letham says, the deeds do not give someone good title—they just give them a bit of paper according to which 10 years of possession can start running. It should be borne in mind that, if the true owner comes along at any time within 10 years, they can challenge that. The deeds are only the start of a process lasting 10 years before someone can possibly have good title. To have good title within 10 years, it is not just a question of having the bit of paper; the person must also occupy the land.

There is a twofold aspect to getting good title to such a piece of land: first, an existing title; and secondly, occupation for 10 years “openly, peaceably and without judicial interruption”.

If someone has done that for 10 years, the law prescribes that they have good title. In the scenario that you have outlined, if the land has some value, the question whether the Crown or the local community should have a say in its ownership is a policy decision for Parliament to make.

Patrick Harvie: Are there any other views?

Graeme McCormick: I see no reason why this could not be advertised. We should be as transparent as possible with these things. We must also remember that the keeper has a general duty of care. I see no reason why, when the keeper gets such an application, she cannot then refer it to the QLTR for his or her comments.

Patrick Harvie: Again, would that be a departure from current practice that required a statutory basis?

Graeme McCormick: I assume that it would. I do not know whether the keeper does anything internally; I suspect that she does not. I see no reason why she should not.

Ian Ferguson: The land register is a public register, so the information is there. When someone puts an a non domino deed on to the register, the company needs 10 years to pass before it can get good title. That amounts to disclosing that it has had bad title for 10 years, and there is public knowledge of that because it is on the register. Then it is a question of whether one goes further and advertises, which I suspect would lead to all sorts of nutcases coming forward with no possible basis for owning the land but saying, “It’s mine.”

Patrick Harvie: I am reminded of Arthur Dent lying in front of his house and being told by the man with the bulldozer, “The plans have been on display for some months in your local planning office—it’s not our fault if you don’t take account of local affairs.”

Ross MacKay: Then there was the Vogon destructor fleet.

Patrick Harvie: It made the same argument on a grander scale, yes.

Ross MacKay: I agree that an advertisement is an alternative. As I said, the commission took the view that, on balance, notice was appropriate rather than an advertisement, but I do not think that is something that anyone here would go
to the barricades about—it is a practical aspect. Personally, I wonder who will pick up on a small advert in the local paper, or indeed a national paper. I do not know whether that addresses people’s concerns in this respect.

John Wilson: Let me give some background on notification of claim of title. In the area where I live, for a number of years we have been aware of a character known as the raider of the lost titles, who goes around snarfing up titles all over the place. I recently came across an inquiry from a constituent who had purchased their house three years ago and thought that they were also purchasing a garden that had been managed for over 50 years by the previous owner of the house, only to find, two weeks after the purchase, that somebody else claimed title to that garden. The difficulty is about the notification period. It may not be appropriate to advertise in a national or local newspaper, and some 40 per cent of the population in Scotland do not have access to the internet or a computer. It might therefore be advisable that the neighbour notification process be applied as it is in the planning process, so that, if someone claims title to a piece of land, at least the neighbours of that land are given notice that they have done that instead of facing the current situation whereby, for example, the purchasers of a property suddenly find out that someone else owns the garden that had been tended by the previous owner of the property. How do we get the information out to people that somebody has identified by searching through the records that evidence and to satisfy herself that the keeper would have to adopt in satisfying herself as to whether there is a valid reason for title being taken. At the moment, it is perfectly possible for the keeper to say to the person who has made the application that she wants to know about the keeper to say to the person who has made the application that she wants to know about the keeper’s policy changed from being fairly relaxed about such applications to being much more diligent and seeking a lot more information. That was about five or six years ago.

Fiona Letham: I, too, am not sure when the policy changed but, from my experience, a few years ago, when I submitted some a non domino dispositions to the keeper, we were put through the hoops in the number of searches that we had to do to verify whether there was an owner of the land. From personal experience, on that occasion, the keeper’s staff were stringent in ensuring that we did all the possible searches. The approach was more lax in the years before that. I do not know when the approach changed, but it is now very tight.

John Scott: The issue is a fine example of the deficiencies of the existing legislation on land registration. There is no provision in the Land Registration (Scotland) Act 1979 to cover it. Over the years, keepers have had to evolve their policy to take account of the circumstances, particularly when claims were made on the keeper’s indemnity because sufficient checks had not been carried out. Many more checks are now in place than there used to be.

The Convener: The final topic that we want to cover—briefly—is advance notices. Angus MacDonald has a question.

Angus MacDonald (Falkirk East) (SNP): I will be brief. The proposed system of advance notices must be simple to operate and must fit with existing practices. It is envisaged that advance notices will primarily be in electronic form. Are the witnesses content with the idea of a system of advance notices? Do you have any reservations with regard to points of detail?

Ken Swinton: We support the introduction of advance notices because of the dangers of granting letters of obligation, which have become more apparent as a result of fraud cases in the past 12 months, to which Ross MacKay referred. It seems inevitable that we will have to change the
system of granting letters of obligation because of the prospective insurance costs.

We have concerns about the drafting of the bill. It says different things when the advance notice relates to the register of sasines and when it affects a title that is in the land register. With the register of sasines, the keeper will have to register the notice but, with the land register, it appears that the keeper will grant the notice. There is a mismatch in the drafting of the provisions.

We are concerned that the advance notice might sit silently in the application record. It is not clear from the bill that the application record will be searchable. The application record is not referred to in the current statute, but it exists and is potentially searchable by searchers. We want an assurance that that will continue. An example of the need for that is the case of a creditor who seeks to obtain an inhibition against an owner of a property to prevent them from selling or otherwise dealing with their assets to the detriment of the creditor. In some cases, the creditor might do that after title has been investigated and it is known that there is a title to attach, but they will not want to incur that expense if an advance notice is already on the record that will prevent the inhibition from being effective. Without the transparency of being able to search the application record, we do not think that that is fair to a potential inhibiting creditor.

Ross MacKay: We agree with that. On a technical point, if advance notices are to be worth anything, they will have to appear on the record in an easily searchable format so that when someone is about to buy a property, the advance notice will be flagged up. That is a technical change that we would agree with.

We would like advance notices, and we would like them as quickly as possible please. For information, the current system is that every selling solicitor grants what is called a letter of obligation on completion of a sale. That is a personal undertaking by the solicitor, not the seller, that when the buyer, subject to certain checks, registers their title, nothing will show up that they do not know about. If, for example, the seller has been underhand and has been putting through a remortgage at the same time as the sale, and they time it so that they complete a remortgage on the same day they complete the sale, they will get the sale price and the remortgage funds, and they will get on the next flight to Brazil. When that comes out at a later stage of the registration process, there is no discharge of that security. The liable person will not be the seller but the solicitor, who is entirely innocent in that regard but has been caught out by some sort of fraud.

Again, one of the hidden benefits of using solicitors is that we underwrite the process by effectively guaranteeing to buyers that, if something comes up at the last moment at completion, we are the ones who have to sort it out. That goes back to our indemnity insurance arrangements, and our insurers might have to fork out for that.

The Law Society operates the master policy that provides indemnity insurance to all solicitors covering all sorts of claims against them. As well as being convener of the property committee, I am also convener of the insurance committee, which has regular discussions with the insurers. They are concerned about letters of obligation and do not quite understand them, but they do know that England and Wales do not have letters of obligation and instead have priority period notices, which are the same as the advance notices that are being proposed in Scotland. Huge claims have been made in the Republic of Ireland due to breach of undertakings and the insurers are equating the two, although technically they are different. We are now under some pressure from our indemnity insurers to endorse advance notices in principle and to seek their introduction as quickly as possible. That will, hopefully, allow the solicitors' personal liability to wither on the vine and they can then make a saving on the insurance policy.

The Convener: Does anyone have any further points?

Fiona Letham: On advance notices, we would prefer the legislation to be clear about whether one advance notice or two would be required in a situation in which someone is purchasing property and granting a mortgage over it. Does the lender who is providing the funds need a separate advance notice or would the one in favour of the purchaser protect the lender as well? I know that some people who have been working on the bill are of the opinion that one advance notice will protect both, but I do not think that that is clear in the bill and we require clarity, or else lenders will insist on there being a second advance notice.

The Convener: Thank you.

Ross MacKay: On a technical point, no style of advance notice is given in the bill. It just says there should be an advance notice but it does not say who will prepare it. There is no reference to the Scottish Government producing a style in the fullness of time. If the style of the advance notice suits the profession, I am sure that it will suit the keeper as well.

The Convener: As there are no other questions, I thank all the witnesses for coming. It has been extremely helpful. I am aware that we have had quite a long session this morning, but we
have covered a lot of ground and it will be useful to the committee in preparing our stage 1 report.
INTRODUCTION
The Law Society of Scotland (the Society) welcomes the opportunity to provide provisional written evidence on the Land Registration (Scotland) Bill, (the bill) ahead of oral evidence which the Society has been invited to give before the Economy, Energy and Tourism Committee on 11 January 2012. The Society will be submitting final written evidence ahead of the call for written evidence deadline of the 20th January 2012.

The bill has been considered by a Working Group which included members from the Society’s Property Law Committee, Banking Law Sub-Committee and the Criminal Law Committee.

COMMENT
The Society is fully supportive of, and committed to, all measures aimed at preventing and minimising any kind of fraudulent behaviour. In this respect the Society have often worked, and continue to work, very closely with stakeholders, including the Registers of Scotland.

Section 108
The Society notes that the Land Registration (Scotland) Bill, as currently drafted, creates a new offence at Section 108:

(1) A person mentioned in subsection (2) commits an offence if the person—
(a) makes a materially false or misleading statement in relation to an application for registration knowing that, or being reckless as to whether, the statement is false or misleading, or
(b) intentionally fails to disclose material information in relation to such an application or is reckless as to whether all material information is disclosed.

The Society wish to make the following comments on the proposed Section 108 offence:

The Society is of the opinion that the proposed provision is not necessary for two reasons, (1) the current criminal law, both at common law and under statute, is sufficient to prosecute the mischief complained of, and (2) the introduction of this offence is disproportionate to the level of threat presented.

There already exist statutory and common law criminal offences which cover the mischief complained of. The common law provides for the offence of fraud, and attempted fraud which extends to false representation by writings, words or conduct. Further offences are also provided for in the Proceeds of Crime Act 2002. Part 7 sets out a number of offences (appendix 1) which relate to money laundering.

In addition, the Society is of the opinion that when a solicitor is completing and submitting registration forms they are effectively making a statutory declaration. If the solicitor provides false or misleading information in that declaration, then the making of false or misleading statements, whether intentionally or recklessly, may be
pursued as contempt with the penalties that establishment of that offence carries (see Appendix 2).

As well as criminal sanctions, the Society, as the regulator of the solicitors profession in Scotland, has strict rules in place to prevent and address any kind of wrongdoing by a practicing solicitor. In particular, the Law Society of Scotland Practice Rules 2011, Rule 6 provides:

6.23.1 Every independent legal professional who is regulated by the Society shall comply with the provisions of the Money Laundering Regulations.
6.23.2 A regulated person shall demonstrate to the Society on request that the information held by him or by his practice unit is sufficient to evidence compliance with the provisions of Part 7 of the Proceeds of Crime Act 2002 and Part 3 of the Terrorism Act 2000.

Where a solicitor is found to be in breach of the Society’s Rules, then the Society may take disciplinary action against that individual or firm of solicitors.

The Society, therefore, is of the opinion that there exits sufficient deterrent in the form of existing law and practice rules to deter the mischief complained of.

(2)
The Society believes that the introduction of this offence is disproportionate to the level of threat presented. The Society has not been presented with, nor is it aware of, sufficient evidence to demonstrate that the level of mischief to be apprehended is as extensive as suggested. And therefore, the Society suggests that the number of cases where current ‘difficulties’ in prosecuting the mischief under existing criminal law arise, as forwarded to support the introduction of the offence, is very small in number. The Society also believes that the very small number identified could all be prosecuted under existing criminal law. Statutory intervention to address cases which are of rarity would appear to be incongruous to the statutory process where adequate tools exist for prosecutors to pursue criminally reckless conduct by solicitors resulting in loss to a public body.

The Land Registration Act 2002, which applies in England and Wales, provides for a similar offence and mirrors, to an extent, the proposed Section 108 offence. The Crown Prosecution Service has confirmed to the Society that no proceedings or prosecutions have been brought under these provisions.

The Society is of the opinion that the proposed wording of Section 108 (1) is not sufficient to give solicitors or other applicants sufficient notice of the types of behaviour, action or inaction which may result in criminal penalties being levied or indeed deprivations of liberty ensuing. The Society hold this to be a fundamental requirement of the criminal law in our society.

**The use of the term ‘Recklessness’**

The Society notes, and is concerned, that the provision as drafted states that the mens rea required to satisfy the offence is intention or ‘recklessness’. The Society believes that the term ‘recklessness’ is very problematic and is too vague to meet the
requirement of due notice which is a tenet of the rule of law. The term is not settled in Scots law, and may differ dependent on the offence pursued. Case law suggests that this should be an objective approach, with behaviour falling far below that of the competent person in the defendant’s position. Applying this principle to conveyancing transactions, this is likely to demand a very high level of proof of malpractice, and will require expert evidence being lead to show that the solicitor’s actions fell far short of that of a competent practitioner. The Society is of the view that it may be no easier to prosecute recklessness conduct under the proposed new offence as it is with intention, under the existing criminal law offence of fraud.

In addition, the use of the term ‘recklessness’ has the effect of criminalising professional service which, although unsatisfactory, falls short of fraudulent. As drafted, this would cover those solicitors who make a genuine administration error in submitting an application for registration or any other dealings with the Registers of Scotland. Unsatisfactory professional service, on the part of solicitors, in relation to land registration is already dealt with in a number of ways, and sanctions may be imposed on solicitors by both the Law Society of Scotland and the Scottish Legal Complaints Commission – both striving to eradicate unsatisfactory professional service. Any loss suffered by clients may ultimately be recovered from the Scottish solicitors’ indemnity and guarantee funds and civil action may also be raised in the event of any loss.

By incorporating the term ‘recklessness’ in this way, a solicitor may find him or herself facing criminal prosecution for a genuine error.

**Defences**

The Society believes that the defences require further consideration in order to avoid (1) unfair consequences arising from a lack of clarity in the terminology used and (2) a breakdown in the accepted conveyancing practice which has operated for a considerable number of years.

(1) The Society notes that subsection (3) provides for a defence to the offence created by Section 108, and states:

3) *It is a defense for a person charged with an offence under subsection (1) (the “accused”) that the accused took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.*

The Society has concerns about the proposed wording ‘all reasonable precautions’. What are all reasonable precautions? This is a subjective test and the bill fails to provide any definition or guidance to clarify. Again this falls short of what one might expect from an executive’s criminalisation of conduct. The Society has the same concern with the stated wording ‘all due diligence’.

(2) The Society does not believe that the defence, set out in S108(4), adequately addresses the issue of the input of any other party to an application. The steps
required to make out the defence are cumulative and the last limb of the defence introduces the undefined concept of solicitors taking "all such steps as could reasonably be taken" – this step suggests that there may be accepted procedures and enquiries which should be taken which are not themselves set out in the statute and nor may they necessarily be within the ken of the applicants in any given situation and any that agents may develop will necessarily result in delay and time costs to members of the public.
APPENDIX 1

Part 7 Proceeds of Crime Act 2002

327 Concealing etc
(1) A person commits an offence if he—
(a) conceals criminal property;
(b) disguises criminal property;
(c) converts criminal property;
(d) transfers criminal property;
(e) removes criminal property from England and Wales or from Scotland or from Northern Ireland.

(2) But a person does not commit such an offence if—
(a) he makes an authorised disclosure under section 338 and (if the disclosure is made before he does the act mentioned in subsection (1)) he has the appropriate consent;
(b) he intended to make such a disclosure but had a reasonable excuse for not doing so;
(c) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.

(3) Concealing or disguising criminal property includes concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.

328 Arrangements
(1) A person commits an offence if he enters into or becomes concerned in an arrangement which he knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person.

(2) But a person does not commit such an offence if—
(a) he makes an authorised disclosure under section 338 and (if the disclosure is made before he does the act mentioned in subsection (1)) he has the appropriate consent;
(b) he intended to make such a disclosure but had a reasonable excuse for not doing so;
(c) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.

329 Acquisition, use and possession
(1) A person commits an offence if he—
(a) acquires criminal property;
(b) uses criminal property;
(c) has possession of criminal property.
(2) But a person does not commit such an offence if—
(a) he makes an authorised disclosure under section 338 and (if the disclosure is made before he does the act mentioned in subsection (1)) he has the appropriate consent;
(b) he intended to make such a disclosure but had a reasonable excuse for not doing so;
(c) he acquired or used or had possession of the property for adequate consideration;
(d) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.

(3) For the purposes of this section—
(a) a person acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property;
(b) a person uses or has possession of property for inadequate consideration if the value of the consideration is significantly less than the value of the use or possession;
(c) the provision by a person of goods or services which he knows or suspects may help another to carry out criminal conduct is not consideration.

330 Failure to disclose: regulated sector
(1) A person commits an offence if each of the following three conditions is satisfied.

(2) The first condition is that he—
(a) knows or suspects, or
(b) has reasonable grounds for knowing or suspecting, that another person is engaged in money laundering.

(3) The second condition is that the information or other matter—
(a) on which his knowledge or suspicion is based, or
(b) which gives reasonable grounds for such knowledge or suspicion, came to him in the course of a business in the regulated sector.

(4) The third condition is that he does not make the required disclosure as soon as is practicable after the information or other matter comes to him.

(5) The required disclosure is a disclosure of the information or other matter—
(a) to a nominated officer or a person authorised for the purposes of this Part by the Director General of the National Criminal Intelligence Service;
(b) in the form and manner (if any) prescribed for the purposes of this subsection by order under section 339.

(6) But a person does not commit an offence under this section if—
(a) he has a reasonable excuse for not disclosing the information or other matter;
(b) he is a professional legal adviser and the information or other matter came to him in privileged circumstances;
(c) subsection (7) applies to him.

(7) This subsection applies to a person if—
(a) he does not know or suspect that another person is engaged in money laundering, and
(b) he has not been provided by his employer with such training as is specified by the Secretary of State by order for the purposes of this section.

(8) In deciding whether a person committed an offence under this section the court must consider whether he followed any relevant guidance which was at the time concerned—
(a) issued by a supervisory authority or any other appropriate body,
(b) approved by the Treasury, and
(c) published in a manner it approved as appropriate in its opinion to bring the guidance to the attention of persons likely to be affected by it.

(9) A disclosure to a nominated officer is a disclosure which—
(a) is made to a person nominated by the alleged offender’s employer to receive disclosures under this section, and
(b) is made in the course of the alleged offender’s employment and in accordance with the procedure established by the employer for the purpose.

(10) Information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to him—
(a) by (or by a representative of) a client of his in connection with the giving by the adviser of legal advice to the client,
(b) by (or by a representative of) a person seeking legal advice from the adviser, or
(c) by a person in connection with legal proceedings or contemplated legal proceedings.

(11) But subsection (10) does not apply to information or other matter which is communicated or given with the intention of furthering a criminal purpose.

(12) Schedule 9 has effect for the purpose of determining what is—
(a) a business in the regulated sector;
(b) a supervisory authority.

(13) An appropriate body is any body which regulates or is representative of any trade, profession, business or employment carried on by the alleged offender.

331 Failure to disclose: nominated officers in the regulated sector
(1) A person nominated to receive disclosures under section 330 commits an offence if the conditions in subsections (2) to (4) are satisfied.

(2) The first condition is that he—
(a) knows or suspects, or
(b) has reasonable grounds for knowing or suspecting, that another person is engaged in money laundering.

(3) The second condition is that the information or other matter—
(a) on which his knowledge or suspicion is based, or
(b) which gives reasonable grounds for such knowledge or suspicion,
came to him in consequence of a disclosure made under section 330.

(4) The third condition is that he does not make the required disclosure as soon as is practicable after the information or other matter comes to him.

(5) The required disclosure is a disclosure of the information or other matter—
(a) to a person authorised for the purposes of this Part by the Director General of the National Criminal Intelligence Service;
(b) in the form and manner (if any) prescribed for the purposes of this subsection by order under section 339.

(6) But a person does not commit an offence under this section if he has a reasonable excuse for not disclosing the information or other matter.

(7) In deciding whether a person committed an offence under this section the court must consider whether he followed any relevant guidance which was at the time concerned—
(a) issued by a supervisory authority or any other appropriate body,
(b) approved by the Treasury, and
(c) published in a manner it approved as appropriate in its opinion to bring the guidance to the attention of persons likely to be affected by it.

(8) Schedule 9 has effect for the purpose of determining what is a supervisory authority.

(9) An appropriate body is a body which regulates or is representative of a trade, profession, business or employment.

332 Failure to disclose: other nominated officers
(1) A person nominated to receive disclosures under section 337 or 338 commits an offence if the conditions in subsections (2) to (4) are satisfied.

(2) The first condition is that he knows or suspects that another person is engaged in money laundering.

(3) The second condition is that the information or other matter on which his knowledge or suspicion is based came to him in consequence of a disclosure made under section 337 or 338.

(4) The third condition is that he does not make the required disclosure as soon as is practicable after the information or other matter comes to him.

(5) The required disclosure is a disclosure of the information or other matter—
(a) to a person authorised for the purposes of this Part by the Director General of the National Criminal Intelligence Service;
(b) in the form and manner (if any) prescribed for the purposes of this subsection by order under section 339.
But a person does not commit an offence under this section if he has a reasonable excuse for not disclosing the information or other matter.

333 Tipping off
(1) A person commits an offence if—
(a) he knows or suspects that a disclosure falling within section 337 or 338 has been made, and
(b) he makes a disclosure which is likely to prejudice any investigation which might be conducted following the disclosure referred to in paragraph (a).

(2) But a person does not commit an offence under subsection (1) if—
(a) he did not know or suspect that the disclosure was likely to be prejudicial as mentioned in subsection (1);
(b) the disclosure is made in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct;
(c) he is a professional legal adviser and the disclosure falls within subsection (3).

(3) A disclosure falls within this subsection if it is a disclosure—
(a) to (or to a representative of) a client of the professional legal adviser in connection with the giving by the adviser of legal advice to the client, or
(b) to any person in connection with legal proceedings or contemplated legal proceedings.

(4) But a disclosure does not fall within subsection (3) if it is made with the intention of furthering a criminal purpose.

334 Penalties
(1) A person guilty of an offence under section 327, 328 or 329 is liable—
(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both, or
(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years or to a fine or to both.

(2) A person guilty of an offence under section 330, 331, 332 or 333 is liable—
(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both, or
(b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both.

Disclosures
337 Protected disclosures
(1) A disclosure which satisfies the following three conditions is not to be taken to breach any restriction on the disclosure of information (however imposed).

(2) The first condition is that the information or other matter disclosed came to the person making the disclosure (the discloser) in the course of his trade, profession, business or employment.
(3) The second condition is that the information or other matter—
   (a) causes the discloser to know or suspect, or
   (b) gives him reasonable grounds for knowing or suspecting,
that another person is engaged in money laundering.

(4) The third condition is that the disclosure is made to a constable, a customs officer or a nominated officer as soon as is practicable after the information or other matter comes to the discloser.

(5) A disclosure to a nominated officer is a disclosure which—
   (a) is made to a person nominated by the discloser’s employer to receive disclosures under this section, and
   (b) is made in the course of the discloser’s employment and in accordance with the procedure established by the employer for the purpose.

338 Authorised disclosures
(1) For the purposes of this Part a disclosure is authorised if—
   (a) it is a disclosure to a constable, a customs officer or a nominated officer by the alleged offender that property is criminal property,
   (b) it is made in the form and manner (if any) prescribed for the purposes of this subsection by order under section 339, and
   (c) the first or second condition set out below is satisfied.

(2) The first condition is that the disclosure is made before the alleged offender does the prohibited act.

(3) The second condition is that—
   (a) the disclosure is made after the alleged offender does the prohibited act,
   (b) there is a good reason for his failure to make the disclosure before he did the act, and
   (c) the disclosure is made on his own initiative and as soon as it is practicable for him to make it.

(4) An authorised disclosure is not to be taken to breach any restriction on the disclosure of information (however imposed).

(5) A disclosure to a nominated officer is a disclosure which—
   (a) is made to a person nominated by the alleged offender’s employer to receive authorised disclosures, and
   (b) is made in the course of the alleged offender’s employment and in accordance with the procedure established by the employer for the purpose.

(6) References to the prohibited act are to an act mentioned in section 327(1), 328(1) or 329(1) (as the case may be).

339 Form and manner of disclosures
(1) The Secretary of State may by order prescribe the form and manner in which a disclosure under section 330, 331, 332 or 338 must be made.
(2) An order under this section may also provide that the form may include a request to the discloser to provide additional information specified in the form.

(3) The additional information must be information which is necessary to enable the person to whom the disclosure is made to decide whether to start a money laundering investigation.

(4) A disclosure made in pursuance of a request under subsection (2) is not to be taken to breach any restriction on the disclosure of information (however imposed).

(5) The discloser is the person making a disclosure mentioned in subsection (1).

(6) Money laundering investigation must be construed in accordance with section 341(4).

(7) Subsection (2) does not apply to a disclosure made to a nominated officer.

Interpretation

340 Interpretation
(1) This section applies for the purposes of this Part.

(2) Criminal conduct is conduct which—

(a) constitutes an offence in any part of the United Kingdom, or

(b) would constitute an offence in any part of the United Kingdom if it occurred there.

(3) Property is criminal property if—

(a) it constitutes a person’s benefit from criminal conduct or it represents such a benefit (in whole or part and whether directly or indirectly), and

(b) the alleged offender knows or suspects that it constitutes or represents such a benefit.

(4) It is immaterial—

(a) who carried out the conduct;

(b) who benefited from it;

(c) whether the conduct occurred before or after the passing of this Act.

(5) A person benefits from conduct if he obtains property as a result of or in connection with the conduct.

(6) If a person obtains a pecuniary advantage as a result of or in connection with conduct, he is to be taken to obtain as a result of or in connection with the conduct a sum of money equal to the value of the pecuniary advantage.

(7) References to property or a pecuniary advantage obtained in connection with conduct include references to property or a pecuniary advantage obtained in both that connection and some other.
(8) If a person benefits from conduct his benefit is the property obtained as a result of or in connection with the conduct.

(9) Property is all property wherever situated and includes—
(a) money;
(b) all forms of property, real or personal, heritable or moveable;
(c) things in action and other intangible or incorporeal property.

(10) The following rules apply in relation to property—
(a) property is obtained by a person if he obtains an interest in it;
(b) references to an interest, in relation to land in England and Wales or Northern Ireland, are to any legal estate or equitable interest or power;
(c) references to an interest, in relation to land in Scotland, are to any estate, interest, servitude or other heritable right in or over land, including a heritable security;
(d) references to an interest, in relation to property other than land, include references to a right (including a right to possession).

(11) Money laundering is an act which—
(a) constitutes an offence under section 327, 328 or 329,
(b) constitutes an attempt, conspiracy or incitement to commit an offence specified in paragraph (a),
(c) constitutes aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a), or
(d) would constitute an offence specified in paragraph (a), (b) or (c) if done in the United Kingdom.

(12) For the purposes of a disclosure to a nominated officer—
(a) references to a person’s employer include any body, association or organisation (including a voluntary organisation) in connection with whose activities the person exercises a function (whether or not for gain or reward), and
(b) references to employment must be construed accordingly.

(13) References to a constable include references to a person authorised for the purposes of this Part by the Director General of the National Criminal Intelligence Service.
Appendix 2

Statutory Declaration
Solicitors are licensed under an Act of Parliament to make statements and carry out legal acts as part of a public office on behalf of clients. When a solicitor completes a return to the Registers, as with a tax return or a confirmation to an estate on behalf of a client, he effects changes in publicly held registers which deal with the identity of persons and their ownership of property. That is why many in the profession have always believed that when they are completing and submitting forms on behalf of clients they are making declarations under statute - the statute that regulates their public office. In this respect the terms of Criminal Law (Consolidation) (Scotland) Act 1995 c. 39 S 44 should apply:-

"False statements and declarations.
44 (1) Any person who—
(a) is required or authorised by law to make a statement on oath for any purpose; and

(b) being lawfully sworn, willfully makes a statement which is material for that purpose and which he knows to be false or does not believe to be true, shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding five years or to a fine or to both such fine and imprisonment.

(2) Any person who knowingly and wilfully makes, otherwise than on oath, a statement false in a material particular, and the statement is made—
(a) in a statutory declaration; or

(b) in an abstract, account, balance sheet, book, certificate, declaration, entry, estimate, inventory, notice, report, return or other document which he is authorised or required to make, attest or verify by, under or in pursuance of any public general Act of Parliament for the time being in force; or

(c) in any oral declaration or oral answer which he is authorised or required to make by, under or in pursuance of any public general Act of Parliament for the time being in force; or

(d) in any declaration not falling within paragraph (a), (b), or (c) above which he is required to make by an order under section 2 of the Evidence (Proceedings in Other Jurisdictions) Act 1975, shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding two years or to a fine or to both such fine and imprisonment.

(3) Any person who—
(a) procures or attempts to procure himself to be registered on any register or roll kept under or in pursuance of any Act of Parliament for the time being in force of persons qualified by law to practice any vocation or calling; or

(b) procures or attempts to procure a certificate of the registration of any person on any such register or roll,
by wilfully making or producing or causing to be made or produced either verbally or in writing, any declaration, certificate or representation which he knows to be false or fraudulent, shall be guilty of an offence and be liable on conviction to imprisonment for a term not exceeding 12 months or to a fine or to both such fine and imprisonment.

(4) Subsection (2) above applies to any oral statement made for the purpose of any entry in a register kept in pursuance of any Act of Parliament as it applies to the statements mentioned in that subsection."

Law Society of Scotland
December 2011
1. Biographical Note: My name is Graeme McCormick. In 1978 I qualified as a solicitor in Paisley. As Renfrewshire was the first operational county for land registration in 1981 I have been closely involved in the land registration process since its inception. I established Conveyancing Direct, Solicitors in Glasgow in 1997. We undertake around 4000 domestic conveyancing transactions each year from Shetland to Gretna. I personally check and draft around 2000 title deeds every year for purchasers and their lenders. My firm is an associate member of the Council of Mortgage Lenders.

2. My Firm's Conveyancing Philosophy: Around 66% of adults in Scotland own heritable property through the purchase of their homes. Many more aspire to home ownership. Many commentators state that the process is potentially the biggest and most stressful transaction most people will make in their lives. Consequently my firm's focus is quite simple: If you are a buyer you expect your keys on time. If you are a seller you expect your money on time. If either of these objectives is delayed or doesn't happen then the system has failed. That system involves various professions and agencies; these include estate agents, mortgage brokers, lenders, surveyors, banks, insurers, factors, solicitors, local authorities, Scottish Water, British Coal, law enforcement agencies, private searchers and sometimes many more; but most crucially, The Land Register of Scotland.

3/1 The Purpose of the Bill: In my opinion the purpose of legislation is to make life better. This Bill may appear extremely dry and technical and primarily designed for administrative convenience and a wish-list for the Keeper of the Land Register, but in my submission, it offers this Committee and this Parliament the opportunity to develop the land registration system to be more equitable, robust, clear, efficient and in the public interest while greatly improving the conveyancing process for the property buyer and seller and their lenders. The land registration system must also be capable of correction without undue cost or delay to the consumer.

3/2 While I appreciate that this Bill is largely an enabling one there are serious issues which are not addressed in it which have a major impact on the practice of conveyancing and, as a result, the general public. I passionately believe that Parliament should take this opportunity to consider these issues and seek to enforce and direct change. My comments are of a general nature but if thought worthy of further consideration I am happy to make more detailed suggestions.

3/3 While the following issues are not exhaustive they do highlight some of the existing deficiencies which are not directly addressed by the Bill but which the land registration process could and should address.

Issues:

4/1 Title Descriptions

Most title descriptions in Land Certificates are adequate. However that cannot
be said for tenement flats where the descriptions range from floorplans, compass points, various descriptions such as “righthand”, “second from the left”, “second left”, etc. to even reference to a floor in the tenement where one flat cannot be accurately identified from another. Failure to be accurate can cause transactions to be delayed or even fail or involve clients paying for expensive private sector title indemnities. In a robust title system adequacy of a property’s description should be paramount. As far as I can judge the proposed measures in the Bill do not provide for a single means of describing a tenement flat.

4/2 Remedy: the Keeper should be required to insist that on any purchase or grant of a standard security (mortgage) on a property there must be a floor plan of the property in a form prescribed by the Keeper indicating the location and extent of the property.

5/1 Servitudes Rights

The Scots Law of Prescription creates rights of access and others through the uninterrupted use over time even if these rights are not conveyed in any written deed. Rights can also be ended by failure to use over a prescribed period. As a general rule the Keeper refuses to mark the Title Sheet or Burdens section with any reference to these rights. As a result the Land Certificate may not be a definitive expression of the extent of the title of a property. As such prescriptive rights do not appear in Land Certificates one of the objects of land registration—reference to one title deed—is not achieved as the full title picture requires examination of other properties’ titles and documents and knowledge of local practice.

5/2 Remedy: The Keeper, if requested so to do by the applicant, should be obliged to enter or remove such rights in the Land Certificate but suitably endorsed to exclude her indemnity with the date of said endorsement.

6/1 Errors in Existing Land Certificates

If a solicitor submits an application which the Keeper considers has an error the Keeper may reject the application and charge the solicitor a penalty for the rejection. If however the solicitor finds an error in an existing land certificate or the Keeper’s response to an application, the Keeper is not obliged to compensate the solicitor for the error. The solicitor's only recourse is to charge his client or write-off the unpaid work to experience. If these were isolated incidents then the matter would not be worth raising but they can take hours of investigative work by the solicitor. We alone see on average two Keeper's errors in our title examinations each week so if that is multiplied across the land registration activity it is significant and causes delay and extra costs to the consumer. If we assume that on average there are dealings on a property every four years I guesstimate that there are around 40,000 titles with significant defects already registered in the Land Register.

6/2 Remedy: The Keeper should be legally obliged to pay solicitors a correction fee where solicitors identify errors in land certificates as the solicitors are doing the Keeper's work for her.
7/1 Very Important Ancillary Documents

As copies of registered title deeds can be obtained online through Registers Direct there is generally no need for original deeds. However domestic conveyancing transactions regularly require additional documentation to enable transactions to complete. Many mortgage lenders do not now retain title deeds and ancillary paperwork, and with the passage of time and regular remortgaging, such paperwork is lost. There is no national register for this paperwork. Such paperwork would include: NHBC ten year guarantees, planning permission, building warrants, completion certificates and plans, letters of comfort, road bonds, property enquiry certificates, SEPA certificates, specialist guarantees and reports, home reports, architect supervision certificates, etc. Replacement of even one item can cost £100 or more thus adding to the house owners’ costs.

7/2 Remedy: There is no reason why the Keeper could not register copies of that paperwork with the land certificate again endorsing same with exclusion of her indemnity. The Keeper could charge a separate fee for registration. The effect of this proposal would streamline sales and purchases and provide a much more useful record of a property and reduce the cost of buying and selling to the consumer.

8/1 Time Limits to Register Titles

While dealings on existing registered titles can be registered within three months of the date of application, first registrations regularly take in excess of one year, and new build properties a staggering five years is not unknown. These timescales are outrageous. Despite solicitors have cobbled together a practical way of undertaking sales and dealings while land registration is incomplete, there are considerable risks to consumers, their solicitors and lenders in the event of the original applications being cancelled, or the Keeper raising requisitions many months and even years after the original application was made.

8/2 Most lenders who lend in Scotland base their mortgage processing and deeds departments in England. The English and Welsh Land Registry appears much more efficient than the Land Register of Scotland so these lenders do not accept that the Land Register should be significantly slower than their English and Welsh counterparts. These mortgage lenders (quite rightly in my view) refuse to adjust their audit processes to take account of the much slower Scottish land registration process. These delays result in lenders and the instructed solicitors in considerable extra work and cost while the land registration is ongoing. Six monthly audit reports are required to be lodged by the solicitor with the lender while land registration is incomplete. If land registration takes 5 years that amounts to 10 audit reports which, on a time-cost basis to the solicitor and lender at a modest rate of £30 per hour, adds £300 to the cost of a purchase all because the Land Register takes so long to complete a title registration.

8/3 Furthermore, solicitors are regularly threatened with losing the right to act for lenders through no fault of their own but through the delays in the completion of land registration of a property title in the Land Register. If
solicitors lose their panel status with lenders they may as well close down their businesses given that around 80% of house purchases involve mortgage lenders. Each year I visit mortgage lenders’ deeds departments in England offering them a free seminar explaining to them the vagaries of the Scottish land registration system just to keep them onside with their Scottish panel solicitors.

8/4 Remedy: The Keeper should be required to complete the registration of the title within six months of receipt of the application (subject to specific exceptions) otherwise the Keeper should be in default and liable to pay compensation for delay. Six months would appear to be a reasonable timescale as most lenders will not accept an application for a loan on a property to be purchased where the current seller has owned the property for less than six months. The effect of this would be that the land registration system would be more robust as only dealings where land registration had been completed would be permitted thus avoiding the risk of dealings on incomplete registrations. The principal reason given by the Keeper for the delay in new builds is the updating of Ordnance Survey mapping. I understand that OS rejects this reason, but in any event measures could be put in place to address this before any new build purchase application was submitted.

9/1 Money Laundering and Identity Fraud

Solicitors, mortgage lenders, brokers, estate agents and many more are charged to carry out various checks to help the law enforcement authorities to prevent money laundering, identity and mortgage fraud. It is estimated by the Council of Mortgage Lenders that there is over 1 billion pounds of mortgage fraud in England and Wales alone. I do not have the figure for Scotland, but although the CML acknowledges that the problem is less severe in Scotland due to the Law Society of Scotland’s more robust and coordinated compliance regime, Scotland is not immune. Much of this unpaid work on behalf of the state involves considerable repetition with no sharing of information among these enforcement agencies and the professions.

9/2 The police etc. spend millions of pounds each year in detailed detective work to bring fraudsters and money launderers to justice and to deprive them of their ill-gotten gains. The Law Society of Scotland’s Financial Compliance Department has detailed guidelines for solicitors which have been created so that almost as much time is spent by a solicitor on an individual transaction assessing whether the client and others involved in the transaction are financially and legally clean than in the conveyancing process itself. This adds greatly to the cost of a conveyancing transaction.

9/3 The purchase of and dealing in property are very popular routes for money launderers and fraudsters yet no attempt is made by the law enforcement agencies to share information with solicitors to prevent these dealings in the first place and radically reduce, if not prevent, criminals using the property system in Scotland. It amazes me that the Keeper has not sought to include some mechanism to help prevent crime using the land registration process. At a recent pre-Bill presentation by the Keeper’s staff in Glasgow all the solicitors present were astounded to discover that the Keeper has a stand-over file of title transaction applications which may be fraudulent.
The status of these files is never disclosed to the submitting agent or the mortgage lender or worse still another solicitor who may be undertaking a subsequent dealing on the property in the honest belief that there was nothing nefarious about the original application whose registration is ongoing. This was the first we had ever heard of such a secret file.

9/4 Remedy: Since law enforcement agencies and Registers of Scotland are all parts of government, the law enforcements agencies could provide the Land Register with names and aliases of all criminals, their historic addresses, their relationships with other criminals, the properties they have owned, their spouses or partners and children. On application by a solicitor, the Land Register, for a fee, would provide any information it received from the law enforcement agencies to the solicitor so that the solicitor could then decide if he or she was prepared to act for the individual concerned. Given the Law Society of Scotland's Compliance Regime and the risk assessment solicitors are obliged to undertake, there would quickly be established a practice convention which prevented solicitors acting for such people and thus squeeze the criminals and their associates out of owning or dealing with property in Scotland.

10/1 ARTL Automated Registration of Title in Land

I have participated in any consultation to which I have been invited by the Land Register since ARTL was first suggested. From the start I indicated that our case management system was open access and have been assured over the years that ARTL would be compatible with open access systems in line with government open access policies. Despite several assurances by Land Register staff and visits from them this has not been the case, and we have been forced to use a Microsoft word system. ARTL is very slow and takes much longer to work in a transaction than traditional case management systems. The Keeper tries to encourage solicitors to use ARTL through pressure from lenders (who should know better) and charging less for land registration using ARTL when all that this does is increase the time devoted to each transaction by the solicitor and potentially increases the legal fees accordingly. I am aware that some Land Register officials believe that the ARTL is not fit-for-purpose.

10/2 Remedy: Solicitors welcome a streamlining of the systems of dealing in property. Any involvement by the Land Register must take account of, and be fully compatible with, case management systems which are a considerable financial investment by small businesses. Ninety five per cent of the 1200 legal businesses in Scotland are small businesses. Such investment could be a costly waste of money because the Land Register has failed to incorporate within its system the ability to work with all case management systems. There should be a mechanism that if the Land Register decides to introduce a successor to ARTL which involves solicitors in significant costs to adapt their case management systems to allow them to continue in business, the Land Register should contribute to the cost of adaptation.

10/3 With the advances in technology wherein much of any transaction type can be undertaken by internet exchanges among solicitors and other professionals, the Land Register should be required to restrict its participation
to the Stamp Duty Land Tax and land registration process and not be a participant in the completion of the sale/purchase transaction itself. Instead of the Keeper actively promoting ARTL in its current inadequate format a public acknowledgment of its deficiencies, abandonment of its reduced fee regime and a commitment to work with the ten most active conveyancing practices in the land to develop a functional system would be a major advance on the present situation.

11 Extending Land Registration

While I welcome attempts to increase the number of properties registered, in the light of the guesstimated errors in the current registered titles, I suggest that the Keeper concentrates on completing the land registration of all tenement flats and houses in housing schemes where the bulk of properties are already registered. In many cases the only difference between the title to two properties is the property description, purchaser's details and lender's details. All other title conditions are broadly similar. A drive to fast-track these types of properties at a one-off land registration charge of say £60 (the current basic Land Register charge to register a property purchase under £50001) would be a tremendous help. This approach would provide the Land Register with the opportunity to review existing land certificates to check and correct errors or inconsistencies.

12/1 Measure to Reduce Mortgage Repossessions

My firm was among those consulted by the former Scottish Executive prior to the introduction of the Mortgage-to-Rent Scheme. A short time after its inception we were approached to act for all the sellers which we did for about three years. During that time, which was before the Credit Crunch, it was clear that in many cases the lender promoting the repossession proceedings was not the first security or charge holder, but the second or even third charge holder. What basically had happened was that the house holders were using their houses as cash cows for fund raising and seeking second mortgages from specialist companies at far higher interest rates than the standard mortgage rates charges by their principal and first mortgage lender. In many cases the house holder did not even appreciate that the second loan was charged against his property. Many people will have lost their homes due to unsustainable secondary and tertiary borrowing against their homes. The Land Register has not sought to address this problem.

12/2 Remedy: While not wishing to promote a nanny state there is an issue here for Parliament and government. The first mortgage company invariably has a greater financial stake in the mortgaged property than the householder. The Mortgage-to-Rent and other initiatives involve the state in considerable expense to support distressed householders. Would it not be reasonable and in the public interest therefore for the Keeper only to accept an application for such a second security or charge from a specialist secondary or tertiary lender provided that the holder of the prior charge consents to the secondary or tertiary charge?
13 Conclusion

Where legislation on the face of it may appear technical and administratively enabling there is no point to it unless its end result improves the experience of the consumer and the society the legislation seeks to serve. The Keeper may argue that this Bill is not the forum for considering inadequacies of the present service provided by the Registers of Scotland nor to detail the incremental improvements the Register could provide in a cost neutral way due to its ability to charge for its services. I, and I hope you, reject this. While Civil Service vision is important, that vision should not obscure the fact that much public money, including some expended by the Registers of Scotland, has been lost due to systems which were not fit-for-purpose when less sophisticated but more incremental and less technically challenging processes can produce greater practical benefits to more people and reach a similar or more enhanced destination than that originally envisaged. I trust this Committee will not look on this Bill as a technical yawn but an opportunity to investigate current practices and how changes can be made from which home owners present and future, who make up the majority of your electors, will see the benefit soon.

Graeme McCormick
Senior Partner, Conveyancing Direct, Solicitors
11 January 2012
SUBMISSION FROM THE SCOTTISH LAW AGENTS SOCIETY

1. Introduction
The Scottish Law Agents Society is the largest national voluntary association of solicitors in Scotland representing the interests of the whole of the profession. In general terms the Society welcomes the introduction of the Land Registration (Scotland) Bill. The current legislation is now over 30 years old and the Reports which formed the basis of that legislation date back to the 1960s. Reviewing the current regime applicable to land registration is therefore appropriate and the Scottish Law Commission has carried out a detailed examination of the Land Registration (Scotland) Act 1979 and its operation culminating in its Report No 222 which forms the basis of the Bill as introduced

2. Closure of the existing Register of Sasines
2.1 The current scheme of Land Registration has not yet resulted in the capture of all titles within the Land Registration system. The Sasines system of registration remains an important register at present.

2.2 We understand the logic of wishing to close the Register of Sasines which is provided for in S47 of the Bill. We note the provision has been revised compared with the draft bill attached to the SLC Report and consider this is an improvement.

2.3 The closure of Sasines is potentially a legitimate purpose. The Land Register records ownership or at least it records who has title to the property. It does not prevent nominees holding title, ownership by trusts or corporate vehicles all of which may serve to obscure beneficial ownership. However a register of title does, in our view, constitute a legitimate purpose. The extension of the current system which requires a transfer of ownership for onerous consideration, typically sale, is extended to gratuitous transactions. Insofar as they involve a change of ownership then that falls within the realms of proportionality and we include within this, by extension, those types of lease transaction which are already treated by law as akin to ownership – leases of more than 20 years. However where an existing title is recorded in Sasines and the current owner wishes to remortgage the property then, should s47(3) become operative, the owner will first have to register the property which will increase the transaction costs perhaps with the preparation of a new plan which will also create delay. The number of titles still remaining in Sasines will decrease year on year but where there is no transfer of ownership the ability to carry out a standard juridical act – the granting of a security over the property - without incurring further expense does not seem proportionate.

We therefore have some doubt as to whether this is compliant with A1P1 ECHR. A reasonable use of the property as security for a loan is impeded by the proposed legislation which, absent a change of ownership, does not appear to us to comply with the Convention requirement for proportionality. There seems to be insufficient public benefit. We have raised this previously with Registers of Scotland who have assured us that it is unlikely that s47(3) will be activated for many years to come. As the number of titles in Sasines diminishes then the proportionality argument becomes weaker. Nonetheless it would be helpful to have the Minister/Registers of Scotland place their views on the record with an assurance that the provision will not be activated until the number of potential Sasine titles which might fall into this category is much smaller than at present.
2.4 The arguments we have made in relation to securities are also applicable to dispositions and other deeds but in our view ensuring a single Register of titles and the capturing of data coupled with the change in ownership outweighs the detriment which owners suffer even where that transaction is gratuitous. We therefore support s47(1).

3. **Advance Notices**

3.1 We note that the Bill proposes the introduction of a system of advance notices. There is no such system at present. We note the SLC Report 222 para 14.5 where they conclude after extensive research Scotland is only legal system in world with method of addressing these common problems with letters of obligation granted personally by agents. These are granted by solicitors to cover the gaps in the present system. There will always be a small time frame in which it is not possible to carry out searches which are right in real time. Information is at best real time — 24 hours and in practice it may be real time — 48 hours. The second gap covered by the obligation is the period from delivery of the disposition to the registration of the deed. When using paper documents the best that can be hoped for a one day gap unless using ARTL when the gap can be reduced in theory to nil.

3.2 Letters of obligation covering these gaps fall within the terms of the Master Policy so solicitors will be insured should claims arise. We understand that this matter was referred to the SLC by LSS. The Bill does not require the use of such notices and while insurance cover is available then the need for advance notices is marginal. We expect that the availability of such notice will lead the Master Policy insurers to withdraw cover making the use of such notices effectively mandatory.

3.3 Initially we considered Advance Notices to be unnecessary. However in light of recent cases [Frank Houlgate Investment Company Limited v Biggart Baillie [No 1] (2009) CSOH 165; Mair SSDT 1463 (27/05/09); Frank Houlgate Investment Company Limited v Biggart Baillie [No 2] 2011 CSOH 160 and Cheshire Mortgage Corporation v Grandison and Blemain Finance v Balfour & Manson [2011] CSOH 157] where it has been argued solicitors could be liable to third parties on the basis of identity fraud on the part of their clients on the basis of letters of obligation issued by the solicitors. Notwithstanding that such arguments in these cases have to date been unsuccessful it has convinced us that a move to advance notices has merit. The introduction of advance notices must therefore be simple to operate and fit with existing practices. That appears generally to be the case in relation to the proposed system. We do have some observations noted below.

3.4 **The application record**

S15 The application record is to consist of all—
(a) applications for registration as are for the time being pending, and
(b) advance notices as are for the time being extant.

We note that the application record will include advance notices. Such notices however never make it on the title sheet. If an application coheres with an advance notice the application is given effect to. If it does not then the application is not given effect to. While the title sheet is searchable it does not appear that the application record will be. A creditor who is considering inhibiting a selling debtor may incur expense in obtaining an inhibition which would be defeated by the advance notice. In
our view such a system is not transparent. It ought to be the same for both Sasines and the Land Register which it does not appear to be. There are two ways in which this might be achieved – (i) making the application record searchable or (ii) registering the advance notices directly on the title sheet. The former complicates the searching procedure and the latter clutters the title sheets. Our preference would be (i).

3.5 Application for advance notice- s56
We note the new procedure which is being proposed for advance notices inspired by provisions of the German Civil Code - BGB s883. This has the potential to eliminate letters of obligation which have oiled the conveyancing system for over a century. Any such system is designed to cover gaps. Solicitors grant such obligations personally so that they become liable as well as their client. In essence the current system has two potential gaps- the first is from the date of the last search obtained prior to settlement. If instructed today the search will cover entries up to the close of business yesterday. So that gap is now short. The danger is that the seller is inhibited in the gap. The risk of the seller being sequestrated in the gap has gone as a result of the Bankruptcy & Diligence (S) Act 2007 s17 and in relation to companies it is still possible to rely on the decision in Sharp v Thomson. The second gap covers the period from settlement until the deed is registered. That gap can and should be short. The transaction might be ARTL enabled which would enable the transfer of property to be effected electronically which again would be effective tomorrow. Alternatively it could be transmitted by post or private mail service in which case it ought to be received the next day and given effect to. As SDLT is now paid online there are no delays in paying stamp duty.

Recent case law noted above has suggested that there may be examples of identity fraud which conceivably have an impact on liability under letters of obligation albeit not in those cases. Creating a system which will be optional that permits there to be no letter of obligation will be welcomed by many agents even if classic letters of obligation are covered by professional indemnity insurance.

3.6 We are however concerned regarding the implementation of this concept in s56. In a Sasine case Keeper records the advance notice S56(4)(b). This will include an application for first registration because there will be no application record at that point. In relation to a Land Registration case the Bill provides:

(1) A person falling within subsection (2) may apply to the Keeper for an advance notice in relation to a registrable deed which the person intends to grant.

(2)
This does not appear to have been fully thought out – this suggests Keeper grants it in Land Register case. It is not clear why there is this difference in treatment. We would recommend that s56 be revised to reflect that the advance notice will be signed by or on behalf of the seller or with their consent and when submitted in a Land Register case entered by the Keeper on the application record when appropriate. On our reading the Explanatory Notes are in line with our suggestions while the Bill itself is not so aligned.

We recommend that the drafting be amended to show that an application is mode to lodge an advance notice for inclusion by the Keeper in the application record.
3.7 The notice will be drafted by buyer’s agent and adjusted with seller’s agent. A style ought to be provided in the Bill. Does it need to be signed? It is not clear and if so by whom? The Bill is silent. We consider it should be signed either physically or electronically by the agent and this would be made clear by the incorporation of a style.

4. Changes to the system of rectification and indemnity

4.1 Under the current law a proprietor in possession who has not been fraudulent or careless will be permitted to retain the property even where their title was the product of a fraud on the owner unknown to them. This places a premium on attaining the status of proprietor in possession. In reported cases [Kaur v Singh; Tesco v Keeper] this has been interpreted as having physical possession and thus where there are competing claims this has resulted in a premium attaching to the self help remedy of obtaining and thus denying an opponent possession. This is not a satisfactory basis on which to operate a system of title to land. One of the consequences of the current system can be a mismatch between the operations of the Land Registration system and the conduct of a court case where say boundaries are disputed or where a servitude right is claimed. In a disputed boundary situation if the Keeper grants a land certificate then title flows from the Register and any boundary dispute is effectively resolved by the Keeper’s actions. The court must simply adopt the boundary as stated in the land certificate. In short the Keeper while acting administratively determines the outcome of litigation – a judicial function. In some instances the Keeper is aware of the dispute at the time of the application and delays dealing with the application until the judicial proceedings are complete. In either situation the different nature of the Land Register from the general law is not a comfortable situation. **We accordingly welcome the realignment of the provisions for rectification and compensation. This will prevent an owner with a registered interest losing a right without notice** [see e.g. Williamse v French [2011] CSOH 51].

4.2 We note that the term used for rectification is ‘manifest’ inaccuracy in s78. Manifest’ is not further defined. In the notes to the to the draft bill in the SLC Report a definition of manifest is provided. – the evidence for the inaccuracy is indisputable. **We recommend that a definition be included in s78 along these lines which would improve the intelligibility of the provision.**

5. Shared plots

5.1 We note the provisions of s17 et. seq. in relation to shared plots. We understand the reasoning that in order to complete the map base shared plots offer a solution. However over 30% of titles in Scotland relate to tenement flats. The Bill provides in relation to such properties that the cadastral map may depict only the building and that it is not necessary to depict the pertinents of tenement on the map [s16]. We therefore are not convinced as to the necessity of having shared plots at all. The use of shared plots which we accept is optional for the Keeper does in our view give rise for the potential difficulties. At present the shared areas will be shown with a different colour scheme on the title plan forming part of the Land Certificate. If the shared plot system then two plans are required. See the example given in the SLC Report and the two plans at pages 614 and 622 thereof. When advising a purchaser both plans will need to be copied rather than just one at present. This example is a very simple one with only one shared right. In a modern estate there
may be a number of differing shared rights shared with different numbers of other owners and conceivably a house could come with four or five different shared plots each with different rights/shares. This will inevitably lead to confusion and mistakes as to ownership rights on the part of owners and solicitors. We accept that the propose system has advantages in allowing a search of the Register which will disclose all the properties which benefit from a share of the shared plot but the inconvenience added expenses in handling multiple title sheets and opportunity for error or lack of communication of information at the transaction stage outweigh those arguments. We are not in favour of this provision. Our view is that it should not be included. It is only to be used at the discretion of the Keeper. We hope that if it is enacted the power is never used.

5.2 We are pleased that provisional shared plot scheme contained in the SLC Report has not found its way into the Bill. This scheme is simply too complex and requires developers to act responsibly and remain solvent over the lifetime of a development. It was a recipe for disaster and its omission is welcomed.

6. E-conveyancing
6.1 The logic of the SLC set out at para 34.6 of its Report for the extension of the ARTL system to a general system is correct. We welcome these provisions.

7. offences under s108
7.1 We fully endorse and adopt the submission by LSS that s108 is wholly unnecessary and that common law fraud and the protections of the Proceeds of Crime Act and the Money Laundering Regulations are sufficient. We note that s108 has no counterpart in the draft Bill in the SLC Report. We recommend its removal from the Bill.

8. Comments on drafting issues
8.1 The Keeper must take such steps as appear reasonable to the Keeper to protect the register from—
(a) interference,
(b) unauthorised access, and
(c) damage.[s1(5)]

This seems directed at computer misuse type offences. These are already subject to the offences created by the Computer Misuse Act 1990. It is appropriate to place the Keeper under a duty to minimise this type of risk. This duty might usefully be extended to include protection from fraud. The Register is vulnerable to identity fraud and the Keeper ought to be placed under a duty to guard against this so far as is practicable. We recommend such an extension.

8.2 A separate tenement constitutes a plot of land for the purposes of this Act. S3(5) In this section and elsewhere separate tenement is used in a technical sense – it is not intended to mean a tenement building but rather any interest in land which is capable of being owned as a separate unit. Although tenement is defined in the definitions section s109 by reference to the Tenements (Scotland) Act 2004 it does contain the qualification unless the context otherwise requires. The use of separate tenements is well known to conveyancers but may not be readily understood by the general public. Taking tenement back to its Latin root gives us the idea of holding of
land. That connotation of holdings of land no longer has any significance since the coming into force of the Abolition of Feudal Tenure (Scotland) Act 2000 when feudal tenure was finally abolished. We note in relation to servitudes the Title Conditions (S) Act 2003 redefined the usage in relation to servitudes from dominant and servient tenements to dominant and servient properties – so references to tenement in this sense can be eliminated. The whole technical idea of holdings of land looks backwards rather than forwards and as people become less familiar with the feudal system of holding. We recommend a change on the usage in s3(5) and the other instances within the Bill.

8.3 Extension to facilitate integration of geospatial datasets. [s2.]

We note the SLC in their report para 33.17 envisage that in the future the Land Register will operate in a similar way to Google Maps. While that comment was made in relation to the zoom function specifically there is a singular failure of the ability of Google maps to integrate geospatial datasets. (Maps and photographs). Registers of Scotland were one partner in what must be regarded as the failed ScotLIS project which attempted to demonstrate the potential for such integration in Scotland. Adding for example information which presently has to be obtained from the Coal Authority in relation to former mine workings could usefully be overlaid on to the cadastral map. We recommend that s2 be amended by adding to this section enabling provisions to permit the Keeper to host other layers of information to the cadastral map which might be triggered in the future by regulations. This would help future proof the legislation. Obtaining information from a single source could in the future help reduce transaction costs. In addition such integration can be used to level economic development. British Columbia is a leader in this field and much could be learned from that approach. [See http://archive.ilmb.gov.bc.ca/irb/Level_1/Spatial/ICF/ICF.html ]

8.4 A title number is an unique identifier consisting of numerals or of letters and numerals [S4(2)].

We recommend adding to the end ‘however represented’. This would remove any doubt that the title number could be represented by a barcode/QR code etc which may make for easier handling of paper documentation.

The Scottish Law Agents Society
10 January 2012
Land Registration etc (Scotland) Bill: Stage 1

10:01

The Convener: Under item 2, I am pleased to welcome the first panel of witnesses for our stage 1 inquiry into the Land Registration etc (Scotland) Bill. Graham Little is head of service delivery, data collection and management at Ordnance Survey; Iain Langlands is a chartered surveyor with the Royal Institution of Chartered Surveyors; and Andy Wightman is an author and campaigner.

Before I move to questions, do any members of the panel wish to say anything by way of introduction? We have already received your written evidence, but you are welcome to give us a brief supplementary to that. It seems that no one wants to say anything at this stage, so we will move straight to questions. The first area that we are interested in exploring is mapping. Mr MacKenzie is going to handle that question.

Mike MacKenzie (Highlands and Islands) (SNP): Good morning. I live on a tiny island called Easdale, which was first surveyed by the Ordnance Survey in about 1872 by a Captain Melville, who, given the technology of the day, did an extremely good job. However, knowing that tiny island as intimately as I do, I know that the Ordnance Survey map is really quite inaccurate. It has been updated over the years of course, but I also have experience of other areas of the country, and I have found some other inaccuracies.

Bearing that in mind, will the panel members comment on how fit for purpose the Ordnance Survey map is as a basis for the land register? Are there any improvements that could be carried out?

Graham Little (Ordnance Survey): The term “inaccuracy” is an interesting one—I could ask you for a definition of what you mean, but I will not. As you rightly say, Ordnance Survey mapping has evolved over a very long period of time. Since the mid-1800s—in fact, since before then—there has been a constant process of improvement, in terms of the positional quality of the information, how up to date it is and how well it reflects the real world.

In using the word “inaccurate”, some people mean that the features on the map are not correctly represented in terms of their positional accuracy in relation to those same features on the ground. That is one general definition. Others will say that it means that things are on the ground but are not on the map—in other words, information is missing. That is a fairly important distinction to draw.
We have a continuous revision process that means that we constantly add change to the map base. By and large, such change is major, not minor, so it might not include some small details such as extensions to buildings and back garden sheds that might be relevant to land registration.

Where there is a requirement for land registration, Registers of Scotland will often commission us to supply that information. I am speaking about small items of change that may not be relevant to many map users, but may be relevant to land registration. It is about trying to produce a simple answer with regard to what is on the ground and what is on the map.

The map is never a true and absolute representation of what is on the ground; it is a representation based on a specification and an updating regime, which gives it currency, if you like.

Does that answer the question about the missing detail?

Mike MacKenzie: Given what we are considering, I and the committee are concerned about the map’s fitness for purpose and its accuracy with regard to land and property ownership. Obviously, accuracy is relative—we are not talking nanometres here—but the map needs to be accurate to a degree that, as we go through the registration process, will not leave the legal profession and the courts with a huge amount of work to do in resolving disputes that arise over inaccuracies. Although there are different types and shades of inaccuracy, we are concerned about any that would give rise to disputes over property ownership.

Graham Little: I might be stating the obvious, but it is important to point out that Ordnance Survey maps show not property boundaries—but it is important to point out that Ordnance Survey disputes over property ownership. We are concerned about any that would give rise to different types and shades of inaccuracy, we are concerned about any that would give rise to disputes over property ownership.

Graham Little: Are you concerned that the advent of newer and much more sophisticated global positioning system-based technology, which allows very accurate surveying work to be carried out quite easily and quickly, will lead to inaccuracies that might not have been apparent becoming increasingly so and that that, in turn, will lead to difficulties and disputes over land and property ownership?

Mike MacKenzie: Are you concerned that the advent of newer and much more sophisticated global positioning system-based technology, which allows very accurate surveying work to be carried out quite easily and quickly, will lead to inaccuracies that might not have been apparent becoming increasingly so and that that, in turn, will lead to difficulties and disputes over land and property ownership?

Graham Little: You are quite right. It is true of every field of endeavour that technology is improving and it would be unwise for any organisation not to utilise the best available technology. Ordnance Survey utilises the technology that you have described, which is known generically as global navigational satellite system, or GNSS—most people call it GPS—which is the American satellite system. We use other satellite systems, and others are being developed. If the right methodologies are used, such systems give very high levels of absolute positional accuracy. With any global position, for example, you can fix the location with great accuracy down to centimetres.

That is great, but it also creates a problem for us. Ordnance Survey has been collecting data for many decades—indeed, one could say centuries—and our customers have been using that information for a similar period. We do not have the luxury of being able to wave a magic wand and suddenly bring everything up to modern specifications for positional accuracy. The very nature of the creation process means that the map database is fairly heterogeneous; it has mixed provenance going back over quite a long period and, if you survey additions to it using modern technology, you will inevitably get some mismatches.

Part of the skill is how we integrate information that is captured using modern technology with a database that has varied provenance. However, we are pretty good at doing that. That is not to say that we do not get things wrong occasionally, because of course we do.

Our vision is to improve the whole database over a period of time and to align it with modern accuracy standards. For obvious reasons of cost and resource it is problematic to do that in a short period of time. However, it is also highly problematic for our customers. We must bear it in mind that over many years our customers have been relating their information to the map base—the registers have been doing that for the past three decades.
The registers have built up a jigsaw puzzle—that is a useful analogy—of land titles that are not by any means complete but which are substantially complete for urban areas. All the interlocking titles are defined against a map. What do we do when we come to add a new piece of the jigsaw puzzle? Do we cut a piece that is perfect in every respect, but which will not integrate with the existing database, or do we find a compromise whereby we can integrate the new piece with the existing puzzle and have something that is coherent? I am trying not to get into technical language here. Am I making myself clear?

If we had a magic wand, we would not be where we are now. We are living with a legacy, if you like, that has been in very wide usage over a very long period of time. We and our customers are therefore having to adjust our processes so that we can accept the output of modern technology while avoiding the need to throw away all that we have done for the past three decades.

Chic Brodie (South Scotland) (SNP): Good morning. You said that the Ordnance Survey map is fit for purpose, although with certain conditions. The bill proposes the continuation of the current mapping system. However, you said that it is a compromise. Unfortunately, courts and tribunals do not necessarily accept compromises; they need hard information. I therefore suggest to you that the Ordnance Survey map is not fit for purpose. Have you thought about what alternative there might be to the current mapping system?

Graham Little: When I say that the Ordnance Survey map is a compromise, I am talking more about the technology involved in collecting change and integrating it into the database, which is a compromise to an extent. I am not using the term “compromise” in relation to the legal process. The legal process is the legal process, and I am not the best person to comment on that; that is for Registers of Scotland.

The definition of a title is certainly based on the Ordnance Survey map, but it is a general boundary definition rather than a precise definition; it is not a cadastral definition, if you understand the distinction—and it is an important distinction to understand. The decision about the precise alignment of any boundary is an issue not for Ordnance Survey but for the users of our mapping with regard to whether they consider it to be sufficient for their requirements. As I said, over the past three decades mapping has been used to populate the land register, with very little difficulty.

The Convener: Mr Langlands wants to comment on the same point.

Iain Langlands (Royal Institution of Chartered Surveyors): Thank you, convener, and good morning to you and to the committee.

When we talk about Ordnance Survey mapping, we must ask what it is being used for in land registration. The RICS Scotland perspective—this is one of the reasons why we are quite animated about the bill—is that the Ordnance Survey base map should be used for reference only. It is a reference tool for whatever titles are captured in relation to it.

If we are discussing the merits or the accuracy of Ordnance Survey mapping and we then refer to titles in the land register, in my view and in the view of the RICS that is almost like comparing apples and oranges. Current practice is such that modern surveying technology can give a far greater accuracy of position than can the cartographic generalisation of an Ordnance Survey map or any other small-scale map.

It is not for me to speak up for Ordnance Survey but, in the RICS’s view, it is not that there is anything wrong with the OS map, unless a title is digitised to match the OS map, in which case there is a dilution of the surveyed information to match the generalised cartographic information. As long as the distinction is made that the OS map is for reference only, it becomes a lesser issue.

10:15

The Convener: Just to follow up on that specific point, is not the whole issue with the land registration system the fact that it is based on the Ordnance Survey map?

Iain Langlands: Yes—for the RICS, the crux of the argument is to do with that being based on the Ordnance Survey map. Does that mean that a title must match what is on the OS map, or does it mean that it must relate in space, in terms of a locational reference to what is on the OS map? I could go out and survey the curtilage of this building and its physical features and that would be far more precise in millimetric dimensions than anything that Graham Little and his colleagues would represent on the OS map. It is that difference that we are debating.

The Convener: Yes. I do not know what the title to this building looks like, but if it is a registered title, it will exist in map-based form, which will be an extract from the Ordnance Survey map.

Iain Langlands: I might disagree with you there—it might not be an extract from the Ordnance Survey map; it might be a surveyed boundary related to the Ordnance Survey map.

The Convener: Okay, but I am not sure that that is quite correct. My understanding is that the keeper prepares plans from the OS map.

Iain Langlands: Yes, but to anyone who looked at a registered title sheet that was on a scale of 1:1,250, for example, it would look as if the red
line matched the Ordnance Survey mapping. However, in reality, if you were to plot that red line at a scale of 1:1,250, which is the precision and accuracy to which it might have been surveyed, it might not do so. We are talking about subtle differences but, in the RICS’s view, it is an important point.

The Convener: Rhoda Grant wants to ask a question. Does Mike MacKenzie have a further question?

Mike MacKenzie: Yes.

The Convener: I will let Rhoda follow up on this point first.

Rhoda Grant (Highlands and Islands) (Lab): I can understand the difficulty of trying to plot on a flat map something that, because of its features, is not flat. If there is a measurement in a title deed and an attempt is made to transpose that on to a flat map, it will not fit because no account is taken of how the land lies. Therefore, would it not be wiser to look at using some kind of satellite positioning system with the register to give a degree of clarity? We are trying to avoid boundary disputes. If a title specifies a length, which is put on to an OS map that is flat and does not take into account the fact that it might have been necessary to go up a hill to get that measurement, the boundary will get larger and people will dispute it.

Would it not be better to use measurements in a deed, plus satellite positioning information to say where the land is? That would get rid of any argument. Instead of using Ordnance Survey mapping—which, granted, was probably the only thing that was available at the time—has not the technology moved on far enough to allow us to do something quite different, especially as we are looking at legislation?

Graham Little: There are two separate issues there. One is to do with the third dimension. I agree that it would be great if we could have a truly three-dimensional model. You are quite right—the Ordnance Survey map and, indeed, most other maps are reduced to the horizontal, so the measurement on the ground will not always agree with the measurement on scale from the map, because one is measuring a horizontal and the other is measuring a slope distance. That is a universal problem that, until we develop our data management and data modelling to truly represent that third dimension consistently, we will just have to live with. It is quite possible, of course, to put the true measured dimension in the title, if there is a desire to do so, should there be a radical difference between the horizontal and the true slope distance. That issue is a challenge for anybody who deals with any definition of a piece of land on the surface of the earth.

You also asked about satellite positioning. Satellite positioning can give both those dimensions—in effect, it can give the X, Y and Z co-ordinates. In isolation, that might be fine, but we should bear it in mind that we have a land register that is already substantially populated. To return to the jigsaw analogy, relating that new and precise definition to what is already in the register would be a challenge because, in effect, we would have a jigsaw piece that did not necessarily fit. Perhaps we would have a jigsaw piece in three dimensions, whereas the rest of the pieces would be in two dimensions. So you are on the right track in relation to the vision for the future, but the idea is not practical here and now.

Andy Wightman: The issue is important but, as Graham Little says, we have a legacy issue. The most important thing about the land register is that it shows where the boundary is, and people understand where that boundary is. If the proprietors on both sides of a boundary understand where the boundary is, there is no boundary dispute. If that boundary has not been plotted accurately and is, at a higher scale, in fact 75cm away from where it should be, that does not matter as far as the land register is concerned, because both owners understand that their boundary is the fence. As long as no one shifts the fence in the middle of the night—or as long as nobody notices—matters are okay. Therefore, we should not get too hung up on positional accuracy in relation to the land register. As Graham Little says, the problem is a generic one that faces the Ministry of Defence, local authorities and everybody who uses maps.

Mike MacKenzie: I am concerned that, as Mr Langlands said, it is common practice to produce an initial title plan to a high degree of accuracy, at 1:200 or whatever. Following the jigsaw analogy, if we produced title plans to that degree of accuracy for every single title in Scotland and put them all together as the pieces of the jigsaw, we seem to agree that they would not fit the Ordnance Survey plan. Therefore, in effect, somebody would have to take a pair of scissors to some of them to make the pieces of the jigsaw fit together. However, we must remember that the bits that would be cut off are bits of land or property that people currently believe that they own.

Am I correct that the current mechanism for resolving those problems is the courts and that the legal and surveying professions would have to be involved in a huge amount of work to resolve many of the differences, which are really quite intractable? They are particularly intractable because the parties that are affected by such land disputes are actually innocent parties—it is not their fault. I do not suggest that it is anybody’s fault—it just so happens that we have the legacy of an Ordnance Survey plan that was started way
back, but we now have sophisticated and accurate measuring. Resolving all the potential boundary disputes, many of which we do not know about, would create a great deal of difficulty and expense. Should the committee therefore consider a reasonable, low-cost and relatively quick means of resolving those disputes short of the courts as a potential solution to the problems that we are talking about?

**Andy Wightman:** In my experience, most boundary disputes are not grounded on whether a map is accurate; they are grounded on where the boundary is. They are about whether the boundary is one fence or another one; whether it is a fence that was there in 1942 and is no longer where it should be; or whether it is the bank of a river that has eroded by 10m. All such disputes can be resolved adequately by the courts and they often derive from plans or titles that are of some antiquity.

If the parties cannot agree on where the boundary is, there is no alternative but to look to the courts. The land register is based on modern maps, and a modern map, even from 30 years ago, is vastly superior to the maps that were produced in 1920, 1860 or 1880, from which many titles in the sasine register that are migrating to the land register are derived. I am not sure that this is a vital issue, because ultimately the boundary dispute will have arisen as a consequence of the fact that the parties cannot agree among themselves or there is insufficient information in the existing registers.

**Graham Little:** Can I add to what Andy Wightman has said? I do not want to sound like a stuck record, but it is important to point out that the features on the Ordnance Survey map do not define legal title. Indeed, there may be no feature on the ground that defines legal title. The issue, therefore, is not about the accuracy of the map but about a clear understanding of the location of a title extent. That may well align with a feature on the map, but it does not necessarily do so. The feature on the ground could have been changed, and we would reflect that change on the map because we survey what is physically there without any reference to whether it defines legal title.

**Iain Langlands:** If it is permissible to have surveys of the level of precision that my practitioners can provide and match them with historical data, there will be mismatches of the kind that we are talking about. I agree, and the RICS Scotland would agree, that there is a potential risk of lots of challenges and appeals against those mismatches, and it would be helpful if there were some form of mechanism to speed up the process. Assuming that there can differentiate disputes that arise from historical information and those that arise from currently surveyed information, the RICS believes that if one captured supplementary information such as GNSS and GPS-type co-ordinates, a surveyor could go back out into the field and re-establish, with a great degree of precision, exactly where the boundaries were when they were first measured and then captured in title.

Our difficulty lies with the old records on the land register and the register of sasines. The archived information that we have makes it much harder to re-establish the boundaries, so an almost two-pronged approach is required. We must recognise where we stand as regards the historical information that we have, and then we must recognise the opportunities that I hope the bill can present in smoothing the process for the future. In the view of the RICS, this is not only about capturing the title and recording it but about re-establishing the title boundary in future. That is where the archived supplementary information would be very helpful.

**John Wilson (Central Scotland) (SNP):** Good morning, gentlemen. I think that we need to go back to Mike MacKenzie's original question—is the Ordnance Survey map suitable for matching with the land register? Mr Little said that Ordnance Survey maps only the features that are on the ground, so any fence, garage, shed or whatever that is currently situated on the land will be identified on an Ordnance Survey map. However, those features may not correspond to the ownership of the land. We received a submission from Scottish Water—no doubt Network Rail would make a similar submission—saying that in some cases where it had fenced off what it thought was its land in terms of title, it had not fully integrated all the land that had been passed to it. It gives the example of having historically fenced off a particular area while having title to more land outside that area, so that someone could think at a later date that they have title to the land up to the fence because the fence is the boundary that is identified on the Ordnance Survey map.

We need to ensure that what we get from the land register in future represents the most accurate mapping of land ownership in Scotland. At the moment, someone may build a shed or a garage on what they think is their piece of land and then somebody can say 30 years later, “Your garage is on my land. I want you to get rid of it because I am going to sell off this land, and the land title shows that I own the area where your garage is situated.” How do we get to a situation where the Ordnance Survey map accurately matches land title ownership? Will it ever get to that stage? If not, what do we do in terms of completely mapping title ownership of Scotland over the next 30 or 40 years, which is what we hope to do?
Andy Wightman: I am not sure that this is a question of mapping. Say the Forestry Commission acquired 1,000 acres of open hill land in Perthshire and put a fence around it. When the commission sells the land, 50 years later, the title plan will show that the legal boundary is sometimes outside the fence and sometimes inside the fence, because the people who went up the hill in 1940 to put the fence up were not following a legal boundary—they were trying to, but there is no way that they could. That is not a mapping problem. The fence is where the fence is. The Scottish ministers’ title—as it is they who own Forestry Commission land—is where it is. If Scottish ministers fail to defend land that is legally theirs but is outside the fence, that has nothing to do with mapping. It has everything to do with prescriptive claimants and so on; it is a matter of law.

I was recently involved in another situation involving a prominent golf developer in the north-east of Scotland, who is claiming that someone has built a garage on his land. He has gone around with highly accurate global positioning system equipment to show that the garage is 75 cm away from where it should be. The resolution of base mapping for Aberdeenshire in 1979 or whenever would have had a tolerance of 2 m, and the fact is that this person’s boundary is the fence, which is still there. The fact that the fence is not where it is supposed to be, according to the map, is neither here nor there. It will matter in future, as that fence will be surveyed to a higher degree of provision in future, but that does not necessitate a change to the land title, because the boundary is clear—it is the fence. That is what matters, as far as land titles are concerned.

Iain Langlands: At the risk of repeating what Graham Little has already said, the Ordnance Survey map is not a capture of land title. Title will always take precedence over Ordnance Survey mapping. I repeat what I said earlier. For the RICS it is not a question of whether the Ordnance Survey map is fit for recording title; the point is that it is absolutely fit for referencing title in locational space. That is the purpose to which we believe that the bill is alluding. We do not think that the bill is extending in terms of triggers for registration, and the resources that it has to complete the register. It is important that we try to complete the land register as soon as possible—certainly, by the end of the century it would be nice to see 97 per cent of Scotland’s land on the land register. The register’s completion is a political question because, as you say, that costs money. At the moment, Registers of Scotland is a self-funding organisation—I seem to recall that it was Margaret Thatcher’s first next-steps agency in Scotland—and the degree to which it can speed up the process is dependent on its legal powers, which the bill is extending in terms of triggers for registration, and the resources that it has to complete the register. The committee is interested in the process of the completion of the register, which is in many ways the driving policy behind the bill. What priority needs to be given to completion of the land register? What advantages would flow from that? In practical terms, how should that happen and who is going to pay for it?

Andy Wightman: I think that it is desirable to complete the land register. The register of sasines is a tired old beast that is not easy to use and is the source of many disputes given that, prior to the 1930s, there were no plans in the public domain and the ones that were produced after that time are not very good. We need to complete the land register.

The priority that should be attached to the land register’s completion is a political question because, as you say, that costs money. At the moment, Registers of Scotland is a self-funding organisation—I seem to recall that it was Margaret Thatcher’s first next-steps agency in Scotland—and the degree to which it can speed up the process is dependent on its legal powers, which the bill is extending in terms of triggers for registration, and the resources that it has to complete the register. It is important that we try to complete the land register as soon as possible—certainly, by the end of the century it would be nice to see 97 per cent of Scotland’s land on the land register. I calculated how long it would take to complete at the current rate of progress—it was a desk exercise, which I can give you if you like—and the date is well past 2050 or 2060. However, a lot of stuff is now going on to the land register and, in certain counties, progress is slowing down, as the land that is not registered is mainly land that is not subject to frequent transaction. If you want Registers of Scotland to continue to be a self-funding organisation that does not receive any public money, a balance must be struck between the demands on its time, the costs to those who are paying fees for the registration of titles and public demand for that information.

The Convener: Does anybody else want to comment on that?
Chic Brodie: On the issue of completing the land register by the end of the century, I understand that Registers of Scotland has fairly substantial surplus funds. Is it a question of resource or skill that would allow us to accelerate the process of completing the land register earlier?

Andy Wightman: It also depends on what you mean by completion. I have the figures. In terms of title, we are over 50 per cent complete; with respect to land coverage, we are still down at 20 per cent. What is the priority for the register? Is the priority to get to 90 per cent of titles or to 90 per cent of the land? I suggest that it is a mixture of both. However, the fact that a vastly greater percentage of titles is on the land register reflects the fact that it is the land with the highest turnover that is getting on to the land register. That tends to be properties in urban areas—principally domestic properties—that the public are transacting, and the priority is greatest for those to be on the register. If the greatest volume of buyers and sellers of land are buyers and sellers of houses, it is most important that they have access to a good-quality register in which the title being conveyed is clear, so that would be the priority.

However, if your priority is to identify who owns Scotland, you will want to find mechanisms for admitting large rural properties, many of which are held in trusts and companies which will never change hands—the title will remain with the company or trust as family members die. As it stands just now, many rural properties will never get on to the land register because they are structured in such a way that they never transact. The bill introduces triggers on succession, but nobody inherits the Buccleuch estates, for example—the succession of the members of the Buccleuch family will not trigger the registration of the land that is owned by Buccleuch Estates Ltd. Therefore, one has to make a political decision, at some point, as to the public interest in registering extent of land, and the bill gives the keeper powers to undertake keeper-induced registrations that could be triggered at any time in the future. The bill, as it stands, gives sufficient flexibility, in terms of triggers, ministerial orders and secondary legislation, to order the completion of the register.

The Convener: I have a follow-up question on keeper-induced registration. Who should pay for that? Should the landowner be charged for it, even though he or she did not necessarily want to register the land, or should the resources come from Registers of Scotland?

Andy Wightman: That is a tricky one, because every circumstance is slightly different. If the public interest is in registering the land, the keeper should substantially pay. However, the owner should not be exempt. As a consequence of registration, the owner will get a much better title that is guaranteed by the state. That is incredibly valuable to have, in comparison with the quality of titles that some people have. It is therefore only fair that owners should pay something. However, sending somebody a bill for something that they did not ask to be done is in a sense a political problem.

Mike MacKenzie: I am still not quite clear about the benefits of completing the land register. Last week, the committee heard from conveyancing solicitors, who said that they can buy and sell property on clients’ behalf reasonably well under the current system, although they also said that improvements could be made. I am not quite sure about the tangible benefits of completing the register simply for the sake of doing so—for the satisfaction of completion.

Andy Wightman: One of the big drivers for land registration is the consumer interest. I am not surprised that conveyancing lawyers sat here and said that they were relaxed about how the system works, because the ultimate vision is that the land registration system will be based on positional accuracy to the millimetre and computer-mapped titles that allow people to transact digitally without involving lawyers at all. Lawyers will always be comfortable with what is around now, because it pays them money. We are moving towards a system in which transacting in property will cost much less, because that will increasingly be done simply by changing the name on a land certificate. Using the land register means that searches do not have to be undertaken, for example.

The thrust of and main driver for having a good land registration system is making it cheaper, easier and faster for the consumer. In the process, lawyers and land search companies will lose work. I do not expect them to come along and say that that is the world that they want.

The Convener: To be fair to the lawyers—I should declare an interest—their clear view when we heard from them last week, which was probably fair, was that most of the work that is involved in a domestic transaction has nothing to do with the transfer of title; it concerns missives and related issues such as whether central heating works and what the price includes. I must defend my former profession for a second.

Andy Wightman: Well said.

Iain Langlands: The recommendation to complete the register is perhaps an issue of vision. I and others in my profession deal with the capture, display and analysis of digital information. When a data set is incomplete, as the land register is, that limits what can be done with it. Land registration and everything that is in the bill might be the vehicle that justifies completion, or a wider vision might have to be taken on the fact that...
heading towards and being proactive about completing the register will create a digital data set that covers the entire country, from which strategic analysis and statistical interrogations can be done.

The RICS is probably neutral on completing the register, but I caution the committee to consider carefully what completing it could offer for national objectives and priorities.

10:45

Graham Little: I do not wish to make any kind of political statement, but I simply observe the reality that many public bodies in Scotland have an interest in land ownership, and the easier that it is for them to ascertain that information, the more effectively they can deliver their services. That would apply to almost every public sector organisation—it applies to organisations in the private sector too—whether it is an environmental, farming or other organisation. Whatever an organisation’s purpose is, having ready access to unambiguous land ownership information has an intrinsic value.

Andy Wightman: Your question underlines what Iain Langlands and Graham Little have said. Land registration is not just about registering titles or about the law; you have plenty of advisers on the law. It is about building the basis of a national land information system, so that any public agency—as Graham Little said—or any individual can go in there and find the answers to questions. If you want to find out how much land in Aberdeenshire has been sold in the past 10 years, you should be able to do so in a straightforward way. HM Revenue and Customs is interested in how much land in Scotland is held in the Bahamas and Grand Cayman, and it should be able to find that out. The information is all there. It is much more than a system of recording titles and legal ownership—it is a vast source of information for a wide range of public and private bodies. That, in addition to the consumer interest dimension, is a key benefit of completion.

Chic Brodie: Again without making an oblique or direct political statement, I would have thought that it was desirable from an environmental and economic point of view for us to have a nearly complete land register. If we were taxing land values, for example—I am not suggesting that we should—we would require an almost 100 per cent accurate land register. I find it slightly unequal that all the transactions for Mrs McGlumphie’s flat and so on are recorded, while the Duke of Buccleuch can sit there and we do not know exactly what he owns.

Andy Wightman: In 1910, Lloyd George wanted to introduce land taxes in his famous people’s budget. The Inland Revenue surveyed every last square inch of the whole of Great Britain and Ireland in the space of four years, with ink and paper. All those maps for Scotland are sitting in the national archives. They could do that 100 years ago, and there are no barriers to doing so now if we wanted to.

Chic Brodie: So it will not take a century.

Andy Wightman: If you want a national land information system, you should not rely simply on the imperatives of land registration and the lawyers—you should build a land information system.

The Convener: Okay—thank you. We will move on and talk about another subject of interest to the committee, which is the issue of a non domino titles. I think that Patrick Harvie wants to ask a question on that.

Patrick Harvie (Glasgow) (Green): Yes, but, first, may I ask one brief supplementary on the previous discussion?

The Convener: Yes, of course.

Patrick Harvie: If there is a substantial benefit in the completion of the land register or, in another sense, the creation of a land information system, should the bill specify a target date for—as an example—90 per cent of land or titles to be on the register?

Andy Wightman: If Parliament so desires. It is all the rage to have targets—in fact, I think that we have some statutes that contain very little other than targets. That would be highly beneficial. If Scotland’s legislators were to say that they would like the land register to be substantially complete by 2050—around 98 per cent coverage; it would never be 100 per cent complete down to the last bit—I see no reason why that should not be in the text of the bill.

Patrick Harvie: I will give the example of the fuel poverty target. Not all factors affecting fuel poverty are within the power of Scottish ministers, but ministers still have legal duties to, as far as practicable, eradicate fuel poverty. Something comparable could be included in the bill. Are there any other views on that?

Iain Langlands: It is a valid question. If you have an aspiration, there is no guarantee that you will ever get there. If you want to get there, you have to set a target. I can feel the keeper’s knees quaking as I say that. There are resourcing issues, but a target would generate discussion about those issues. You are right: a target must be in there, or the aspiration simply will not be achieved.

Graham Little: I agree. The target will drive the definition of resources. It will not work the other way round.
Patrick Harvie: Thank you. As the convener said, I will move on to some of the other issues, particularly those that Andy Wightman raised in his written evidence. Mr Wightman might have more to say about this, but I would like the other witnesses to comment on prescriptive acquisition. Do you have a view on the Government’s general approach of retaining the existing mechanism of prescriptive acquisition—a non domino dispositions—but tightening the conditions under which it can be used?

Graham Little: No.

Iain Langlands: The RICS has no view on that.

Patrick Harvie: In that case, the floor is all yours, Mr Wightman.

Andy Wightman: I am sorry—what was the question?

Patrick Harvie: I suspect that your answer will be no. Is the Government right to take the general approach of retaining the existing mechanism of prescriptive acquisition and somewhat tightening the conditions under which it can be pursued?

Andy Wightman: The legislation governing prescription is the Prescription and Limitation (Scotland) Act 1973, and I think that there has been subsequent legislation. The legislation states that prescriptive acquisition is legitimate. I have many problems with that, but the bill is not about prescription per se. However, the bill is about land registration and, as the Scottish Law Commission made clear, whether the door should be shut, open or ajar to the admission of prescriptive acquisitions and the circumstances in which that should be the case. That is fairly and squarely a matter for the bill.

Although it is seeking to tighten up those conditions, the Government has not thought enough about the public interest in admitting a non domino dispositions in the first place. Its position appears to be that they are legitimate, even though the law has to contort itself by ignoring something that is invalid and pretending that it is valid. That is not a very good basis for Scots law. The Government appears to be saying that it will admit a non domino dispositions while just tightening up the rules somewhat.

We have to go back to first principles. If someone is attempting to acquire a piece of land through the process of prescriptive acquisition and a non domino titles, there can be two positions. First, the true owner simply cannot be found. I have seen titles in the name of people who lived in KwaZulu-Natal in 1932; where are they now? There is no requirement to keep the register of sasines or even the land register up to date in respect of where the owners are, and that will be a problem for the land register. Land will be acquired, 50 years will pass and we will have no idea of where the owners are. That is the first possibility—the true owner of the land cannot be found. There have to be mechanisms to deal with that. As the bill and its explanatory material make clear, it is not in the public interest for land, particularly large or valuable areas of land, to lie unused purely because we have no idea who the owner is or where they are.

The second case is when land does not have an owner—even then, there is no such thing as land that does not have an owner as, ultimately, it is owned by the Crown.

I have a problem with the Government’s approach in both those cases. On the first, I do not see why the first person to kick open the door should be the one who gets to submit a claim. That is not particularly fair or legitimate. In the second case, if land does not have an owner, it falls to the Crown and I do not see why the keeper should have anything to do with it whatsoever. The Crown should deal with it, as it currently does. When companies dissolve and disappear or there is no heir, all property falls to the Crown.

That a non domino device has been abused for centuries and even in recent decades. The keeper has tried to tighten things up, but the Land Registration (Scotland) Act 1979 is silent on how it should be dealt with. The current bill will tighten up procedures somewhat, but I still have fundamental questions about whether it is a legitimate way of acquiring title to land, particularly in the terms outlined in the bill.

Patrick Harvie: There are probably a few arguments that might be put to you in response to that, some of which come from previous witnesses and some of which we might expect the minister to use. It would be useful to hear your response before we hear from him. One argument would be that notification of land to the Crown would lead to what one witness described as “ransom” prices being exacted. There could be unreasonable prices to pay for land that might be of particular benefit to a developer if their development is to go ahead but not of much value to anyone else; for example, it could be a tiny strip or corner of land that is important for a particular development but not of much use otherwise.

Another argument might be that notification would spark off a bidding war, not necessarily by the Crown but by others, and that there may be different scenarios for land with commercial value compared with land that does not have such value, such that there would be a disincentive to report unowned land or land for which there is no clarity about ownership. How would you respond to the arguments about bidding wars or ransom prices, or about disincentives to report unowned land?
Andy Wightman: I do not understand the disincentive to report unowned land.

Patrick Harvie: There is land that has clear commercial value, and opportunities can be created to bring it into ownership and put it to use. However, land that does not have much commercial value might continue to sit unreported because no one has an incentive to report it.

Andy Wightman: I am not too concerned about the latter. If there is not much interest in a piece of land, why should anyone bother themselves with it? The only trouble that I would have about such instances is in relation to what I said in my written evidence about common land and cases in which people simply do not know that land is common land and some people have aggressively moved in and acquired it.

On Mr Harvie’s other point, I read the evidence from the witnesses at last week’s committee meeting and I have to say that I do not see the public interest being taken account of in the arguments. One witness seemed to argue that, if a commercial developer found a little piece of land but could not find who owned it, that somehow entitled them to title of it, because otherwise the development would be prevented from taking place. That seems to me to be a non sequitur. I cannot understand the logic in that. I can understand the public interest in bringing forward a development, but I do not understand why as a consequence the developer should simply be given title to unowned land.

As to whether ransom prices would be paid if land falls to the Crown, ransom prices are paid in the private sector all the time. If you want to develop but you cannot put your hands on all the land, and one little strip is held by Patrick Harvie, then that is life: you have to pay ransom prices. However, Patrick Harvie is not the same as the Crown, which can put in place arrangements that do not require ransom prices; for example, it could put land to public auction, as in fact I understand it currently does for certain land that falls into its ownership. Land in a public auction will go to the highest bidder. I do not see any problem with that. I just found offensive the idea that the people with the deepest pockets and the cleverest lawyers can move in first and grab land. If they want to lay claim to land, let them lay claim to it at a public auction like everybody else.

Patrick Harvie: I have a slightly more general question. You have made a case that is partly about the current situations that you describe and partly about the historical use of the a non domino mechanism. Would you like to speculate on why the Government has not introduced a bill that addresses the issues that you have raised? Is it because it thinks that the issues are only historical and that there is no current public interest in that regard? Is it because it is simply looking for a bill that addresses economic interests and developer interests ahead of wider public interests? Is there another reason why the Government is not legislating in a way that you might find more welcome?

Andy Wightman: It is not for me to speculate on why the Government has introduced this bill. I would not care to do that publicly. However, we should remember that the bill is based on—

Patrick Harvie: But bear it in mind that we have only your words now and your written evidence to put to the minister. We are going to have the opportunity to ask the minister those questions, so it would be useful to have your views.

11:00

Andy Wightman: I was coming round to that by another route.

The bill owes its genesis to an instruction made in 2002 or 2003, with the approval of Scottish ministers at the time, by the keeper to the Law Commission to review the law of land registration, which, as everyone involved in land transactions was aware and for reasons that have been well spelled out, was inadequate. As a result, the bill’s genesis was in a department of Government—that of the keeper—that is principally concerned with registration of title and around which gather mainly conveyancing and legal interests. Moreover, the Law Commission revises and reviews Scots law. It is not surprising, therefore, that the bill is substantially legalistic and technical and concerns itself with conveyancing and titles. In a sense, I have no criticism of the Government’s bringing forward the bill in its current form.

However, I am critical of the fact that the bill does not deal with the wider public interest. What do we have land registration for? What can it deliver for that wider interest? Does the bill create a national land information system? Does it deal with some of the abuses that we have seen with people seeking to acquire land or hide assets or with the question of commons that I have raised?

The opportunity has not been taken in the bill to deal with those wider questions, most of which are legitimate concerns that it should address. After all, the bill represents the first time that a democratically elected Parliament in Scotland has ever decided the basis for registering land ownership. That has never happened before, so it represents a big opportunity and I am disappointed that the Government has not introduced something broader.

Why has the Government not done so? I think that it is partly because it regards the bill as a very tight, legalistic and technical piece of legislation.
Unlike Registers of Scotland, the Scottish ministers did not even issue a press release on the day of the bill’s publication and Alex Salmond did not refer to it in his speech on the legislative programme. The Government regards it as a technical piece of legislation that will go through quite quickly—and that is where the role of the Parliament comes in. It should scrutinise the technical measures, which by and large are all good and welcome. However, if it feels so moved, it should express a view on the wider public policy issues to which land registration gives rise.

Chic Brodie: Following on from that response, I note that you say in your submission that, although the bill is technical, certain “public policy dimensions” should be taken into account. You mentioned the Crown in that respect and, on page 301 of your immensely readable book, you make the interesting suggestion that the Scottish Parliament should abolish all Crown rights over Crown land. Given the current position with the Crown Estate, how might we do that?

Andy Wightman: I did not expect to have to answer a question about abolishing Crown rights.

The Convener: To be fair to Mr Wightman, I think that that issue is not strictly within the remit of the bill. We should give him the chance to defer the question and perhaps respond in writing.

Andy Wightman: I am sure that the committee is well aware of the distinction between the Crown Estate Commissioners and the Crown estate, and other Crown rights in Scotland. The Crown, as represented by the Queen’s and Lord Treasurer’s Remembrancer and the Crown Office, is and always has been responsible for ultimus haeres, bona vacantia, land that belongs to nobody and so on.

In the context of the bill, one might consider the points that I have made about a non domino and whether, in dealing with unowned land, the Crown Office could play a bigger role than its current very discretionary role. At the moment, it simply sits there and decides whether it wants to deal with any of these bits of land that come up. On the other hand, of course, the keeper also exercises vast amounts of discretion in deciding whether to admit and record them.

In effect, we have two officers of state exercising vast amounts of discretion over what happens to land with no legal owner. The bill provides an ideal opportunity to tighten up that process, put it on a better statutory footing and make it far more transparent.

Mike MacKenzie: I am slightly concerned about Andy Wightman’s view that all development is necessarily bad and is undertaken by greedy developers. For instance, if I may describe a scenario—

The Convener: To be fair, I am not sure that Mr Wightman quite said that.

Mike MacKenzie: Well, there is the idea that the people with the biggest wallets and the best lawyers can in effect steal land. I will paint another, real-life scenario, although I will not mention where it is taking place. An affordable housing development in a village in which affordable housing is badly needed is being in effect blighted and delayed because of vacant land whose ownership is not easy to determine. Under the current system, there is at least a mechanism to resolve that problem in the community interest.

Equally, I am aware of several cases in which individuals have been in effect able to blight, not for land ownership reasons, the provision of community halls that are required and community playing areas, for example. Do you not think that your suggestion of advertising vacant land or land whose ownership is uncertain might result in vexatious claims to the land to blight development or for any other reason that might not be in the community interest?

Andy Wightman: There is a public interest in getting hold of land, but things have to start from a fairly clear legal basis. Just because Mother Teresa rather than somebody else does the stealing, that does not legitimise the process that is used.

There are existing legal provisions for compulsory purchase in the cases that you highlight. If land is necessary for community halls, affordable housing or roads, we should seek to beef up the compulsory purchase powers and to make them far easier to use rather than using a fairly contorted land registration process to get hold of that land. I do not see that the instances that you mention necessarily provide a defence of what is, I believe, a contorted and undesirable system. People could simply seek the local authority’s consent to acquire the land compulsorily.

Mike MacKenzie: Compulsory purchase is almost another issue. I agree that the process should be simplified, cheaper and quicker.

Let us consider the scenario in which somebody finds that they do not actually own a strip of land at the bottom of their garden. That is quite a common occurrence. The person thought that they owned it, but it turns out that they do not. They hope to resolve the matter, but their neighbour, with whom they perhaps do not get on that well, decides to lodge a claim that has equal merit. Do you agree that that could cause problems under your proposed scenario?

Andy Wightman: Yes. If we have a system in which the land automatically falls to the Crown, as
it does in theory, and there is a public auction, there can be a bidding war over that land between two neighbours, but I do not see a problem with that. It would be a fact that the householder to whom you first referred did not own that land, regardless of what they thought they owned. If we were to introduce into the system criteria that meant that people got a higher score and a greater claim to land if they thought that they owned it, for example, that would be bizarre.

Mike MacKenzie: What proportion of the land whose ownership is uncertain lies under the footprint of people’s houses? Does that apply to some of it?

Andy Wightman: If that is the case, some conveyancing lawyer has made a serious mistake somewhere in the past.

Mike MacKenzie: Indeed.

Andy Wightman: The bill provides far better measures for that. There certainly need to be measures by which people can rectify titles when it is clear that something has gone amiss and the title has not been properly recorded. Mechanisms are needed.

I am arguing for flexibility. If things fell to the Crown, the Crown would have guidelines—preferably statutory guidelines—on how to deal with them. If a piece of land falls under the area of somebody’s house, they will probably have prescriptive possession of it anyway if they have occupied it for at least 10 years. Many such things will resolve themselves within the current law.

Mike MacKenzie: We are not talking about the current law; we are talking about the proposed law. My understanding is that you seek to abolish prescription in pretty much all circumstances. I am just asking whether that could give rise to difficulties.

Andy Wightman: I have views on prescription, but they are not within the scope of the bill. Prescriptive possession will continue to operate. The issue that the bill highlights is prescriptive claims, which occur when people lodge titles in order to initiate a claim of property.

Someone might have a very vague and uncertain title but, because they have occupied and possessed a defined extent of land for 10, 20, 30 or 40 years, their title is secure, regardless of the fact that the original title is unclear. I am not arguing about that kind of prescription, which will continue to operate in the Scots law of property; I am arguing about the specific case of prescriptive claimants who, if you like, lodge hostile bids for land.

Mike MacKenzie: I am not sure that the law recognises a distinction there.

The Convener: We need to move on, Mr MacKenzie.

Patrick Harvie: Convener, can I say something? For the record, I point out that the witness’s written evidence calls for a more open and public process, rather than the abolition of the mechanism that we are discussing.

The Convener: That is a fair point.

Stuart McMillan (West Scotland) (SNP): I have a question for Mr Wightman on what he has said in his written submission and in oral evidence, compared with the proposals in the bill. To take an example, in Inverclyde, the local authority and Scottish Water both argue that they do not own a certain piece of land. I am worried that we will have a battle between those two public bodies that will continue for ever, at considerable cost, but with no definition of or decision on who owns that piece of land. The area causes much of the flooding in Inverclyde, so nobody will want to put in a bid to buy it, because of the cost of rectifying that. The current law certainly does not deal with such situations, but I am not sure whether the bill will help to deal with them or whether Mr Wightman’s suggestion would help.

Andy Wightman: There are two issues there. The first is about who owns the piece of land. You mention two public bodies that deny that they own it, but somebody out there must own it. Secondly, I gather that you are talking about a piece of land that nobody wants, because of liabilities. With respect, that question is for the public authorities and is not one of land registration.

If the problem is that the owner cannot be traced or the land genuinely appears not to have an owner, we will certainly want to resolve the question. The bill provides mechanisms to do that, such as keeper-induced registrations or the a non domino vehicle. In the amended proposals that I am talking about, the Crown or somebody else other than the keeper would deal with who has title.

If nobody wants the land, that is a matter for other pieces of legislation. If the land causes flooding, I presume that the act that the Parliament passed a few years ago on flooding might help, or perhaps compulsory acquisition powers or whatever could be used. At the end of the day, I am not sure that the question is one of title. You seem to be saying that the fact that nobody wants the land is causing the problem. That is a problem, but it is not in itself a question of land registration.

Rhoda Grant: I have a question that relates to that issue and to the previous discussion. If unowned land or land whose owner cannot be traced because there is no title reverted back to the state in some form, would that sort the problem that Stuart McMillan is talking about, as
the state would become responsible for the flooding that the land caused? If the state had ownership of such land, it would have a public good interest in it.

If communities wanted to exercise their right to buy under land reform legislation, they would be able to do that if the land was needed for the development of housing or the like. If there was a body with the right public interest in statute, land being taken back into public ownership need not be a dead hand; indeed, it could be the very opposite.

11:15

Andy Wightman: I agree. That goes back to my point that hostile bids should not be making their way into the keeper's office for the keeper to consult the Crown on. Under Scots law, if land has no owner, it belongs to the Crown. We should therefore look at Crown Office procedures and possibly beef them up, make them more transparent, give them more powers and put them on a statutory footing.

We should provide guidance and guidelines, some of which would be to do with the fact that, if there is a public interest in the land, the Crown Office should act as a public body—as the state—and do something proactive with it. At the moment, the Crown Office simply sits there choosing pieces of land to accept—it does not want to accept responsibility sometimes—and taking the money to pass on to the Scottish consolidated fund. The Crown Office has a very passive role.

I agree that there is certainly a role for a public organisation or body to take on board land that has been abandoned and is lying unused, possibly causing problems for the community. To my mind, that should already be happening, because we have the Crown Office; it is just a question of revising its statutory obligations and duties in guidance.

The Convener: We will move on to the next topic. A number of members are interested in looking at the registration of common land.

Rhoda Grant: I am interested in the fact that common land cannot be registered at the moment. How can we amend the bill to allow it to be registered? Who could register it and who would pay for the registration? I imagine that a member of the public might not be keen to do the registration if they had to pay for it. I am keen to hear your view on that.

Andy Wightman: In theory, common land can be registered. The problem is mainly that people do not know that it exists. It is archaic, it has been left behind, lawyers have forgotten about it and some people even deny that it exists.

The current land registration process does not make it terribly easy to register common land. That is partly because defining who has beneficial ownership of common land is a bit tricky.

The bill provides an enhanced suite of means to register common land by providing the means to register shared plots, such as the gardens in Edinburgh's new town that are held in common or areas of green land in new housing developments that are held in common. The bill makes it much easier to register those plots as shared plots in and of themselves. That is one mechanism that could be used to register common land. The bill also provides for keeper-induced registration, so there is a variety of means by which the bill can provide for the registration of common land.

As I said, the principal problem is that people do not know that common land exists and can be open to hostile bids. A lot of common land has been lost that way. At the moment, I am looking at approximately 16 or 17 areas of common land, and I know that people have their beady eye on about half of them and would submit claims for them at the drop of a hat. Some have done so already and I have titles to show that.

I propose a more straightforward means of registering common land as a protective order that says, "We assert that this piece of land is common land. It belongs to the parish and should not therefore be subject to any claim of title until due process has been followed."

Rhoda Grant: Would that be necessary if prescription was outlawed so that people could not make hostile bids for common land?

Andy Wightman: If prescriptive claims were outlawed, such a measure would not be necessary, but no one is proposing to do that.

John Wilson: There is also the issue of common good land and the definition that is used by local authorities. In your written submission, Mr Wightman, you suggest that "Statutory power for ... management would be vested in local authorities."

I am aware of a number of cases in recent years in which land was bequeathed to the people of a particular burgh or area and then came under the control of local authorities. The local authorities subsequently disposed of that land, despite the public outcry from the residents in those areas.

How do you square the view in your submission, which states that a local authority would have the statutory power to maintain the common good land or the common land for a community, with the fact that an authority would have the right—although it is currently untested in law—to dispose of that land as it sees fit?
Andy Wightman: The two designations are distinct. Common good is land to which there is an existing title. There may be no title at all: in the ancient burghs of Scotland—Perth, Edinburgh, Aberdeen, St Andrews and other places—there is land with no title as its status pre-dates 1617 and it has never been transacted.

The legal position is clear: title to common good is held by the current unitary authorities. When the town councils were abolished in 1975, they no longer existed as a legal entity, so titles had to be transferred somewhere. They were transferred to the districts and, in 1996, to the unitary authorities.

Mr Wilson referred to instances in which one class of common land already has a title and can be transacted. Whether or not local authorities should be selling the land is a question for those authorities, for their electors and ultimately for the courts.

What I am talking about in my evidence is land to which there is no title at all: it is genuinely common. As a default position, the management of that land should be vested in local authorities. They could make further provision that it should be managed by local communities or whatever, but a council would not be able to transact the land because it would not have title—it would be common land. It could not be sold by the local authority, so it would not fall prey to the same dangers as common good land, for which a clear title exists and in which local authorities’ powers to transact are well defined.

Patrick Harvie: Can you give some clarity on one aspect that I do not understand? It has been suggested to us that common land can be registered on a voluntary basis—as I think you have acknowledged—by a property owner in the community. If it was registered voluntarily, and was given some sort of shared title, would that change its nature as common land? In other words, if one such property owner sold their house and moved away, would they retain part of the shared title to what had previously been the common land, or would the title continue to be attached to the property that they had owned? Would it continue to persist as common land owned by the property owners in that area?

Andy Wightman: Some of the law is not clear on that but, in general terms, parish commons—which became commonties—are owned by all the property owners in the parish. If you move away and have no interest in the parish any longer, you lose any interest in that particular piece of land.

Patrick Harvie: But if it had been registered on a voluntary basis and given title, would that change its nature as common land?

Andy Wightman: No, as long as the title was vested in the appropriate organisation or body. For a parish common, the ideal entry in the title would be, “the residents of the parish”, but conveyancers will not like that. Historically, the appropriate body would have been the parish council, but we abolished those councils in 1929. There are real problems in how those titles are registered; I do not dispute that.

I am involved in a case at present in which a local development trust is bidding to hold title to a piece of land. I am saying to the trust that the land really belongs to the whole parish and that, although the development trust is a community organisation, it is in effect a private organisation. It could wind itself up tomorrow, and if its name were on the title it could sell the land.

I am telling the trust that I want it to have a special general meeting and pass a resolution that it is taking on the title on behalf of members of the parish, and that the land will never be sold without consent and so on. In other words, I am telling it to use administrative procedures to embed the property within the common ownership of the people of the parish.

Patrick Harvie: In short, there needs to be something more specific than simply the option for a local property owner to apply for a voluntary registration.

Andy Wightman: Yes, the procedure needs to be thought about. In my written evidence, I suggest that the property owners are the people who could initiate registration but that their name would not appear on the title—and some work needs to be done to determine exactly whose name would appear on the title. The main purpose is to provide some protective status for that land to exempt it from hostile challenge.

Stuart McMillan: My question follows on from that. Let us imagine that an individual submitted a registration but did not put in any specifics as to what would happen to the land in the future. That individual might be genuine and want to ensure that the land was kept for the community in the future, but if something happened and they died suddenly, their son or daughter would inherit the land. If they did not have the same community belief that their father or mother had, could they sell the land?

Andy Wightman: No. The title would never be taken by a private individual or a group of individuals.

Stuart McMillan: That was Patrick Harvie’s question.

Andy Wightman: Such people would be entitled to lodge an application to register 6 acres in the parish of wherever as common land. They would be able to initiate the procedure, but the title would reflect the fact that it was common land.
The keeper could then perhaps have the discretion to admit a local development trust or, indeed, the local authority to have its name on the title, but that is a separate question to which further thought needs to be given.

No private individual would be able to transact. The whole point of the procedure is to put protective orders around pieces of land that are historically common and which have been prey to hostile takeover bids by individuals, often neighbours.

**The Convener:** Thank you. We have one more area to cover—disclosure of beneficial interest. I thank Mr Little and Mr Langlands for their patience. You have been very quiet, gentlemen. Please feel free to chip in if there are any issues on which you want to express a view.

**John Park (Mid Scotland and Fife) (Lab):** You beat me to the punch on that, convener. I was going to ask whether the witnesses wanted to say anything on this question. However, I will first ask Mr Wightman specifically about something in his written submission.

Mr Wightman, you state:

“My proposal is simply to make it incompetent to register title to land in Scotland’s Land Register in any legal entity not registered in a member state of the EU. This provides compliance with Treaty of Rome obligations and means that any US or Japanese company that wishes to buy land and build a factory can happily do so—they simply need to set up an EU entity to do it.”

What, if anything, could we do in the bill to encourage wider disclosure—not just the names of the owners but the beneficial interests that may lie behind their organisation, such as a pension fund?

**Andy Wightman:** You could do what you liked—that is the short answer.

That issue was behind Andrew Edwards’s concerns in the quinquennial review of the Land Registry in England and Wales, to which I allude in my written submission. The recommendation never went anywhere. The quinquennial review of the Land Registry was put before the UK Parliament, but it chose to take no action on that recommendation. I do not know why—that was six or seven years ago.

The basis of the recommendation was that we need more transparency about who really owns the land. As the Law Commission made clear and as I suggest, we already know that: Hanky-Panky Properties in Tortola, in the British Virgin Islands, owns the land—end of story. The problem is that we do not know who those people are. We could tackle that by saying that there needs to be a disclosure of the beneficial owners, but the beneficial owners of the property may just be Hanky-Panky Properties in Panama. The chain can be endless and can change within 48 hours.

11:30

Companies law requires that the ultimate controlling interest is admitted in the registration of the company and the annual form that is required to be submitted. Therefore, I think that it would be much easier simply to exclude legal entities that have zero transparency from the Scottish land register completely. If someone wants to find out who is behind any company, they can go to the relevant company registration in France, Germany, the Netherlands or the United Kingdom, where they can find a vastly greater amount of information than they can if all they see is an entry that says, “Hanky-Panky Properties”.

**John Park:** Some might argue that the proposal would limit potential inward investment from outwith the European Union or from companies that are not registered in the way that you describe. First, what would you say in response to that? Secondly, do you know of any examples of EU countries that have systems that enable greater transparency, and are you aware of any impact that that has had on potential investors?

**Andy Wightman:** On your second question, I am not aware of any such examples.

On your first question, I do not think that it is a disincentive at all. Even my friend the golf developer, to whom I referred earlier, set up a Scottish registered company. I have no doubt that Amazon in Dunfermline, Mitsubishi and all the other inward investors have companies that are registered in the UK or elsewhere in the EU.

**Patrick Harvie:** Not if they want to avoid corporation tax.

**Andy Wightman:** It would be unusual for a multinational company in Japan, Brazil, South Africa or the US to invest in France or the UK and not set up a subsidiary. That is the way that they do things. I therefore do not think that the proposal is a disincentive; the situation is normal for those companies.

I am seeking to exclude the people about whose motives we are uncertain, such as the people who have just bought the National Trust for Scotland’s former headquarters in Charlotte Square, as well as half of the square itself. We do not have a clue who they are.

As Andrew Edwards has highlighted, a lot of money laundering and proceeds of crime go through property. I think that legislators have a public duty to ensure that their land registry—whether it be in England and Wales or in Scotland—provides a level of information whereby criminal prosecutors, the police, Her Majesty’s Revenue and Customs and so on can find out some information about such people. At the moment, they are faced with a blank wall.
John Wilson: I have a general question. Earlier, Mr Wightman talked about some of the issues that are not addressed by the bill. Part of the role of this committee is to examine the bill and identify any shortcomings or flaws. Is there anything in the bill that our panel members would like to be tightened up, added to or taken out?

Iain Langlands: Yes. The bill addresses some issues of ultimate responsibility. There is talk in the supporting documents of the keeper’s one-shot principle. There is a recurring problem in current practice, in that each of the various professions that are involved in getting from a survey to a registered title are sometimes guilty of thinking that one of the other professions is responsible for the end product. Although the keeper has the ultimate responsibility for what is registered, in this country we do not have a cadastral surveying system—we do not have licensed or registered surveyors—and there is no proposal to go that way.

Part of the issue with regard to conflicts and boundary disputes is the poor quality of the survey information that has been presented to the registers in the past. Therefore, the committee might wish to consider whether the responsibilities for all professions that are associated with the registration process are clear, or whether you want the responsibility to lie ultimately with the keeper, with all of the resource implications and delays that would be consequential to that.

Graham Little: The bill is fairly clear about the issue of new build, such as housing developments on brownfield sites and greenfield sites, but there is an issue of interpretation. Clearly, those projects involve a process that includes initial planning, provisional planning, planning approval and so on before the concept is eventually translated on to the ground, through a setting-out process. If that setting-out process is not done with sufficient precision and accuracy, the houses, roads and infrastructure might not end up in the place that they were intended. That could mean that, when the Ordnance Survey comes along and does an as-built survey, which records what is on the ground, there could be a discrepancy between what was planned and what was built and therefore shown on the Ordnance Survey map.

That is a difficulty. Which entity defines the legal title? Is it the plan or is it the as-built situation? The bill addresses that, but it is an on-going issue, as there is no validation process in place at the moment that says that the design has been faithfully replicated on the ground and that, therefore, the plan that was approved is effectively the legal title. The bill does not contain that validation, but the situation that I described can cause considerable difficulties, even to the extent of houses being built on land that the builder does not own.

That is not necessarily a comment about a deficiency in the bill; it is more about how the bill would be applied and the associated processes.

The Convener: I thank our witnesses. This has been a long session, but it has also been extremely helpful.

11:36

Meeting suspended.

11:44

On resuming—

The Convener: I welcome to the meeting our second panel: Richard Blake, legal adviser from Scottish Land & Estates Ltd, and Tom Axford, corporate secretary and head of legal at Scottish Water. Does either of you wish to comment on the previous panel’s evidence before we move to questions?

Richard Blake (Scottish Land & Estates Ltd): Convener, I came in very late from another committee, so I did not catch very much. I have nothing in particular to say about common land.

The Convener: We covered a few areas before you arrived, Mr Blake, including the accuracy of maps, the quite vexed question of the completion of the register, the potential for and consequences of keeper-induced registration and, perhaps most important, who will pay the costs. Does either of you have any views on those issues?

Richard Blake: We are aware of issues with the accuracy of mapping, particularly in relation to rural property—which is obviously where I am coming from—but we are pretty comfortable with moves in that respect. My understanding is that the Registers of Scotland, the Law Society of Scotland and RICS Scotland have set up a working party to try to work out the best way forward.

The accuracy of mapping is certainly a problem. Where, for example, a dyke has been used as a march between two bits of land and, for convenience, fencing has been erected on one side or the other, the fence rather than the actual march wall will probably come out as the boundary. Moreover, discrepancies might arise where, as a result of European subsidy requirements, fencing around water margins might be erected several metres—indeed, probably tens of metres—back from the centre line of a burn or river. Practical issues need to be addressed, but I am confident that the RICS and the Law Society will do that.
The main issue for us is probably keeper-induced registration. Shall I set out my concerns at this stage or in questioning?

The Convener: Do it now. There are other issues that we want to cover but, as I raised that particular matter, we should just get into it.

Richard Blake: We address the issue in our written evidence. I am not sure whether you have seen the private draft that the clerk circulated yesterday—

The Convener: I think that we have.

Richard Blake: My understanding is that the section in question gives the keeper the ability to register the land without an application from or the consent of the landowner. Although it appears that because it is keeper induced the registration would not attract an application fee and that the keeper will rely on information that is registered either in the land register or the register of sasines, we feel that there will inevitably be significant costs to landowners when keeper-induced registrations are introduced.

It is at the moment sound professional practice in rural first registrations, when the land certificate comes back, for the lawyer to check the certificate’s wording and the map’s accuracy. Problems arise with estates and their significant hectarages, particularly where there have been what, as a lawyer, I would call break-offs or complex splits from the title—where, say, plots of land have been sold off over the years. For example, in an estate in East Lothian that I was involved with, there were 13 very thick bound copies of split-off documents from the 18th century.

We are talking about lawyers and land agents spending quite a lot of time checking what the keeper has done without any interaction with the landowner or the landowner’s representatives. As a result, whatever the keeper does by way of issuing a land certificate, the professional advisers and the landowner will still have to do a lot of work.

Moreover, what happens when the land certificate goes back? As far as I can see, the bill neither says anything about when the keeper has to inform a landowner that a keeper-induced registration has taken effect, nor sets out the period for raising what we might call an objection or appeal against the certificate as issued. Will the keeper be under an obligation to deal with any queries that the landowner makes after a keeper-induced first registration certificate has been issued? All those practical issues need to be seriously addressed.

As far as we can see, the financial memorandum makes no mention that any expense that is incurred by landowners will be met by the keeper. We are concerned that what seems to us to be a unilateral action by the keeper, which is a non-ministerial department of the Scottish Administration, might lead to costs being incurred by the large estates. We have been assured by the minister and the keeper that it is not the intention of the keeper to bring on what would be called the large estates for decades, but it seems to me that the bill’s stated intention is to complete the register. We are supportive of that—we have no problem, in principle, with getting Scotland mapped and registered. We think that that is a good thing for everyone, but it needs to be done in a sensible way, which we hope will involve a dialogue at an earlier stage.

The Convener: That was a very interesting response because, up until now, our discussion has been about the fee that might be charged for a keeper-induced registration and whether a fee would be appropriate. You have raised a different dimension, which is that, quite apart from the issue of any fee that might be charged, the amount of time and work that agents acting on behalf of landowners would have to put in to ensure that the work that the keeper had done was correct could give rise to a substantial cost.

Richard Blake: That is right. As far as fees are concerned, the encouragement of voluntary first registration is a different issue. I am talking about landowners being encouraged to get some blocks of land registered before the keeper feels that it is necessary to induce first registration. I suspect that that is an area in which there might be discussion about an application fee and whether encouragement should be given. I think that that is the case in England and Wales, where the fee for application for voluntary first registration is pretty low, to encourage people to get land on to the register.

It is certainly my understanding that, if registration is keeper induced, there is nothing to say that a fee will be charged. That is probably right because, in such a case, an application would not be involved.

The Convener: Scottish Water is a major landowner. Do you have a view on the issue, Mr Axford?

Tom Axford (Scottish Water): We do. We are moving to voluntary first registration for selected key sites. At the moment, the issue with that is the fees and costs that are involved, which we need to balance up.

I agree with what has been said about keeper-induced registration. I would be concerned about the impact that it would have on resources. I spoke to one of the water companies in England, where they have moved to voluntary registration.
That is involving a considerable amount of resource, but the application cost that the company had to pay was very low.

We support the aim of getting Scotland on to the land register, but we suggest that we still have a way to go. We should probably look at the fee levels for voluntary first registration before we move to implementation.

**The Convener:** As no other member wants to come in at this point, I will continue.

One of the proposals in the bill is to increase the number of trigger points for first registration. For example, first registration will be induced when a standard security is granted. Does anyone have a view on that? Is it a beneficial change?

**Richard Blake:** I have no particular comments on the technical side of that, but I do have some issues with registrable leases being a trigger point. Would you like me to expand on those?

**The Convener:** Please do.

**Richard Blake:** I have just come from giving evidence to the Rural Affairs, Climate Change and Environment Committee on the Agricultural Holdings (Amendment) (Scotland) Bill. I made the point to that committee that there is a crossover between the two bills, given that the current Administration is trying to encourage the entering into of more leases of agricultural land. Under the Land Registration etc (Scotland) Bill, we will face a situation in which the relatively new limited duration tenancy, if it is for more than 20 years, will induce a first registration, which will incur more costs for landlords and, perhaps more important, tenants. That might serve as an inducement to ensure that the leases are for a shorter period, to avoid registration, which could defeat another stated policy of the current Administration. I flag that up.

Another issue, which is really more practical, is that section 51(2) of the Land Registration etc (Scotland) Bill requires registration of anything “otherwise altering the terms of the lease.”

We would like clarification of that in relation to the requirements in the Agricultural Holdings (Amendment) (Scotland) Bill, because that very wide statement seems to imply that any correspondence between a land agent and a tenant, rent review memoranda and possibly even Scottish Land Court and Court of Session decisions might have to be registered in the land register. I am not sure whether that is the intention; it would add to the general clutter on the land certificate, possibly unnecessarily.

**The Convener:** Does Mr Axford want to add anything?

**Tom Axford:** No.

**The Convener:** You concur with what has been said.

I will ask you about an interesting point on the acquisition of land by others in Scottish Water’s submission. You have particular concerns about the realignment provisions in part 6. Will you elaborate on that?

**Tom Axford:** About four or five times in the past 10 years, titles have been taken to assets that we own. Under the existing procedure, we have generally found that the keeper has been cooperative. We have looked at fraud or carelessness on the part of the proprietor in possession and we have managed to rectify the situation and acquire a couple of the titles back.

The bill will improve the situation. Currently, people have a remedy only against the first purchaser who acquires the invalid title. Under the bill, people will have rights against the first purchaser and, once that purchaser transfers the title, a right will apply for a year, which will cover occupancy by the first and second acquirers. Our concern is that that period is quite short for landowners of major areas of land across Scotland, including us, particularly if we are talking about transfers of access roads, which are difficult to ascertain—we have had to deal with that. The registration process can also take six to nine months to be completed.

**Richard Blake:** I confirm that the general concern of landowners—whether they are small or large—is that the provisions could chip away at the fringes of landholdings. Such transfers are difficult to ascertain, particularly in larger landholdings, unless landowners have adequate resources. The point applies particularly to large estates, which might be predominantly rural but lie on the fringes of urban or village populations, which might have taken gardens a little further than titles allow.

**The Convener:** Is it not the case that the bill offers better protection than the current law provides?

**Richard Blake:** Yes, but the issue is whether a year will be long enough.

**Rhoda Grant:** I will ask about the fraudulent acquisition of land under prescription. How do you differentiate somebody who had worked the land and who, because there are huge tracts of land, genuinely believed that they and not Scottish Water owned it from somebody who thought that they would have a land grab because Scottish Water was a huge organisation that had not visited the land in the past 10 years and was unlikely to pitch up in the next few weeks? If you have encountered that, how did you tackle and rectify the situation?
Tom Axford: We have tried to avoid any suggestion of fraud, because fraud is difficult to prove, as you will know. In the cases that we have had, we have looked at the wording on carelessness. We have looked at the process that the solicitor who registered the title undertook—they might have made a statement that the land had been occupied by the other party or they might not have looked at the surrounding titles.

In cases where we have gone to the Lands Tribunal we have pursued it on that basis, because, evidentially, fraud is very hard to prove other than in extreme cases. There is a famous case involving a husband and wife forging signatures, but in general fraud is quite hard to ascertain.

Rhoda Grant: Is that because of the way that the law is currently written, whereby prescription is allowed, and it is therefore very hard to prove whether someone is acting within the law or using the law for illegal purposes?

Tom Axford: Under the existing regime, it is hard to understand or to prove someone’s motive when one looks at what they have done and whether it was careless or prudent. The new legislation tightens that up through the requirements on what must be submitted as part of an application.

The Convener: You may have caught some of the evidence about prescriptive acquisition that we heard from Andy Wightman on the previous panel; if not, you may be familiar with his views from elsewhere. In general terms, are you content with the principle of prescriptive acquisition? Are the threshold provisions and time limits in the bill correct and, if not, how would you change them? What is your view on Mr Wightman’s proposal that if there is no clear owner of land it should be advertised and sold by auction, instead of allowing for the alternative of acquisition by prescription?

Richard Blake: I have no specific comments on the technical wording of the bill in that relation, as that is not a matter that we have looked at in much detail.

The advertising of land is an interesting area. We have a member who has recently been trying to establish whether he owns an area of woodland that sits within a village. The title goes back to 17-something; one is lucky if something from those days is in English and there will certainly be no plan. Nobody can find any evidence that the land was, or was not, part of the estate. The alternative in such a situation, if all other avenues have been exhausted, could be to find out whether the community might be interested in it. In this particular case, the community is not interested because of the liabilities that might attach to the timber. However, it is an interesting concept.

Tom Axford: The current system gives the keeper discretion in relation to a non domino dispositions. We have registered a couple of those and had to go through a fairly exhaustive process. I question whether advertisement would be necessary, given the increased checks and balances that are going into the system. We often find that interesting situations arise. There is part of a housing development where, in effect, 100 shares in one of our pumping stations are owned by the proprietors in common and there is a question as to whether they would want to be consulted on whether we acquire what they probably consider to be a liability.

Patrick Harvie: I imagine that for Scottish Water prescriptive acquisition might cut both ways—that sometimes Scottish Water would pursue it and sometimes Scottish Water would be pursued against regarding land in which it might wish to register an interest. Could it not reasonably be argued that when those situations arise, other parties should, instead of remaining in the dark, have an opportunity to express their interest? If the matter is resolved through an auction or by the Lands Tribunal, that might provide opportunities for a better resolution of the situation.

Tom Axford: A corollary to that is that, under existing legislation, if we want to serve notice to lay infrastructure, there is a procedure whereby we attach a notice to the land if we cannot trace the owner. There is a precedent in legislation for that type of approach should the Parliament be minded to adopt that.

Patrick Harvie: Thank you.

Mike MacKenzie: I have a question for Mr Blake. At the beginning of your remarks, you mentioned the problems of accurately defining boundaries and so on, but surely modern surveying techniques such as GPS make it easier to survey things very accurately. For a title in which a lot of individual plots have been sold over the years, do you envisage the greater accuracy of surveying and the less accurate Ordnance Survey map leading to problems, disputes and legal conflicts? Would that be of concern to your members?

Richard Blake: Yes, it could be. I was at a meeting with the bill team in 2011 with four experienced rural conveyancers, one of whom indicated that one of the estates that he looks after has on its fringes towns and villages in which 100 or 1,000 gardens might abut the estate. Some of those titles would have plans that were probably drawn originally by the estate surveyor and that might be quite accurate but, when it came to first registration, they would have gone on to the land
register mapping system. There are often inconsistencies in that because in the old days the thickness of the red-pen line for the boundary could have been the equivalent of 10ft. I am sure that the convener will be aware of that.

Going through my mind when you asked the question was an experience of first registration that I had up in highland Perthshire. There was a section round a village, but that got sorted out. The main problem was up in the north-west corner of the estate where the boundary was in the middle of a steep rock face. There were mark stones at both ends, but the fence had obviously been taken round the top of the cliff to prevent the stock from going over. That is an example of a commonsense situation that has to be sorted either by what is known as a section 19 agreement as to what the common boundary is, or by an exchange of land—an excambion.

Generally, a practical problem that has been resolved over the centuries by landed estates will get sorted—because it is a practical issue. However, where there is more detail around villages and towns, there could well be problems with the mapping tying in.

Mike MacKenzie: Would it be true to say that those problems would come to light as a result of a first registration process and that they may have hitherto been unnoticed?

Richard Blake: Yes, that is probably right and that leads me on to my concerns about keeper-induced registration, because the keeper will be going on information held in the registers and not information held in the estate office or the farm office. That is quite often where the discrepancy will sit.

The Convener: As members have no further questions, I thank our witnesses for their time this morning and for coming along. It has been very helpful.

12:08
Meeting continued in private until 12:36.
1. INTRODUCTION

I am a writer and researcher on land issues in Scotland and author of a number of books on the topic as well as a range of reports. I also run the www.whoownsscotland.org.uk website. I advocate transparency and accountability over landownership in Scotland.

LAND REGISTRATION BILL

In broad terms I welcome the publication of this Bill as it delivers a much-needed statutory revision of the inadequate and outdated Land Registration (Scotland) Act 1979. I commend also the thorough work of the Scottish Law Commission and the diligence of their review which underpins the Bill. As a means of oiling the wheels of land registration there is little in the Bill with which I take exception.

However, the Bill should not be seen as merely a piece of technical legislation or a measure designed to underpin “modern market economies” and ensure the “smooth running of a vibrant property market”. (1) Admittedly, much of the Bill is technical, but there are also important public policy dimensions to the Bill which have not been addressed.

Revision is certainly needed. As the years have gone by, the remedies to many of the deficiencies of the 1979 Act have been essentially made up by the Keeper and incorporated into the Registration of Title Practice Book. This is highly unsatisfactory and provides the rational for the current Bill. However, land registration is not simply a process of technical issues faced by conveyancers or the Keeper. It is the legal basis for providing real rights to own property.

This is the first time in the history of Scotland that a democratically-elected Scottish Parliament has considered the statutory basis for sanctioning who owns land in Scotland and providing the benefits that accrue to landowners with a recorded title. It is therefore vital that Parliament consider some wider questions of public interest that come within the scope of the Bill. Now is the perfect time for the Scottish Parliament to provide some leadership on wider questions of what and what is not desirable from a public policy point of view in terms of Scotland’s system of land registration.

In this submission, I will focus on four of these, namely prescription and a non domino titles, registration of commons, beneficial ownership, and access to the Registers.

PRESCRIPTION AND A NON DOMINO TITLES (Section 42 - 44 of the Bill)

Prescription is a legal device introduced in 1617 which has the effect of exempting a title from legal challenge provided that the land has been occupied “peaceably, openly and without judicial interruption” for at least 10 years (20 years in case of Crown land). The principle was established in its “modern” form in 1617, along with the Act of Registration to provide legitimacy for land that the nobles had appropriated from the Church in the 16th century. It is telling that the Prescription and Limitation (Scotland) Act 1973 (which governs
prescription) states in the preamble that it replaces the Acts of 1469, 1474 and 1617. This is an ancient device and it has served landed interests well.

These laws continue to underpinning modern property law but have (and continue) to represent little more than a form of post hoc legitimised theft which, were it to involve ordinary criminal theft would have the party doing the thieving in the dock for criminal reset.

For example, the Duke of Argyll admitted in the House of Lords in 1815 that the principle of prescription provided the foundation of a "very good deal of the property held by Members". (2)

And John Rankine, author of the magisterial *The Law of Landownership in Scotland* went so far as to remark that, "The words of the protection given in the Act of 1617 to this favoured conjunction of title and possession are very full and sweeping, and have been applied .... to many cases which were not properly within the purview of the Act" (3)

The particular form of prescription covered by the Bill is provision for individuals to lodge a claim of ownership over land they do not own – a non domino titles (literally, “from one who is not the owner”). This is where a deed is recorded for land not owned by the applicant in order to found prescription – in other words to start the clock ticking on the prescriptive period. The Bill provides a statutory basis for anyone claiming prescriptive title to have it recorded. This is an area on which the 1979 Act is silent. But should such claims even be entertained in the first place?

The Keeper’s rules for accepting a non domino deeds have been tightened up in recent years and the Bill tightens matters further by insisting that any claims must relate to land that has been abandoned for the previous seven years and that must have been possessed by the applicant for one year. The applicant must also submit evidence that they have attempted to trace the true owner and must inform the Crown as the ultimate owner of land in Scotland.

But despite such tightening of the rules, the question remains as to whether such first-come, first-served land seizure is desirable in the first place and whether alternative arrangements should be made to deal with land that has no apparent owner.

The admission of a non domino deeds causes the law contort itself. Section 42(1) in the Bill admits openly that such deeds are to be treated as valid despite not being so and limits the grounds on which the Keeper can rule that they are invalid in Section 42(2). The Bill effectively conspires to accept as valid something which is not, so long as the applicant conceals the fact that it is not.

Is this the kind of law the Scottish Parliament is comfortable with? This kind of contorted logic has been developed by landed elites and their legal representatives over centuries. Vast swathes of land have been acquired on the basis of deeds that purport to transfer land that the disponer does not own.

Prescription and a non domino deeds have provided for widespread theft of land over the centuries by the greedy and powerful being able to get their claims in the door first whilst the innocent bystanders, being ignorant of the attempt, have lost their land. Under the current rules, the Keeper is even prohibited from notifying the true owner that a hostile claim has been lodged. It is time to end this abuse of the law. Instead of the (admittedly stricter) rules set out in the Bill, a far more public process should be adopted.
Any claims to “unowned” land should be lodged with the Keeper and then advertised publicly on the Registers of Scotland website for a minimum period of one year. The publicity should include the name of the claimant and their grounds for the claim, the extent of the land being claimed, a report on investigations into its legal history and the conclusions of the research conducted to identify the true owner, and an invitation to lodge rival claims. The view of the Crown should be sought and publicised as it is the ultimate owner of land and could legitimately lay claim.

Only after the expiry of this period should the Keeper have any power to admit an un domino deed for registration. Any contested claims should be settled by the Lands Tribunal.

COMMONS

Scotland’s laws of landownership have been devised to favour private property. For centuries, common land has been under attack. As Tom Johnston observed in his The History of the Working Classes in Scotland,

“...adding together the common lands of the Royal Burghs, the common lands of the Burghs which held their foundation rights from private individuals, the extensive commons of the villages and the hamlets, the common pasturages and grazings, and the commons attaching to run-rig tenancies, we shall be rather under than over estimating the common acreage in the latter part of the sixteenth century, at fully one-half of the entire area of Scotland." (5)

It has now virtually all disappeared. What marks Scotland out is the scale of this onslaught compared with other European countries. The situation stands in stark contrast to that in England and Wales, for example, where common land has statutory protection and registration can be applied for through local authorities by members of the public. The UK Government DEFRA provides full details of the topic and you can even download a list of ALL the common land in England and Wales. (6)

For the avoidance of doubt, there is very little common land left in Scotland. Exactly how much is unclear and obtaining any accurate statistics is not helped by the fact that many lawyers and government officials deny that commons even exist in the first place. A couple of examples might assist in understanding the problem.

The first concerns a 400 acre commonty in Perthshire.

Within the past 25 years, three local landowners drafted and lodged a deed splitting the commonty among themselves. The deed claims that they have sole rights to the common. This is doubtful in the extreme. Nevertheless the deed was accepted in the Register of Sasines but not before the Keeper had made a note in the margin that “Agent aware that granters apparently only have title to rights in pasturage in [name of commonty]”. In other words, not only did the landowners know that they had no property rights, their lawyer also knew. Nevertheless, the deed stands. This is what I refer to as legalised theft.

It is worth remembering that in the London riots last summer, an engineering student was jailed for 6 months for stealing a £3.50 case of bottled water.

In another case, in the parish of Carluke, there is a happier story. A landowner registered a title in the Land register and, as part of his title was recorded his rights of use of the parish common together with the rights of access over the loan leading to it. This is probably the
sole example of a common registered in the Land Register. The common itself, however, is not registered for the simple reason that there exists no mechanism to do so.

Some would argue that since there is so little common land left, that there is little point in making any effort to preserve it. A more intelligent response is to argue that what little is left is such an important part of our cultural heritage that every effort should be made to identify and preserve it. That is my position and the Land Registration Bill can help is the will exists.

The Bill is relevant here for the simple reason that the law of prescription and non domino titles have been (and continue to be) responsible for the theft of our commons. As the Bill stands, those devices can continue to be used to appropriate commons. The central problem is that in Scotland there is no means to register common land and it stands vulnerable to prescriptive claims. A means needs to be devised to protect them by assertive action by citizens to register them. What is needed is a simple solution that provides a statutory mechanism for members of the public to submit an application for recording titles to areas of common land. This could take the following form.

The Land Register recognises commons as a class of property and admits applications for registration from any member of the public residing in the civil parish in which the land is situated. For so long as the application is pending, no other private claims will be entertained by the Keeper. The application will be advertised publicly on the Registers of Scotland website for a minimum period of six months and circulated to the local authority, community councils and published in local newspapers. The publicity should include the name of the claimant and their grounds for the claim, the extent of the land being claimed, a report on investigations into its legal history, and an invitation to lodge rival claims.

The Lands Tribunal shall adjudicate on any contested claims but if none are made, then the Keeper shall record a title and the land shall be registered as a common. Statutory power for their management would be vested in local authorities.

If this can be done though local authorities in England and Wales I don't see what the problem should be in Scotland other than that for centuries, landed and legal elites have conspired to airbrush commons from our history and from the map of Scotland.

**BENEFICIAL OWNERSHIP**

Two days after the 9/11 attacks in the USA, Andrew Edwards, a former deputy secretary of the UK Treasury stood up at the Cambridge International Symposium on Economic Crime to give a presentation on taxation and money laundering in which he argued that,

“As we all know, serious criminals mostly commit crime and launder its proceeds, not under their own names, but through company or trust formats. In most countries, however, tax and company registration authorities don’t even require to know who the true or beneficial owners of private companies, trusts or foundations are. In most countries, similarly, land registration authorities don’t try to establish who the true or beneficial owners of property are.” (7)

Edwards later carried out the Quinquennial Review of Her Majesty's Land Registry in England and Wales in 2001. In it, he argued that

“In these days when economic crime and money laundering have become major issues for the world economy and society, and when property assets are a significant vehicle for
holding the proceeds of crime, the fact that the Registry neither records on the Register nor knows who the true owners of property are becomes ever harder to defend. There must be a strong case, therefore, for including in the Register details of the true or beneficial owners of registered properties where these differ from the nominal owners.

... The disclosure of such information on the Register, and the index of true or beneficial property owners that the Land Registry could compile from it, would be invaluable for law enforcement, regulatory and tax authorities, as would similar information on ownership of private companies. Without such information, the transparency of land registration must always be seriously qualified. The existence of the requirement would itself do something to deter the unscrupulous from putting the proceeds of crime into property assets.” (8)

Such concealment also formed part of the background to the Mohamed Al Fayed court case against the Inland Revenue Commissioners in 2002 where the Special Compliance Office of the Inland Revenue had launched a Who Owns Scotland project to try and investigate the tax affairs of landowners in Scotland who had registered land in offshore jurisdictions. (9)

Section 108 of the Bill introduces a new statutory offence designed to assist in tackling serious organised crime in Scotland. I do not have a view on this proposal but would merely point out that the Scottish Parliament should take note of Andrew Edwards’ proposals and amend the Bill so as to eliminate the secrecy that surrounds the registration of titles by companies in offshore tax havens. This would not only assist in deterring money laundering but assist the tax authorities in collecting tax and improve transparency over who owns land in Scotland.

I happen to disagree with Edwards’ specific proposal to insist on a declaration of beneficial ownership. Such a mechanism could be cumbersome and within 48 hours of a land registration being accepted, this information may well change.

My proposal is simply to make it incompetent to register title to land in Scotland’s Land Register in any legal entity not registered in a member state of the EU. This provides compliance with Treaty of Rome obligations and means that any US or Japanese company that wishes to buy land and build a factory can happily do so – they simply need to set up an EU entity to do it.

Of course, the owners of such a company may be another company in an offshore tax haven BUT at least the entity is governed by EU law and the Directors are named and are legally responsible and accountable for the affairs of the company. All of which takes us a long way forward from where we are right now.

Any tax liabilities or money laundering allegations could thus readily be chased up and such a reform would greatly boost transparency, accountability and the collection of taxes.

ACCESS

Currently the Registers of Scotland charge for access to search the Sasines and Land Register. Moreover, there is no online facility for the public to use to conduct their own search. Registers Direct is an online service but demands an account be set up and a high level of familiarity with the structure of the Registers (particularly Sasines) to use effectively. By contrast, the Land Register in England and Wales has a box where one can enter a postcode and a checkout where you pay for the result.
Future land registration should be based upon an easy interface for the public and should be free. In 2010/11 the income from searches yielded a total of £2,604,000 (5.3%) out of a total operating income of £48,621,000. Such a shortfall could easily be made up from other income sources and would contribute to transparency and efficiency by making it painless for anyone, anywhere to find out who owns Scotland.

REFERENCES

(1) Policy Memorandum, para 2.

(2) Hansard Parliamentary debates 3rd series, vol 192, col. 1815, 19 June 1868.


(4) See Aberdeen College v. Youngson at 14

(5) The History of the Working Classes in Scotland, pg 164


(7) Andrew Edwards address is available here.

(8) HM Land Registry, Quinquennial Review, June 2001 pgs 104-105

(9) Al Fayed vs Lord Advocate, Court of Session, 31 May 2002 at [61]
SUBMISSION FROM SCOTTISH WATER

Scottish Water welcomes this opportunity to write to the Committee setting out our views on the proposed Land Registration etc. (Scotland) Bill.

We support the proposal to legislate in relation to that part of the Law Commission’s report which recommends an alteration to provisions for the rectification of inaccurate Title Sheets. Scottish Water has substantial land holdings throughout Scotland and most of our land is held on Sasine titles, as such land was acquired by previous authorities before the introduction of land registration under the Land Registration (Scotland) Act 1979.

Under the current system of land registration, a person might register a title to land belonging to Scottish Water on a Sasine title but we might not discover this purported registration of title to land in our ownership until a considerable period of time had elapsed.

A typical situation where this arises is where an owner of land near a reservoir or other property held by Scottish Water on a Sasine title sells that land but includes more land than they actually own in the disposition in favour of the purchaser and the extra land comprises land belonging to Scottish Water. In some cases Scottish Water or its predecessors may have acquired an area of ground for an operational asset but the actual area fenced off is less than the extent of ownership, as part of the land may have been acquired for future expansion. In other instances a title may be taken to an access road owned on a Sasine Title.

Section 3 of the 1979 Act makes the purchaser in these scenarios the owner immediately.

We note that section 17(2) of the proposed Land Registration (Scotland) bill provides that registration of an invalid deed normally has no effect and understands the intention to be that in such cases, the purchaser would not become owner of Scottish Water’s land until they had possessed it for a ten-year positive prescriptive period following the erroneous registration.

Section 53 of the proposed Land Registration (Scotland) bill states that a title sheet is inaccurate in so far as it misstates what the position is in law or in fact. Section 54 requires the Keeper to rectify a manifest inaccuracy in the title sheet record. These sections represent a considerable improvement on the existing position.

We note that under the “realignment” provisions in part 6 of the draft Bill – in particular section 45 - Scottish Water might lose land more quickly than ten years where the disponee in the first inaccurate deed conveyed on to a good faith purchaser. However, we note that in this scenario at least a year’s adverse possession would be required during which time Scottish Water could assert its rights either in court or by regaining physical possession. This is better than the current immediate deprivation, and we note that where land is lost in this way compensation will continue to be payable to the deprived owner. Scottish Water suggested in its response to the consultation a period of ten years instead of one year, since a period of one year would probably not give Scottish Water enough time to discover an encroachment on any of its landholdings.

Scottish Water does not have comments on the proposals for electronic documents, conveyancing and registrations.

Scottish Water
4 January 2012
Scottish Parliament
Economy, Energy and Tourism Committee
Wednesday 25 January 2012

[The Convener opened the meeting at 10:01]

Land Registration etc (Scotland) Bill: Stage 1

The Convener (Murdo Fraser): Good morning, and welcome to the third meeting in 2012 of the Economy, Energy and Tourism Committee. I welcome committee members, witnesses, and guests in the public gallery, and I remind everyone to turn off all mobile phones and other electronic devices. We have received no apologies for absence.

Agenda item 1 is a continuation of our evidence taking for stage 1 of the Land Registration etc (Scotland) Bill. I am delighted to welcome Gary Donaldson, business development manager with Millar & Bryce; Alan Cook, chairman of the Scottish Property Federation commercial committee; and Ann Stewart, member of the Scottish Property Federation commercial committee. Thank you for coming.

Normally, before we move to questions, we ask witnesses whether they want to say something by way of introduction. I believe that Mr Donaldson wanted to say something.

Gary Donaldson (Millar & Bryce): Good morning. Millar & Bryce is a private search firm—the largest in Scotland—and we were formed in 1875. To give committee members some context, private search firms supply reports and information to solicitors, which are used as part of the conveyancing process. Millar & Bryce supply conveyancing reports in approximately 60 per cent of residential transactions in Scotland, and approximately 90 per cent of commercial transactions in Scotland. We use a variety of data sources in compiling our reports but, for property reports and transactions, our main data supply is from Registers of Scotland. Like other private search firms, we use the keeper’s online system—registers direct—to access information on both the land and the sasine registers. I understand that we are one of the largest users of registers direct and that, last year, we made approximately 170,000 searches against both the land register of Scotland and the general register of sasines.

As private searchers, we are in the interesting position of being not only significant customers of the keeper but competitors of the keeper—providing the same kind of reports for use in conveyancing transactions.

Broadly speaking, we are very supportive of the changes that proposed in the bill. Should they be accepted, there will be a significant impact on us, with changes to process within our business and our peers’ business, but we believe that the end result will benefit our customers. However, we have concerns over some specific proposals to grant wider powers to the keeper in relation to commercial activities and fee setting.

The Convener: Mr Cook or Ms Stewart, do you wish to say anything by way of introduction?

Alan Cook (Scottish Property Federation): No.

Ann Stewart (Scottish Property Federation): No.

The Convener: In that case, we will move straight to questions.

This question is for all the witnesses. How much priority should be given to the completion of the land register? By completion, I mean having as much as is practicable of the land in Scotland transferred to the register. What advantages might accrue? Should the bill include a target date by which the land register should be completed and the general register of sasines closed?

Ann Stewart: Speaking for businesses and the profession, I think that eventually having all of Scotland clearly mapped and identified in the context of the land register is a good aim. I would not say that it is an excruciatingly high priority. It has to be done in a way that allows businesses to transact swiftly and efficiently. It should certainly not be an overarching priority that might get in the way of normal transactions. It would be quite dangerous to set a target date for this work: instead, it should be phased in sensibly with some easy wins that can be made without too much disruption and within Registers of Scotland’s resourcing capabilities.

The Convener: Do you have a view on this, Mr Donaldson?

Gary Donaldson: I share Ann Stewart’s views. Accelerating the programme will be beneficial; indeed, it is clearly more efficient to search against one register rather than two and, in general, the land register is easier to interpret. This move will make things more efficient.

John Wilson (Central Scotland) (SNP): This is a major piece of legislation that, as the submissions make clear, will impact severely on some organisations. Indeed, concerns have already been raised. What are the current land register’s shortcomings? Does the bill do enough
to address any such shortcomings, or does it need to do more? Are there any additional issues that it should address to ensure that we have a piece of legislation that will take us forward?

Alan Cook: The main shortcoming that the bill addresses is the lack of detail in so many aspects of the Land Registration (Scotland) Act 1979, as a result of which the keeper has had to create certain administrative processes and procedures. Although what has in many respects been a very pragmatic approach has allowed the land registration system to work over the years, it is less than satisfactory that so many quite important issues are being dealt with at what is in effect an administrative level. As the debate over the bill has made clear, many of those issues, such as dealing with a non domino dispositions and mapping, are significant.

The Scottish Property Federation’s overall message is that it supports the bill’s aims and purpose. I am not going to list the many good things about it but, at random, I highlight the move to bring territorial waters into the land register. Although the number of offshore renewable energy developments is rising, there is, at the moment, no way of registering Crown Estate leases in territorial waters. As that could stand in the way of the ability to fund such developments or grant standard securities over the interests, we very much support moves to unlock that.

We also support the progress that the bill makes on mapping. We might discuss this later, but some issues can arise with the level of detail in Ordnance Survey maps.

In short, there are plenty of shortcomings to deal with and, in that respect, some of the bill’s aims are laudable. There are also some things that we need to discuss, but we think that it will serve a very useful purpose.

Gary Donaldson: From our point of view, there are no major shortcomings in the existing system. However, I can certainly see the bill’s wider benefits to our customer base.

John Wilson: Are the witnesses content that the bill will tidy up all the loose ends from the 1979 act and give us a piece of legislation with which the industry and the public can be happy?

Is anything not in the bill that we should consider? We are at stage 1 of the bill, and it would be useful to know now whether any other issues should be covered in it, so that we can dig into them to determine whether other sections need to be added or other measures need to be identified to allow the bill to become an act that is workable for some time. We do not want to have to revisit it in 20 or 30 years.

Ann Stewart: The bill is a framework. It gives us a structure. It does not throw away our existing system and replace it with something new; it improves the existing system by filling in the legislative gaps but does not fundamentally alter the process that we know.

Much of the detail will be in regulations that will follow the bill, and some finessing points may be incorporated into those. However, as a framework bill, there are no obvious omissions.

Alan Cook: Provisions relating to provisional shared plots were in the Scottish Law Commission report but are not in the bill. Those were drafted in response to the case of PMP Plus Ltd v the keeper of the registers of Scotland a couple of years ago. I do not know whether the committee is familiar with that case. It is to do with the fact that, in the past, housing developers and the like have sought to maintain flexibility over the extent of common areas within large housing developments. When they have given individual owners common rights to those shared areas, the order of events in the land registration system has caused some difficulties with the rights that people are given or not given.

That issue came to a head with the PMP Plus case a couple of years ago, following which the SLC published some thoughts and proposals on how the problem might be addressed. Those have not made their way into the bill, and it is probably fair to say that much of the profession is quite relieved that they have not done so, because we could see many shortcomings and problems with how they would work in practice. We are quite pleased not to see those provisions in the bill. Ann Stewart is involved in discussions in the legal profession to find other solutions to deal with the issue.

Patrick Harvie (Glasgow) (Green): I find the tone of some of what has been said so far a wee bit ambiguous. We heard that the completion of the register should not be considered an “excruciatingly high priority”—I think that that was the phrase. However, previous witnesses made the case that progress so far has been excruciatingly slow. Mr Cook said that he agreed with the comments about completion not being an incredibly high priority, but then he said that he strongly supported the aims of the bill. The policy memorandum says:

“Completion of the Land Register is considered to be the most important policy aim of the Bill.”

If the witnesses support the aims of the bill and that is its most important aim, why should we not set a clearer expectation that we do not want to wait another century for the register to be completed?
Alan Cook: I agree with you. We support the bill’s overarching aim, which is to achieve a complete system of land registration in Scotland.

The experience of the past 30 years of the land register’s operation is that the process has been slower than was anticipated. There are many reasons for that. I guess that the most significant one is the triggers for land registration, which the bill extends. In addition to that, there was a slow roll-out of the operational areas for land registration. That was to do with resourcing in Registers of Scotland. There is a resourcing issue as to how registration can be completed. That is a policy matter—it is for politicians to decide how they resource the land register and Registers of Scotland to facilitate that.

10:15

I completely agree with Patrick Harvie. From the perspective of business and the legal profession, we support that end and want to move towards it. As a property lawyer, your heart sinks when the title deeds for a property come in and it is a box of old sasine titles. From a client’s perspective—that is, the point of view of business—there can be significant costs in getting lawyers to go through a large box of title deeds. That box might have all sorts of problems in it, many of which could be ironed out through the land registration process. Leaving aside the other issues such as who owns Scotland, that is the benefit that land registration achieves.

Rhoda Grant (Highlands and Islands) (Lab): I want to return to the issue of shared plots. The bill introduces separate title sheets for plots that are shared between properties, for access and the like. Is that a move in the right direction, or does it add a layer of complexity to the process?

Ann Stewart: Personally, I cannot see the point of that measure, although there might be circumstances in which it would be useful to have a separate indication of areas that are owned in common. However, I cannot see the advantages in setting up a whole new title sheet for that. For example, at present, if two, three or four home owners share an access road, the title plan of their houses will probably show a right in common to the access that is shown coloured pink, or something like that. That situation is already clear. I am sure that those who have come up with the proposal could give plenty of examples of circumstances in which it would be an advantage but, as a practitioner, I am not sure that the absence of a separate title sheet that shows shared areas is a problem.

As I say, it might be useful. To return to an issue that Alan Cook mentioned, in a development of 200 units, each owner might be given a share in common amenity areas. As the plots are sold, those shares accumulate so that, on day 1, perhaps only one person has a share of ownership, but three, four or five years later, 200 people will have shares. There could be a separate record of who owns those shares. That might be useful information to have but, as practitioners, we have not necessarily noticed the lack of it.

Gary Donaldson: To take a different perspective, we often receive queries about establishing common ownership. From our point of view, a separate title sheet would assist in identifying that ownership.

Rhoda Grant: To continue along the same lines, we have received evidence about servitude rights and burdens not always being noted on the title sheet of every property on which they impact. If someone has rights of access on a property, that might not be on their title sheet, although it will be on the original sheet. Does that cause problems?

Ann Stewart: It can cause problems. The issues that you talk about predate the Title Conditions (Scotland) Act 2003, which came into effect on 28 November 2004.

Since that date, newly created burdens and servitudes have to be registered against the title of both the burdened property—in other words, the property that has to suffer or perform the burden or to which the servitude is applied—and the benefited property, which will cover the people who own the property or who are entitled to exercise the right of access or to see a particular burden performed. In future, those issues will become less and less important. However, in many titles predating 2004, servitudes have been created in the burdened property without the benefited property being identified. In many real burdens, it is unclear who has—or the number of people who have—enforcement rights, even though that forms a fairly major part of a practitioner’s title examination process.

Of course, it is perfectly valid to create servitudes without any documentation; they can, for example, be acquired through exercise or prescriptive use over a requisite period of years. In other words, a right can be perfectly valid, but there might be nothing on the title sheet to say so. These days, however, conveyancers tend to see that as a flaw in the title and a lot of hoops have to be gone through to establish the validity and exercisability of those sorts of servitudes.

As I have said, problems can arise when these things are not apparent on the titles. Much more work and examination is required to get to a not entirely conclusive point, after which a risk assessment is undertaken as to whether that will be okay from the purchaser’s point of view.
Rhoda Grant: I have a final question along the same lines. The bill allows for advance notices—

The Convener: Before you go on to that issue, I believe that Mike MacKenzie has a question on servitude rights.

Mike MacKenzie (Highlands and Islands) (SNP): Going back to Rhoda Grant’s first question on separate title sheets, I have a potential concern about problems arising in the fairly common situation in which someone’s garage, say, is situated away from their dwelling-house. If there are separate title sheets and the owner dies, the title for the garage might get lost in the bureaucracy and it is possible that no one will realise that the two properties go together. Might that sort of thing happen if there are separate title sheets?

Ann Stewart: I am not sure that that is the same as the situation with shared plots. As I understand the proposals, both titles will have a note making clear that each is connected to the shared plot.

Mike MacKenzie: I know that it is not the same point, but it might be related as far as the format of the title sheets is concerned.

Ann Stewart: It would depend on how far away the garage was. If you were acquiring both properties together, you might expect them to have the same title number.

Mike MacKenzie: My understanding of the bill’s proposals was that, if the plots were not contiguous, they should have separate title sheets.

Ann Stewart: It is certainly possible to put different bits of land on separate title sheets. If none of the sheets had a marker to make it clear that, say, this garage half a mile down this lane went with this house, one could be sold without the other. However, that can happen anyway. If you perceive that to be an issue, I suppose that the same kind of marker could be put on the title sheets, making it clear that there was a related plot. That is certainly the intention with regard to shared plots, but the difference there is that one plot is entirely owned by a single owner or proprietor while another related plot is in common ownership and the issue is the relationship between the two. What you are talking about is perhaps two separate bits of property that happen to be owned by the same person but which are not adjacent.

Mike MacKenzie: Possibly—or it might be one property in individual ownership, and then one in common ownership that appears on a separate sheet. Could it be that a second sheet might disappear from knowledge, as it were, and that ownership might therefore lapse?

Ann Stewart: That would be possible but, as I understand the bill’s provisions, there will always be a connection. Cross-referencing will keep things together.

Mike MacKenzie: That is reassuring.

Rhoda Grant: The bill makes provision for advance notices. Do the members of the panel support such notices, or do they feel that combining shared plots, title sheets, burdens and servitude rights with advance notices makes the whole thing complex, with a greater likelihood of errors?

Ann Stewart: I do not know about errors. Practitioners in the industry enthusiastically support the system of advance notices; we think that it is one of the best things in the bill. There has always been a gap between completion and registration, and that gap can be fraught with risk. One of the unique features of the Scottish conveyancing system is the provision of letters of obligation—when firms of solicitors take on the risk of the registers being clear for the gap period between the handing over of the payment of the price of the property and the purchaser’s title being made real by registration in the register. The legal profession has to pay high premiums for professional indemnity insurance, and that covers the provision of those letters. The cost of the insurance is one of the overheads that affect the cost of conveyancing.

If it is applied across all transactions, the system of advance notices ought to render the letter-of-obligation procedure redundant, which should lead to improved risk management, improved perception of risks, and improved protection of purchasers against the risks that can arise during the gap period. It would certainly improve confidence among purchasers and lenders if they had a clear indication of some kind of protection for the risk period, even if that period is sometimes very short.

Alan Cook: A point of detail arises in relation to advance notices. Others have raised the point, but it is worth repeating, and the Scottish Property Federation endorses it. There is uncertainty over whether a disposition of land, followed by a grant of a standard security by the purchaser, would need one advance notice or two advance notices. In some quarters, the view is that one advance notice is adequate for both parties—in effect, the lender can rely on the advance notice that the purchaser has registered or submitted. However, a concern is that lenders might be exposed to the acts of the purchaser. For example, if the purchaser—by fair means or foul, probably foul—decided to grant two standard securities at the same time to different lenders without their knowledge, we would get back to the race to the register. The first lender to get their standard
Ann Stewart: On a slightly different but related point, we need clarification of the actual effect of advance notices. The bill’s explanatory notes suggest that the effect of an advance notice in respect of a particular transactional document would be that, if any other document appeared on the register during the advance notice period but in advance of the document to which the notice related, then once the document to which the notice related hit Registers of Scotland, the other document would be treated as not registered at all. However, that does not appear to be the effect in some of the examples given in the explanatory notes. If a disposition—in other words, the document that transfers title—were protected by an advance notice and another disposition had gone in previously, when the proper disposition hit Registers of Scotland the earlier one would be regarded as not having been registered, whereas the effect with standard securities is that both would stay on the register but the priority of their ranking might change.

Another example is that, if a deed of servitude granted by the seller were followed by the disposition to which the advance notice related, the deed of servitude would be removed from the register. In fact, both deeds might be required for whatever transactional arrangements had been put in place. We need a lot more detail about how the advance notice will work and the different permutations of documents that might appear. It is not always—indeed, it is not often—the case that a bogus deed will appear. In the majority of transactions, the documents that hit the register are those that will actually implement the transaction and, particularly in commercial transactions, a complex combination of documents might well be required. There needs to be a bit more thought about the effect of these advance notices in the overarching approach to purchaser and lender protection.

Rhoda Grant: I assume that, to make that legally binding, the bill would have to stipulate which of the documents—the deed or the advance notice—would have priority. That could not be done in guidance.

Ann Stewart: With regard to the legislative competence of what you can or cannot say, I think that we are talking about a lot of detail that it might not be appropriate to include in the bill. However, it could expand on the combination of effects that might arise without necessarily having to provide pages and pages of examples. We need more clarity about what we are trying to achieve with the interaction of documents.

Alan Cook: For example, it could be acknowledged that, if the applicants of a suite of documents collectively asked the keeper to follow a certain order of events for their registration, the keeper would pay heed to that. I have not stopped to think this through, but advance notices might complicate that order. About a year ago, Ann Stewart and I were involved in a complex project that required the registration of dozens of documents all at once and the order in which they were to be registered was carefully expressed for the keeper’s benefit to ensure that everything made sense and to tell the story of what was going on. We would not want advance notices to stand in the way of that process.

The Convener: Mr Donaldson, do you or your company Millar & Bryce have any concerns about the quality of the information technology systems at Registers of Scotland? On a second, related point, do you have any issue with the quality of the maps on which the register is based?

Gary Donaldson: On the IT systems, we have had a lot of dialogue with Registers of Scotland and its IT supplier on the use of its online system. It was problematic when it was introduced and, although it has significantly improved, it is still quite deficient in some cases. From the user perspective, the technology is not great by any means.

There are some specific issues with the quality of the maps, but in general the quality of the mapping that we use is okay.

Chic Brodie (South Scotland) (SNP): You are suggesting that the IT system is not fit for purpose, on the basis of the way in which it was developed. Why has the uptake been so disappointing?

Gary Donaldson: It is a complex system with a large back-office database and large amounts of data, and it is not delivered in a particularly slick way. We find that there are delays when we access information, which impacts on our efficiency. We have to access scanned registers, which can take a significant time to come up. An image might take six to eight seconds to come up. That might not seem a long time but, in the context of our doing 170,000 searches a year, the time adds up.

Chic Brodie: How involved were users of the IT system in its development? Were they involved at all?

Gary Donaldson: There was little involvement in the development. We were consulted at the
The keeper has found workarounds, such as the use of supplementary maps. As well as having the Ordnance Survey map as the title map, copies of the title deed maps are added to the land register. However, that is not really done to give that additional level of detail, and it takes us away from the whole point of having an overall cadastral map as a single point of reference that shows the extent of ownerships. The keeper and Ordnance Survey are aware of that and a working party is dealing with it. We would certainly like the issue to be resolved.

**Mike MacKenzie:** That point is interesting and leads to my next question. You will probably be aware that some of the sasines titles include maps at a larger scale than is available from Ordnance Survey. Should those not routinely be included as supplementary plans to help resolve potential problems, at least in some cases?

**Alan Cook:** Supplemental maps can be useful to express points of detail that the land register would otherwise struggle to describe. For example, I have been involved with a building in Edinburgh that has a strange arrangement with a stair that goes round the back. It is described as an interleaved stair. In effect, it is a double staircase that is a double spiral. One spiral is for one building and the other one, which follows the first, is for the other building. The land register has used the original sasine maps or drawings that show, level by level, the extent of the ownerships. Without that, the land register would have struggled to show what is going on there. Therefore, I agree that supplemental maps can have a role. However, when we start relying on them to get over problems with a margin of error that arise because of scaling, that is taking the approach further than it needs to be taken.

**Mike MacKenzie:** It is interesting that you mention flats, because I was going to move on to that issue. Witnesses have told us that, in some tenements, there is a problem with identifying flats and that there are no agreed conventions on that. Some flats are described as being on the left or on the right, but it can be difficult to understand what that means and which perspective that is viewed from, which gives rise to confusion. Do you support that point and agree that a plan that clearly identifies the location of flats in tenements and other flatted buildings could be usefully appended to title certificates?

**Alan Cook:** Perhaps. Because tenements are such a huge feature of property ownership in Scotland, they have always been dealt with in a particular way, namely that the tenement building within which a number of flats are held is outlined on the map that is used for the purposes of land registration and then the text in the title sheet describes the specific flat to which the individual...
title relates. I agree that there is quite a lot of scope for uncertainty because of the use of terms such as “left” and “right” to describe which flat is which. I am not aware of any protocol that is supposed to be followed in expressing that. If there was a clear protocol that had to be followed, that would perhaps overcome that particular problem.

The Convener: We can put that question to the keeper later.

10:45

Stuart McMillan (West Scotland) (SNP): I want to ask about electronic registration and other IT issues. Obviously, IT issues are here to stay. Mr Donaldson said that, so far, the system has not been perfect and there have been issues. What should be done to ensure that the system is fully operational for all concerned?

Gary Donaldson: I should probably say first that we cannot really comment on electronic registration. From our point of view, it is really a matter of the electronic access of information. Those are two separate things.

We would have liked to have been consulted by the keeper far earlier when the new system was coming in so that our views could have been fed forward. As I said earlier, there have been some improvements, but I would have liked those improvements to have been more dramatic and to have been given a higher priority.

Stuart McMillan: Obviously, the register will increase as properties go on to it. What would you like to see happening to ensure that the system is robust enough to help the industry and the register keeper?

Gary Donaldson: Good stakeholder engagement is essential to ensure that performance issues are addressed as they arise. If the proposals are accepted, I suppose that there will be less reliance on the sasine register, with which we have many of our main problems, and more reliance on the land register, which is more efficient and seems to work better in the IT environment anyway. Feeding back issues and those issues being addressed are key to ensuring that successful delivery can be scaleable.

John Wilson: I have a question for Mr Donaldson. If I picked up correctly what you said earlier, you are in competition with Registers of Scotland on title searches. Can you define that competition and indicate whether you think that that may be part of the reason why the IT system is not as accessible as you would like it to be?

Gary Donaldson: Absolutely.

The Convener: You should bear in mind that the keeper is sitting right behind you. [Laughter.]

John Wilson: I want to try to explore that question. It is clear that, if individual organisations or companies are trying to use information that they think should be publicly available, we need to explore how that can be done not only to make company searches more accessible but to provide more accessibility for individuals who wish to search titles.

Gary Donaldson: I am trying to think of a scenario. Statutory reports are required for standard conveyancing transactions. The keeper provides exactly the same type of reports that we do in respect of forms 10, 11, 12 and 13. My understanding is that there is a level playing field and that the keeper’s staff will use the same systems that we use to prepare those reports. Therefore, I am not concerned that any nonsense is going on in the background. To emphasise that, I can speak only for my own business, but we managed to achieve around a 60 per cent share of residential transactions. The keeper’s share is therefore certainly smaller. I do not think that there is any competitive leverage there.

Chic Brodie: On the basis that you are in competition with the keeper and any good competitor will determine their commercial and financial outcomes in relation to the competition, where are you better than the keeper?

Gary Donaldson: We are far more flexible. We provide a richer product, and we look at various data sources to supplement it, rather than just reporting from the register. Because there is competition from the public sector, we have had to ensure that we add value to our products over the keeper’s products. It is probably worth noting that, commercially, we do not compete on price. In general, our products are probably more expensive than the keeper’s. It is a matter of service delivery and the quality of product.

The Convener: That was a very good sales pitch.

Chic Brodie: It was a good answer.

The Convener: If there are no other questions, I have a final question for the Scottish Property Federation. Is there anything that we have not talked about in relation to the bill that causes concerns to property owners or businesses that deal in land?

Alan Cook: We are quite interested in the proposals on the prescriptive acquisition of land and a non domino dispossession. We have an interest in having a system that is workable, practical and pragmatic because we are trying to get on with life, if I may put it in that way.
It is completely understood and acknowledged that the bill has to button down certain mischiefs and ensure that people cannot make them for nefarious purposes. We think that a non domino dispositions are useful in dealing with title glitches and historic problems and enabling sites to be unlocked for development, but we are concerned about the workability of the proposed processes, including, for example, the need to satisfy the keeper that the owner has not possessed the land for the previous seven years. It is the old problem of trying to prove that someone has not done something. The keeper might be able to provide some guidance as to how that requirement might be satisfied, but we are concerned about putting a burden on people who might have no knowledge about the land over a seven-year period.

We are also concerned about the need to notify owners. In perhaps the vast majority of cases in which the commercial property industry seeks to utilise an a non domino disposition, the whole point of doing so is that one cannot identify the owner. In a typical situation, an individual might be trying to put together a large development site by piecing together a number of pre-existing title ownerships. There might be one ownership to the left and a different one to the right but, because of inaccuracies in the plans that were drawn up 100—or even 10 or 20—years ago, the jigsaw does not go together properly. If we present all that to the keeper, she might take a pragmatic approach to the mapping—we can speak to the keeper’s office about all that. On the other hand, the gap can be filled with an a non domino disposition. No one is trying to pull a fast one or steal someone else’s land; it is simply a technique. In such cases, the need to notify the Crown raises questions about how the Crown itself views that gap and whether it will see some value in that. As for the need to demonstrate that an applicant has occupied the land for a year before the application can be submitted, I am not quite sure how that would work with a developer who is trying to piece together land in which he has had no prior ownership interests.

The whole point of the process is to get to the point where one can register an a non domino disposition, after which 10 years’ prescription can run openly, peaceably and without judicial interruption before one can lay claim to a good title to the area in question. The conveyancing process tends to deal with the risk of something arising during those 10 years through title indemnity insurance and we are concerned about the effect of notification on the availability of such insurance. Up to now, a pretty invariable requirement of title indemnity insurers is that insurance will be offered only if no one who can possibly lay claim to the area has been told about it, and notification might stand in the way of securing such insurance, which is quite an important leg in making prescriptive acquisition of land work at a practical level.

Patrick Harvie: Mr Cook has explained fairly clearly why his members regard the a non domino disposition mechanism as convenient and useful and he has given us a fairly thorough description of some of the circumstances, which I am sure we all understand. However, is there a reason in principle why the first bid that is in the door is the only one that has any chance of securing the title, as has been suggested to us? Given the 10-year delay until people have a good title, as Mr Cook put it, is it not at least reasonable to add perhaps six months at the beginning to advertise a site so that other potential claims, including those from local communities in some circumstances, could be entertained?

Alan Cook: We are not trying to hoodwink anybody in the process, so I have no problem in principle with a site being advertised or with people knowing about it—leaving aside the concern that I expressed about the impact on the availability of title indemnity insurance. The issue is more about the timescales that the process demands, as against the realities with which we work in dealing with a property development, for example. It might not be practical to identify the problem, work out your strategy, start to advertise and then have a six-month standstill while you wait to see what comes out of the woodwork, before you can move on to the next step of pressing the button on your property development.

Patrick Harvie: Even your phrase, “your property development”, assumes that there is one party with an interest. Is there a reason in principle why the first claim that is in the door is the only one that should be considered to have any merit?

Alan Cook: That depends on the circumstances. I mentioned one circumstance in which a non domino dispositions might be used—when a jigsaw of titles with different ownerships comes together and each title is being sold to a property developer who will create a wider development on a larger area. In that case, it is hard to know who could have a claim to the title glitch area, other than the people on either side, who are co-operating with the developer in any event.

I recognise that there are other potential scenarios in which somebody might come out of the woodwork. For example, that could apply to a series of transfers of ownership through the sasine register that involved lots of fiddly little references to bits of a coal bunker, first-floor landings and little corners of land here and there. At some point in the process, somebody’s eye could have skipped a line and the last recorded title might miss one reference. The jigsaw would be
complete, but a tiny bit in the middle would be missing from the complete title description for the overall area. The a non domino disposition technique could be used in that case.

If you were being comprehensive, suspicious or cautious, you might ask how you knew that the person who granted the relevant title did not deliberately leave out that area as a ransom interest that they thought would have some value. I do not know whether that potential scenario ties in with your point that the first person who manages to get the title is home and dry, after the 10 years are up. However, if people can be identified, notification will pick up that situation.

Patrick Harvie: If substantial and reasonable effort is made to identify the owner, that will take a certain amount of time. I see no reason in principle why the same time should not be used to advertise the matter publicly.

11:00
Alan Cook: I can think of no problem in principle with advertising, because nobody is trying to hide anything.

John Wilson: I will comment on advertising.

Mr Cook, you referred to planning applications and developments. For any development, a planning application must be made and it should include neighbourhood notification. You gave the example of a coal bunker that someone may use surreptitiously as a ransom strip. Would it not be advisable to apply the same principle as we would with a planning application and give neighbour notification to surrounding landowners to say that title has been sought for that piece of land, rather than simply to display a public notice? That might help to speed up the process. Somebody could come back and say that the land belonged to them and they had title to it.

I was surprised to hear you say that it was in solicitors’ interest not to raise the issue because it might impact on the title indemnity insurance. Would it not be advisable to introduce a requirement for neighbour notification when title is sought for a piece of land for which there is no identified owner?

Alan Cook: Leaving aside the point about title indemnity insurance, I think that there is no problem in principle with that. If what you propose is purely about trying to notify owners who have been identified, then, if someone who seeks title to a piece of land has been through the process and not been able to identify the owner, they can notify only the people whom they have identified. We would not have any problem in principle with a wider process—such as advertising, neighbour notification or putting notices on lamp posts—that would give people the maximum opportunity to put their hands up and say that they had an interest in the area. However, we would have to ensure that it did not stand in the way of what we would regard as reasonable use of the process.

Ann Stewart: If the point of the proposal is to identify the true owner, that would be the first stage of the investigation anyway and, if the person who seeks title can locate the true owner, they will, in all probability, engage with that person. It is not about some kind of land grab. However, if the point is to ask why the developer should be the one who gets to have the gap site just because they own land in the vicinity, why there should not be a free-for-all and why other people should not get the opportunity to acquire the piece of land, that is a different issue.

We would need to be clear whether the object of the exercise was not to disenfranchise the true owner or whether it was to give anybody who might be interested in having a nice little patch of land, thank you very much, the opportunity to do so. Those are two different matters.

The Convener: There are no further questions, so I thank the witnesses for coming along. It has been extremely helpful and I am grateful to them for their time.

We now suspend for a couple of minutes to allow for the changeover of witnesses.

11:03
Meeting suspended.

11:07
On resuming—

The Convener: I am delighted to welcome our second panel of witnesses: Sheenagh Adams, the keeper of the register; Gavin Henderson, the bill team leader; and John King, the director of registration at Registers of Scotland.

We have quite a lot of ground to cover, so I exhort members to make their questions brief and to the point. We start with mapping, which is an issue that many witnesses have referred to; some of you will have heard us address it earlier.

Mike MacKenzie: Good morning. It is a great pleasure to meet the panel, even from the other end of the table, because it gives me the opportunity to thank you for a gift of some extra land that you gave me, or attempted to give me. I am certain that it was an error and I have asked my solicitor to get in touch to say, “Thank you very much, but we can’t accept this gift.”
The Convener: I should say that we do not expect panel members to have knowledge of every land transaction that they have dealt with.

Mike MacKenzie: Of course not, but it was in the keeper’s name so I felt it only proper to thank her.

I am sure that you heard the questions earlier. A number of witnesses have told us about problems with inaccuracies in the Ordnance Survey maps. There is sometimes a problem with the scale, particularly in rural areas. We accept that you are obliged to use the maps—they are the only game in town at the moment—but could there be improvements in the future?

Sheenagh Adams (Registers of Scotland): For the vast majority of registrations, the mapping that we have is fine. It works well and the scale is suitable. However, we accept that, at times, there are problems with using the Ordnance Survey map, and rural areas are a particular concern because of the scale that is used.

The Ordnance Survey map is just the starting point for us when we map the legal extent of a property, as we avail ourselves of a range of maps. We use the old county series maps to find out how things were mapped a long time ago, we use aerial photography, and we even use Google street view when that is appropriate to help us to identify the legal title. John King’s staff include specialist plan staff, so I ask him to say a little about how we do mapping and how we address the issues.

John King (Registers of Scotland): The mapping of a title into the land register is a skilled task. There is a skill in interpreting the description of the property in the conveyancing deeds that come to us. The first evaluation that we have to do is to consider whether the deeds are acceptable and whether they give us enough information as a starting point, and we then look at the Ordnance Survey map. Sometimes the deeds give us enough information and sometimes they do not. We have a set of guidelines for our staff to follow.

On the relation of property to the Ordnance Survey map, you are absolutely right to say that the map suffers from limitations of scale. The challenge for us is to ensure that our staff understand what those limitations are, how they can work within them, and how the three scales that we have to use differ. In general, we do not have major problems in towns and areas surrounding them. In those places, we find the scale of the maps and the level of detail that Ordnance Survey provides to be adequate.

I emphasise that the Ordnance Survey map is not a static map. Ordnance Survey aims to update the map with changes on the ground within six months, and it provides us with updates to the map on a weekly basis. We then base our examination of title on that information.

We have more of a challenge in mountain and moorland areas, which are covered on the 1:10,000 map. Figures from Ordnance Survey suggest that only about 1 per cent of titles in Scotland are affected by the 1:10,000 scale map, so although it covers a significant landmass, the impact on property titles is more contained. That is helpful to us because it means that we can take a more involved approach to mapping in those areas.

We have developed a number of techniques that we can use to supplement the map. Someone mentioned the use of supplementary plans in the previous session, and that approach is important and helpful. If we have additional data, we believe that we should use it where it is appropriate to do so. In addition, if there is an issue with a particular boundary line, we can add enhanced information from the Ordnance Survey map or based on what the solicitor has provided to us.

I emphasise that we recognise the challenges in mapping. On the training that we give our plan staff, we have aligned the training that they go through with the Scottish credit and qualifications framework. The basic standard of plans training is equivalent to, in the old terms, a higher national certificate, and our slightly more advanced training is equivalent to a higher national diploma. We invest a lot of time to ensure that our people are aware of the issues and can map appropriately.

Mike MacKenzie: I am still slightly concerned. That almost sounds like a patchwork approach. You look at various maps, such as Google maps and the Ordnance Survey map, and you try to put together something that is accurate. Do you agree that, given that modern surveying techniques are easily capable of surveying to a high degree of accuracy in any part of the country, rural or urban, it would be useful to move towards a much more accurate map in future? Do you have any plans to do that?

11:15

John King: The advantage of the Ordnance Survey map is that it is the only national map of Scotland, which means that we can map neighbouring properties on a consistent basis. I agree, though, that we have to acknowledge new technologies and think about how we apply them to the Ordnance Survey map to supplement what is already there. Last year, we, the Law Society of Scotland, the Royal Institution of Chartered Surveyors and Ordnance Survey set up a plans working group, the remit of which includes considering how best to use new technology in the
conveyancing process and in registering titles on the Ordnance Survey map.

Mike MacKenzie: Previous witnesses have suggested that some of the old title plans in the register of sasines should be included as supplementary information on the new title sheets.

John King: We have done that, where appropriate, for a number of years and intend to continue to do so.

Mike MacKenzie: I am sure that you heard the previous witnesses’ concerns about identifying flats. Should we encourage the notion that in all cases flats should have plans that allow accurate identification, or is there some convention for describing them consistently to ensure that there is no ambiguity about their location?

John King: We would certainly welcome a standardised property description for flats, particularly for the older tenements in Scotland’s cities. However, the fact that there is wide variation in flat descriptions has not necessarily caused problems. Our experience is that although there have been some issues, there have not been many, and they have tended to arise where two flats have been described in the same way—as, say, “the northmost flat” on a particular floor—or where the description is so vague that it does not relate to any of the flats on a particular floor. Where such problems arise—I should emphasise that that happens very infrequently—we suggest that the solicitor contact a surveyor. We are not necessarily looking for a map of the flat or of its location, but the surveyor should be able to indicate with some precision where a flat sits in a particular tenement, and we would give effect to that as well.

We have fewer difficulties with newer flatted properties, because their descriptions tend to be more precise and less vague. Sometimes floor plans are submitted to us and on occasion we use those to supplement the information on the land register title plan.

Mike MacKenzie: Going back briefly to inaccuracies in rural areas, I have no doubt that you will have heard the apocryphal story of the crofter whose hen had laid an egg on another crofter’s land. When the dispute was over the ownership of an egg, it did not really matter as crofter’s land. When the dispute was over, the crofter whose hen had laid an egg on another crofter’s land. When the dispute was over, the crofter whose hen had laid an egg on another crofter’s land, it did not really matter as much. However, with certain very valuable investments in renewable energy developments, associated infrastructure and so on, would it be of benefit in rural areas to work to a much more accurate map than the current Ordnance Survey map?

John King: Our experience is that, in such circumstances, there is an issue with the description of the property in the conveyancing deeds. The worst example that I have seen was a property described only as “Shore Cottage, Argyll”—which, of course, could have been anywhere in the area. A view had obviously been taken that the description was adequate for conveyancing purposes and clearly someone had possessed the property; however, it is impossible to map that property for land registration purposes. In such cases, we would have to ask the solicitor for more accurate information, which brings us back to the need for a plan that is sufficiently specific and detailed, meets our published deed plan criteria and enables us to plot the property accurately on the Ordnance Survey map.

Sheenagh Adams: Where we are not happy with the scale of mapping in rural areas, we have the facility to get Ordnance Survey to go out and map the area to a more detailed scale. We can also send out our own surveyor to look at issues on the ground if we cannot get the information that we need to make an accurate registration.

John Park (Mid Scotland and Fife) (Lab): If you were to move away from what Mike MacKenzie described as the current patchwork approach towards a modernised, more consistent system, would the net result be an improvement for users, be they individuals or organisations? Any modernisation project that you carry out would obviously have a cost element. Would you absorb that cost or would it be passed on to people who use the system?

Sheenagh Adams: On the first point, the introduction of the land register has been the big improvement in enabling people to access information about who owns a particular piece of land and, because it is a map-based register, to look at it. Extending the land register will have the biggest benefit.

Any move to improve mapping would involve a cost, which would be passed on to users. Registers of Scotland is a non-ministerial department. We are the only trading fund in Scotland, which means that we are self-financing and must earn all our income from the fees that we charge for registration activities and information provision. Ministers set the level of fees that we can charge and we must balance our books year on year, although there are no annuity issues. The cost of any improvements would be passed on to the users of the service.

Stuart McMillan: We have heard the phraseology of a patchwork. To me, that indicates that, of all the systems that are out there, none is suitable or perfect for the activity that you undertake. Is that correct?

Sheenagh Adams: I do not think that I would accept the word “patchwork”. We use different sources of information to get the best result to plot a legal title on to the Ordnance Survey map. As
John King said, the Ordnance Survey map is the sole and main map for Scotland and, at the end of the day, people can access that.

**The Convener:** If there are no further questions on mapping, we will move on. I am amazed and delighted that members have adhered to my exhortation to brevity. Let us hope that the trend continues.

The next issue is the timetable for completion of the register.

**Stuart McMillan:** What are the main practical obstacles to quick completion of the land register?

**Sheenagh Adams:** That depends on how you define “quick”.

**Stuart McMillan:** I mean as speedily as possible.

**Sheenagh Adams:** The land register has been around for just over 30 years. The overall national position is that about 55 per cent of titles are on the register and it covers about 21 per cent of the landmass of Scotland. In Renfrewshire, which was the first county in which the land register was rolled out, we have registered more than 70 per cent of titles and more than half of the landmass. However, that has taken 30 years.

At present, properties come on the land register only when they hit the trigger that causes first registration, which is a sale for value. While that remains the case, the process will continue to be slow. At the height of the property market boom, about 2 to 3 per cent of titles came on to the register each year, but at present the figure is only about 1.5 per cent, which reflects the continuing sluggish performance in the property market.

The bill provides for additional triggers that will bring in more registrations—we estimate that it will be about 7,000 a year from the new triggers. However, the general register of sasines was introduced in 1617 and was never completed. Nearly 400 years later, some properties have never made it on to the register of sasines. Obviously, we cannot give you a list of them, because they have never been registered, although Gavin Henderson told me yesterday that the University of St Andrews is one good example.

As I said, the additional triggers will speed up the increase in the land register’s coverage. It is also supported by voluntary registrations, for which we already have a system in place. Last year, about 5 per cent of first registrations were voluntary. For example, the Grangemouth oil refinery was a big voluntary registration. We did that because it was a condition of Chinese investment that there was a secure land register title.

Many of the titles that still have to come on to the land register will be fairly complex, because the easy stuff has been sold and transacted on. Complex title registrations involve specialist staff resource in Registers of Scotland. We have been growing that resource. We have to do it ourselves, as we cannot advertise for somebody with expertise in land registration in Scotland because, basically, that is us. Therefore, there will be time constraints because of the need to increase staff numbers and to train people to do that complex work.

**Chic Brodie:** Last week, we were told that, back around 1910, Lloyd George was able to get all the land in the United Kingdom registered in four years. What financial resources do you have, and what would you require to complete the land register in a much shorter time? What surplus do you carry? What would it cost you to compile the land register quickly? I understand that much of the work might require voluntary registrations.

**Sheenagh Adams:** We do not carry a surplus as such, but we have reserves that we can use.

**Chic Brodie:** What are your reserves?

**Sheenagh Adams:** At the moment, our reserves are declining. Obviously, we have been using them to cover costs because of what is happening in the property market.

For the next property decline, we should have something like £75 million in reserves. Our reserves have fluctuated: at one time, they were in excess of £100 million—at which point, ministers brought in deliberately loss-making fees to help to reduce the reserves. Obviously, that was successful.

We hold reserves both to invest in the different registers for which I am responsible and to cover indemnity costs. Entry in the land register provides a person with a state-backed indemnity, so, if something goes wrong, we pay out. At the moment, we pay out hundreds of thousands of pounds, but that will increase as the land register increases. We expect to need to hold about £6 million in reserves. However, I should point out that the single biggest payment that our colleagues south of the border have had to pay out from their indemnity fund was £8 million. We have therefore been quite lucky.

**Chic Brodie:** Let me be clear. I understand about indemnities, but you have reserves of £75 million. According to the financial memorandum, implementation of the bill will cost £3.9 million. What will you need to do—including using some of those reserves—to complete the register much more quickly than the 30 years that we have heard about?
Sheenagh Adams: Two or three years ago, we did some research into that. At that time, the figure that we arrived at was about £50 million to undertake a programme of voluntary registration to speed up the increase in the land register's coverage. One power of the present bill is keeper-induced registration, and John King and I are looking into that at the moment. Over the years, we have done a lot of pre-mapping in research areas; we considered all the burdens and servitudes, and all that sort of thing. We think that something like 720,000 titles in those research areas are not yet on the land register. Compared with some voluntary registrations, it would be quite easy and cheap to work on getting those titles into the register. We will be looking into the cost of that, and talking about it to the minister.

Chic Brodie: When will that happen?

Sheenagh Adams: We are working on it at the moment. We will be putting a policy—

Chic Brodie: What is your target date for completion of the exercise?

Sheenagh Adams: For the land register, John King is planning to present a paper to the Registers of Scotland board in March. The paper will consider costs in the research areas.

I am keen that the land register should move on. Keeper-induced registration of the properties in the research areas would bring land register coverage of titles up to about 75 per cent. That would obviously be a big improvement.

The Convener: Stuart McMillan wants to raise another point, but I would like to ask a follow-up question on costs. Various witnesses have talked about the costs of keeper-induced registration. From what you say, you could make progress with keeper-induced registration, using your resources to avoid charging fees to property owners. However, as we have heard in previous evidence, that is not the end of the story. With keeper-induced registration of a large and complex title, the owner may well incur substantial legal costs because they would want to work with keeper staff. Thought may have been given to the level of fees, but has thought also been given to the payment of a property owner’s legal costs—or at least to making a contribution towards them—when there is keeper-induced registration?

Sheenagh Adams: There is no provision for that in the bill. However, if keeper-induced registration ended up being wrong, there would be provision under the indemnity fund to cover legal costs, in order to help to put that right.

11:30

Gavin Henderson (Registers of Scotland): Section 80 of the bill provides for reimbursement of extra-judicial legal expenses on rectification. The issue would be whether things had been done wrongly or not. If everything had been done correctly, no payment of costs would be due.

The Convener: I understand that, but even if the keeper does everything correctly, you will appreciate that, for a complex title, the property owner may incur substantial legal costs simply through wanting to check the work that is being done in the process of registration. Many hours of work may be involved in checking a newly issued land certificate. Even without a fee, the exercise is not necessarily cost free for the landowner.

Sheenagh Adams: That would be the landowner’s choice.

The Convener: Not in a keeper-induced registration.

Sheenagh Adams: But the effort and investment that a landowner wanted to put into checking the outcome of a keeper-induced registration would be their choice.

The Convener: It would not be unreasonable for a landowner to want to check the work that had been done.

Sheenagh Adams: No, of course not.

The Convener: Thank you—I will go back to Stuart McMillan.

Stuart McMillan: There is the new power of keeper-induced registration, but there is also voluntary registration. The convener asked about keeper-induced registration, but before today we heard evidence suggesting that there could be a reduced fee for voluntary registration. Would it be advantageous to have a reduced fee for voluntary registration?

Sheenagh Adams: Her Majesty’s Land Registry covers England and Wales, and it has gone down the path of having reduced fees for voluntary registration. However, as I have said, it is for the Scottish ministers to set fees. A policy decision on reduced fees would be a matter for ministers, not for me as keeper.

Stuart McMillan: Have you made any recommendations to Scottish ministers?

Sheenagh Adams: No, not yet. The bill makes changes to the fee powers, and we would intend to hold a review of fees once the new fee powers were introduced. Obviously, we would assist Scottish ministers in consultation on options for fees that they might want to introduce.

Stuart McMillan: Would any properties—ones not currently on the land register—be particularly worth while or easy to get on to it? If so, will you target those properties?
Sheenagh Adams: I mentioned the properties in the research areas. For example, there might be one remaining flat in a block of flats, or one or two houses in a development. My own house is in an estate of 188 houses; we are not on the land register but all the neighbouring properties are. Completing particular areas would allow us to have whole map tiles on the land register. That would be beneficial, because obviously it is costly to run two systems. John King and the rest of us will consider the issue and come to a view, and we will discuss the priorities with Scottish ministers. The outcome of this committee’s deliberations will influence that.

Registrations such as the ones in the research areas will be the easier ones to do. Much of the work has already been done, and those properties would have quite a big impact in terms of title coverage, which is where the advantage lies for future conveyancing costs.

Stuart McMillan: Should there be a statutory target—or even a series of targets—for a phased completion of the land register? Obviously, I do not expect you to give an answer of 400 years, similar to the sasines register.

Sheenagh Adams: There can be advantages and disadvantages in having targets. If they are in the bill, disadvantages could arise if things go wrong and the targets are not met. Furthermore, not enough research has been done into what a reasonable target might be, and into the balance between cost and advantage.

For Registers of Scotland, I set targets for turnaround times and so on. However, we have never set a target for the numbers of titles or the percentage of landmass to come on to the register.

Stuart McMillan: Would it be beneficial to target two or three areas and focus on getting many more properties on to the register?

Sheenagh Adams: We would have to marry such targets with the various mechanisms such as triggers, voluntary registrations or keeper-induced registrations. After all, there has to be some mechanism for getting properties on to the land register. Obviously a lot of those matters are for Parliament and ministers. If a target is set, my job as keeper will be to deliver it.

Stuart McMillan: As far as you are concerned, would it be more beneficial to get more land or more properties on to the register?

Sheenagh Adams: It depends on what you are trying to achieve. If you want cheaper conveyancing, my answer would be to concentrate on titles; if you want to get a complete picture of who owns Scotland, you will need more of both. Of course, some properties never change hands—they are either inherited or owned by bodies such as the Crown, local authorities or the churches that still exist. Getting those properties on to the register will probably not be of much benefit as far as conveyancing costs are concerned, because they are not being conveyed. However, there are other policy issues to take into account. In some ways, it will be a policy decision for Scottish ministers but, as I have said, it all depends on the objective.

Stuart McMillan: Have you made any recommendation to ministers on which is most important?

Sheenagh Adams: I have not discussed the matter with Mr Ewing, but if he asked my advice obviously I would tell him the pros and cons.

Patrick Harvie: On the idea of having a target date or series of target dates, you suggested—quite reasonably, I suppose—that if there were a statutory target there would be a problem if something happened that meant that it could not be met. Perhaps I can draw a comparison with the statutory target for eradicating fuel poverty. Things have happened to make meeting that target date much more difficult; indeed, if energy costs continue to rise, it might well be impossible to meet it. However, the law says that ministers must do everything practically possible to meet the target date and, even though energy costs are rising, those duties on ministers continue to exist. In this legislation, we would not be saying simply that, by a certain date, the register will be complete; instead, we would be placing duties on either ministers or public bodies such as yours to meet the target date. Is that not a reasonable approach?

Sheenagh Adams: Yes. Obviously, you would have to weigh the benefits against the disadvantages, but such an approach is perfectly feasible and reasonable.

The Convener: John Wilson has questions about errors on the register.

John Wilson: Some witnesses have said in evidence that there is a relatively high error rate in accuracy of first registrations. How can Registers of Scotland resolve such errors and how can we work more closely with solicitors and others who make such registrations, in order to reduce the number?

Sheenagh Adams: I think that the error rate in the register is very low. Of course, any error is unacceptable. As keeper, my aim—indeed, my statutory responsibility—is to have an accurate register.

We take quality and accuracy very seriously and spend a lot of time and effort on training staff to keep errors to a minimum. Recently, we have
been doing a lot of work on quality issues. As John King has been leading on that activity, I ask him to talk about it briefly.

John King: We have always emphasised quality, and maintaining the integrity of the register is paramount. People must have confidence in the register. We ensure that staff are aware of the consequences of making errors; they are fully trained so that they have the skills not to make errors.

There are more than 1.4 million registered titles, and we receive more than 250,000 applications a year. We also receive between 250 and 350 applications a year to rectify inaccuracies in the register. We reject an application if we take the view that there is patently no inaccuracy in the register. When we have made such a decision and another party has disagreed, but we still think that our decision is right, we cannot adjudicate; that is for the Lands Tribunal for Scotland or another court. Having set that context, I echo the keeper’s sentiment that we are confident that our staff have the skills and that our absolute number of errors is low.

To ensure that we have a clear picture of what staff are putting out, we take a holistic approach to quality. We use a recognised international standard that is used in other industries—ISO 9001. One part of that involves sampling our work in a more structured and formalised way. With first-registration applications, we sample the key things that we know can create errors. That is based on feedback from customers. For instance, we ensure that we get right the names of proprietors and standard security holders, and we ensure that the mapping conforms to what we expect. That allows us to have a fairly clear view of our internal performance.

Externally, we get feedback from solicitors and we get rectification applications. On a lower level, there are also administrative mistakes, such as typographical errors. Solicitors may send in a request to have a title updated in a way that would not impact on the legal effect. It may be that we have made an irritating mistake; they are irritating, and we are always disappointed when we make them.

We aim for a 98.5 per cent accuracy rate, and we tend to be there or thereabouts. When low-level issues come back to us, more than half of them relate to errors that were made a significant time previously, and not to current applications that have only recently been completed and returned to the solicitor.

We take the issue very seriously. We are confident that our level of quality is good and that an effective form of quality control is in place to minimise the number of errors or inaccuracies.
Gavin Henderson: The first thing to say about the offence is that the bar for being caught by it is relatively high; the behaviour must involve a false or misleading application. I accept that that could be due to an error, but the information has to be recklessly or intentionally provided.

“Recklessness” is a pretty clear term in Scots law. It is much more than carelessness and more than negligence—it is beyond that. A solicitor’s genuine error would be unlikely to fall within the ambit of recklessness, unless it were something that had a potentially serious effect. Although an error could be caused by wilful blindness to a fraudster’s application, it should be remembered that solicitors, as gatekeepers of the land registration and application forms process, ultimately have a responsibility to ensure that what passes their desks is accurate. There is an underlying message about the accuracy of the register, the integrity of the keeper’s indemnity, and fraudsters getting access to funds from lenders or elsewhere.

John Wilson: What evidence do you have—if any—that makes it implicit that section 108 has to be contained in the bill?

Sheenagh Adams: Obviously, section 108 has been included in the bill on the advice of the police force, those who are responsible for dealing with serious crime and the Lord Advocate. Indeed, the judicial factor in the Law Society of Scotland has taken the view that the section is a necessary and helpful addition to the tools that are available to combat fraud.

I know that there is particular concern about mortgage fraud. As Gavin Henderson said, I am obviously concerned about the impact on the indemnity funds that we hold, so we have no reason to believe that section 108 should not be included in the bill. It has been strongly supported by those who are responsible for pursuing fraud and fraudsters.

Patrick Harvie: Is there some ambiguity about what the word “misleading” means in this context? Some people might make the case that an application that fails to disclose the ultimate or beneficial owner could be regarded as being misleading and that, again, that relates to areas in which money laundering or the use of offshore tax havens and the state’s ability to collect taxes that are due could be issues. Do you have a response to the various proposals that have been suggested on that, either on requiring declaration of the beneficial owner or on limiting registrations in the name of offshore companies?

Sheenagh Adams: That is not an issue that has been raised with me in my two and a half years as keeper. The issue has come up only since the bill was published; Gavin Henderson has been considering it.

Gavin Henderson: I am not aware that the law requires a beneficial interest to be declared on an application form now, so it would not be misleading not to include that. What I have heard in evidence is that the idea of requiring it to be declared in the land register is being considered. If that were to become the law, to not include it would be a false or misleading statement.

Patrick Harvie: I suppose that there is a difference between what people would understand as being misleading and what would be regarded as being misleading if the offence were being prosecuted.

Gavin Henderson: If people are not required to provide that information, it is not misleading not to provide it.

The Convener: I want to pursue a further question on the section 108 offence. We have heard quite a lot of evidence from people in the legal profession who are concerned about the new offence and its implications for them. Clearly, agents are already covered by the money-laundering regulations that require them to take reasonable steps to ensure that they properly identify their clients and so on. From a practical point of view, what more would lawyers have to do in order not to be caught by the new offence?

Sheenagh Adams: Lawyers will have to continue doing what they are doing, in general. We in Scotland are lucky in that our legal profession takes its duties seriously and tries to ensure that clients are who they say they are. I was surprised that members of the legal profession were so uptight about inclusion of section 108. As I said, there is support for the provision from those who are responsible for pursuing fraud. I do not think that the legal profession should be worried by it; the vast majority of practitioners will not be affected by it because they take their duty of care seriously.

The Convener: The clerk has reminded me to declare my interest as a member of the Law Society of Scotland, although I am not currently practising.

I am interested by your response that lawyers should keep doing what they are doing. If the offence already exists under money-laundering laws, why do we need another offence that says the same thing?

Sheenagh Adams: That is the advice of the Lord Advocate, the Association of Chief Police Officers in Scotland and those who are responsible for dealing with serious crime. Also, the existence of the tool is seen as being a deterrent in itself.
The Convener: I understand that, but it is a deterrent only if it is clear what steps need to be taken to avoid being caught by the offence.

Sheenagh Adams: I think that solicitors would be clear about the steps that they would need to take.

The Convener: That is not what they told us.

Sheenagh Adams: I think that solicitors understand what they would have to do, and those who are honest—the vast majority of solicitors in Scotland—will have no problem with the provision, which is aimed at people who are recklessly or knowingly participating in fraud.

Gavin Henderson: There are some issues about the prosecution of mortgage fraud—in particular about how difficult it is under existing law. That issues include proceeds of crime, money laundering and the common law of fraud. In each case, knowledge of someone’s state of mind must be proved—there must be proof that they suspected something. I understand that that is difficult to do. The offence in the bill would change the prosecution element to recklessness. Whether that is good or not is a matter for the minister.

My understanding of the difference is that, if a case has been established to that standard, the use of the recklessness provision would mean that the burden of proof would be on the accused, who would have to explain why they had acted recklessly. Of course, such a defence could be established—to my mind, the defences in the bill would be pretty robust and relatively easy to establish, especially for solicitors who were relying on information from their clients or were otherwise themselves the victims of the fraud, rather than being part of any conspiracy.

The Convener: Thank you, that is helpful.

On a related point, which involves the question of errors in the register, I understand that, at the start of last year, Registers of Scotland introduced a £30 fee for when a register application is rejected for being inaccurate. That is perfectly reasonable, because that incurs more work. We have heard evidence from the legal profession that that is fine, as a principle, but that it should perhaps also apply the other way, so that if you produce a certificate that has errors in it and lawyers have to incur expense in making a fresh application to rectify it, you should pay their costs.

Sheenagh Adams: There is a provision for us to pay legal costs if the register needs to be rectified. The Law Society of Scotland strongly supports the rejection fee, which was introduced by the Scottish ministers, who set the fees. It was designed to catch simple but regular errors, such as solicitors putting in the wrong form, not signing forms, putting in the wrong date, not being able to calculate fees if they are not on direct debit and sometimes not knowing what year it is. That has reduced the rate of rejections by about 50 per cent.

We are part of the Crown and have no income other than what we charge in fees for registration and provision of information so, if we had to pay a fee for the type of errors about which John King talked, it would have to be passed on to fee payers in general.

The Convener: It might act as an incentive to reduce the number of errors.

Sheenagh Adams: As John King said, we take that seriously. As keeper, I want an accurate register. We are doing a lot of work to minimise our errors. Our error level, about which John King will write to you, is already low and, from my knowledge and that of previous keepers, has been consistently way below the level of errors for which solicitors have been responsible.

Mike MacKenzie: Earlier, I mentioned the gift of land that you tried to give me. In my short life and with a relatively small number of transactions, I seem to have encountered a great number of errors. Is it possible that you are talking about reported errors, rather than errors that may be latent and are yet to manifest themselves or become obvious?

Sheenagh Adams: As John King said, many of the errors that we see now were made in the early days of the land register. The error rate of registrations that we send out now is way below the 1.5 per cent that is allowed for in the targets.

Mike MacKenzie: Part of the impetus of the bill is a desire to hasten completion of the register. We heard words to the effect that much of the low-hanging fruit has been picked—many of the easy titles have been dealt with—so do you anticipate an increase in the error rate with an increase in complexity and in the pressure to complete the register? Might that pose a problem?

Sheenagh Adams: That risk exists, but our job is to manage it and to ensure that what we register is accurate.

Sometimes, people talk about the register being wrong when, in fact, the register is right and they just do not agree with it. Many of the complaints that we get are from people saying that they do not think that we should have registered a piece of land. I regularly see correspondence on one case about the loft space in a garage. Somebody used the space because the old lady who used to own it allowed them to use it. She died, the property was sold and the new owner said, "Get your train set out of my garage." The person's view is that the register is wrong because it should show that they
have ownership of that loft space through use, but my view as keeper is that it is not wrong.

There can be debate about what we mean by accuracy and whether the register is right.

The Convener: I want to clarify one point about the section 108 offence. Mr Henderson, I think that you said in response to a question from me that “recklessness” is a well-recognised concept in Scots law. That is not the advice that I have just had. Do you want to reflect on that?

Gavin Henderson: “recklessness” is included in common-law and statutory offences across the statute book. You can take advice about whether the term “recklessness” has itself caused systemic problems in Scots law. The Law Society’s submission said that use of the term “recklessness” is not compliant with the rule of law. Clearly, that is to overstate things. If the term was not compliant with the rule of law, it would not be compliant with the European convention on human rights and half of Scots law would need to be changed.

The Convener: That is interesting. I am just looking at the evidence that we received from Ross MacKay of the Law Society. He was explicit that

“The word ‘reckless’ is not known in Scots law”.—[Official Report, Economy, Energy and Tourism Committee, 11 January 2012; c 774.]

Gavin Henderson: We would not agree with that.

12:00

The Convener: There are no more questions on the rectification of the register, but I have a brief point to make on dispute resolution. We will then move on to other matters.

In hearing evidence, the committee has been quite interested in how we resolve disputes—not disputes involving the keeper but between property owners, when there is a discrepancy over a boundary. We understand that in England and Wales there is an independent adjudicator on disputes in respect of registration of land. Are the current arrangements, which require the parties involved to raise a court action, sufficient? Do we need to simplify the process? For example, might there be value in allowing the Lands Tribunal for Scotland a role?

Sheenagh Adams: Most cases of dispute should go to the Lands Tribunal for Scotland. The adjudicator in England is set up on the same basis as the tribunal rules, so there would not be much difference in having that kind of set-up. People can challenge the decisions of the keeper in court, but the Lands Tribunal would be the normal place to have such issues dealt with.

Gavin Henderson: The bill already provides for appeals against the keeper to go to the Lands Tribunal in all cases. At its most extreme, that might be for a refusal to rectify the register. Underlying problems with a title in property law may still need to go to the Court of Session for declarator. At the moment, the keeper might exclude indemnity in relation to a title because the position in property law is unclear. The question whether that, in itself, is overly expensive is worth considering. In such cases, an additional role for the Lands Tribunal may be of help, but that is a matter to put to the minister next week.

Rhoda Grant: I have a small point to make on that. We are moving to questions on a non domino titles. In the evidence that we received earlier, which you will have heard, a reason was given for requiring those titles where a strip of land is wrongly mapped and there is a gap. Could the situation not be dealt with in the same way as errors in the register—in fact, could it not be seen as an error in the register—when mapping is not joined up? It would be down to the keeper to resolve that and, failing that, the matter would go to the Lands Tribunal.

Sheenagh Adams: I do not think so: I would have no way of knowing whether it was an error or whether there was an owner of that land. I would not be able just to say that it must have been a mistake and include it in the register. There would have to be proper procedures to cover that situation; it could not be viewed just as an error.

The Convener: If members are content, we will move on to electronic registration and IT systems, on which we have heard quite a lot of evidence.

Chic Brodie: I ask the following questions acknowledging that you have been in situ only since July 2009. They are also predicated on my desire to see the land register completed sooner rather than later. I would like much more proactiveness than the passivity that is suggested by, for example, voluntary registration.

In an article in JournalOnline, Ms Adams writes:

“Registers of Scotland is a key part of the infrastructure that supports the Scottish economy, underpinning a property market worth over £20 billion.”

We have received other submissions that say clearly that

“effective management of the use of land”

and the knowledge of land are required

“in support of economic, social, and environmental sustainability.”

My first question addresses the IT and commercial aspects. We heard earlier that Millar & Bryce is in competition with Registers of Scotland. Why was it possible for it to enter the market in competition
with a public concern such as Registers of Scotland?

**Sheenagh Adams:** Millar & Bryce has been in business since the 19th century—predating the land register—and provides information not just from the land register but on a range of things, including planning applications and information from the Coal Authority. It provides a much wider range of information. Millar & Bryce is our customer—in complex cases it will sometimes outsource the work to us. We do not see ourselves as being in competition with the company. We provide a service and people can use it. Obviously, Millar & Bryce does far more in the market on this than we do, but some people choose to use our service. John King might want to add something because he has been involved in providing that service a lot longer than I have.

**John King:** When the land register was first set up, we had a monopoly on completing reports and provision of information. That changed at some point in the 1990s. I cannot remember the reason why it changed but Millar & Bryce or another search company must have made a pitch to ministers, directly or via the keeper. It was agreed that it would benefit conveyancers and their clients to have competition in the marketplace. An active marketplace can regulate the price of reports.

**Chic Brodie:** I understand the value of service and efficiency in organisations.

I come to IT. You kindly provided information about the ARTL—automated registration of title to land—system. We heard two weeks ago that it is unfit for purpose and a written submission from the Council of Mortgage Lenders expresses the same opinion, yet we have spent £7 million since 2007 on developing and implementing ARTL. You have a contract with the suppliers for 10 years from 2004. Why has the uptake of ARTL been so bad and why has the impression been created that it is not fit for purpose? How involved were the users in the development of the system?

**Sheenagh Adams:** ARTL was first looked at as a proposition back in the late 1990s; indeed, Scotland was only the second country in the world to have a system of that nature. It is not a product that one can just buy off the shelf.

ARTL is fit for the purpose for which it is designed and is being used by people, although not as many as had been anticipated. The problem with ARTL is that it is not Amazon—its operation is extremely clunky. The system was developed in a close partnership between Registers of Scotland and the Law Society. In many ways the problem with ARTL is that it reflects what lawyers wanted at that time. The legal business and IT have moved on considerably since then and ARTL is now behind the times in how it operates and what it offers.

**Chic Brodie:** But it has been in use for only a few years.

**Sheenagh Adams:** Yes, but unfortunately the design and specification were decided way earlier. I understand that it took quite a while to develop. I should make it clear that Millar & Bryce uses not ARTL, but registers direct; the earlier comments from its representative were about a different system.

ARTL was designed to be used primarily for relaying and discharging of standard securities when the remortgage market was at its height. It is very good at that—that is what it is being used for—but just after it came in the remortgaging market pretty much collapsed, so the business that it was designed to cover is no longer there, which explains why the number is reduced.

**Chic Brodie:** A slightly different view was expressed to the committee.

Leaving that for a minute, let us concentrate on IT, and management and efficiency. The 2010-11 annual report and accounts for the Registers of Scotland says:

“This year two projects in the change programme were reviewed and cancelled principally on business benefit and affordability grounds. Our eSettle project and our Content Management System have both been halted resulting in constructive losses, which are declared in our accounts.”

We are told by some users that ARTL is not fit for purpose, and you have just cancelled two projects. You are involved in a contract for 10 years with the same supplier that produced ARTL. Where are you going on IT systems that will give people the security that they will be able to get the information that they need and want, sooner rather than later? What confidence can you give the land community that the systems that you will develop will be fit for purpose?

**Sheenagh Adams:** One of the big issues is that Registers of Scotland has not had an intelligent client function or, where it did have an intelligent client function, it was not fit for its purpose as the client side of the IT equation. When I became keeper, I appointed a new IT director and finance director. We had two IT directors and one person moved on to a different position. The current IT director took up his place last summer and he is creating a team that will have the skills to develop or commission the systems that we need. We are also in discussion with our current supplier about changes to the contract, where it goes, and whether it lasts for the full 10 years.

None of us on the Registers of Scotland board were involved in agreeing to that partnership and its contractual terms. Obviously they have not
delivered what the organisation wanted. We are, however, absolutely clear that we have done all the proper project reviews of what was done—

**Chic Brodie:** I am sorry to interrupt, but has the supplier been penalised? Did the contract contain penalty clauses?

**Sheenagh Adams:** Late delivery charges were provided for within the ARTL contract. We levied those against the supplier and billed it for about £1 million for late delivery charges. Unfortunately, that was the only project within the contract that provided for such charges to be levied.

**Chic Brodie:** It might have been worth paying a penalty to get out of the contract.

Section 96 of the bill allows for provision to be made for registration. We have heard—

**The Convener:** Before we leave that point, I would like to interject. Our information is that the best part of £7 million has been spent on ARTL, which does not work. All the evidence that we have heard is that it is not fit for purpose. That is pretty damning—

**Sheenagh Adams:** I disagree with that. It is being used. For example, Glasgow City Council uses it regularly to lodge repair notices and it has benefited from the reduced fees that are charged for using ARTL. One of my colleagues told me that Glasgow City Council has saved something like £60,000 through its use of ARTL.

It is therefore fit for some purposes and is being used. Obviously, some type of transaction will not go through and dispositions require both solicitors and all the lenders to be signed up for and willing to use ARTL. There were flaws in the system’s design, but they reflected what the legal profession said it required at that time. It is fit for purpose and is being used as we speak.

**The Convener:** Well, you said that it is fit for some purposes, which suggests that it is not fit for others. What I am getting at is the fact that a lot of public money has gone into it and it is not working. Who in Registers of Scotland has been held responsible for that?

**Sheenagh Adams:** We are providing evidence to the Public Audit Committee on that. The people who are on Registers of Scotland’s executive management team are new.

**The Convener:** What has happened to the old ones?

**Sheenagh Adams:** They have gone.

**The Convener:** To better jobs with more money elsewhere in the public service.

**Sheenagh Adams:** A variety of people have gone to a variety of places. Some have retired and some have moved on to other jobs. As keeper, my concern is to ensure that the organisation has a proper intelligent client function so that, in future, we get systems that people are desperate to use, love using, and offer real value for money.

**The Convener:** I know that Stuart McMillan wants to come in, but I will make an observation. Having spent many years on the Public Audit Committee, I know the familiar saga of it all going wrong in the public sector and huge sums of public money disappearing into black holes because of things that do not work properly while those responsible move on to better-paid jobs elsewhere in the public sector.

**Patrick Harvie:** That never happens in the private sector.

**The Convener:** Sadly, we are not responsible for overseeing the finances of the private sector, Mr Harvie.

**Patrick Harvie:** I wish we were.

**The Convener:** We are responsible for overseeing the finances of the public sector.

**Stuart McMillan:** It would certainly be useful for the committee if we could obtain a report that gave a monthly breakdown of the usage of ARTL from when it started. That would give us a fair indication of usage across the country.

**Sheenagh Adams:** I would be more than happy to do that. We provide a monthly report in the *Journal of the Law Society of Scotland* on the number of people who are signed up for ARTL and what its use has been over the previous period. We would be happy to provide a detailed breakdown of the numbers and who uses it.

**Stuart McMillan:** Will that include the number of transactions?

**Sheenagh Adams:** Yes.

12:15

**Chic Brodie:** I admire your defence of the system. You said that it was predicated on the remortgage market, yet we have a submission from the Council of Mortgage Lenders that says: 

“the ARTL system has had limited use and questions are regularly raised of whether it is fit for purpose.”

I will let that lie.

My final question is, given that we have spent £7 million on ARTL, will it be binned or upgraded, or will you replace it with something else?

**Sheenagh Adams:** ARTL has a number of elements, one of which is the digital signature element—the public key infrastructure part—which accounted for about a third of the expenditure. We are fairly sure that it will be possible for that to be...
reused. I am not a technical person, but that works very well and is very secure, so we envisage it being a feature of any future system.

At the moment, ARTL is clunky because, for example, you have to go in several times and put in your digital signature, which users do not like, especially the bulk conveyancers, who want to be able to go in at the end of a process and sign off a large number of transactions—50 or 100, say. The way in which it is presently structured is based on what the legal community wanted.

I am surprised that the Council of Mortgage Lenders takes the view that you cited, because it was involved in ARTL’s development—indeed, one of its members participated, along with Mr Swinney, in the official launch in 2009. The Council of Mortgage Lenders was fully involved in the development of ARTL and has continued to be involved in it through stakeholder engagement with Registers of Scotland.

**John Park:** The issue of access to the land register for the public is one that we need to consider as part of our deliberations. From my experience of working with a variety of community groups that can access a range of information about decisions that their organisations want to take, I know that it is difficult to access information about the land register. In my experience, it is something that they would need direct assistance with. There is a lack of knowledge and understanding about what can be achieved.

That ties in with the services that you provide online but, in addition, there needs to be an awareness of what people can find out and how they can find the information that they want. Have you done any analysis that you could share with us of the engagement that the public have had with the system? Are there any gaps or areas in which there is room for improvement?

**Sheenagh Adams:** We could talk about a range of things in that area. Until I took up the post of keeper, Registers of Scotland was an organisation that wanted to stay way below the radar. The view was that, as long as the solicitor community knew who we were, that was okay. My view is that we are a public body—a public service organisation—so citizens need to know about the service that they get from us.

For example, we have talked about indemnity. Most people around the table are probably house owners. Many of your properties will be registered on the land register—we know that Mr MacKenzie’s definitely is—but people do not know what that means. They do not know that that provides them with an indemnity—a kind of insurance policy from the state. As keeper, I want to do a lot more on that.

One of the big areas on which we interact with the public is that of house prices. We used to charge for information about house prices, but that is now a free service. We have done a lot to publicise that as a way of publicising the organisation so that people find out about us and can then find out about the other information that we can supply.

We would like to see an online system that the public can access and from which they can find out information easily. At the moment, they would have to come through our customer service centres, as the registers direct system is designed for use by businesses such as Millar & Bryce, which are obviously bulk users.

People can phone, e-mail or call into our customer service centres and get the information, but obviously we have to do more to publicise that. I would like to see any new system that we develop being more citizen centric and able to provide the public with the information that they need. Community groups sometimes come to us through their MSPs and get information that way, and we are obviously happy to help.

**The Convener:** If members have no further questions on that aspect, I want us to move on to the final main topic, which is the question of a non domino titles. We have had a lot of evidence on that from different parties.

**Patrick Harvie:** First, will you tell us your general attitude to the provisions in the bill on notification of the owner or, when the owner cannot be found, notification to the Crown? Those provisions were not in the Scottish Law Commission’s proposals but they are in the bill. Do you have a response to that, or any comments on how they would work in practice and what their effect would be?

**Sheenagh Adams:** Our view is that a non domino titles are a useful tool in property law and conveyancing in Scotland for a variety of reasons, including both the jigsaw that the previous panel talked about and bringing land back into productive use. I am keen to ensure that people develop an understanding of how the tool works and of its purpose and that it is seen to be fair and not a sneaky legal means of stealing somebody else’s land.

The way that the system works has developed through custom and practice as the current land registration legislation is not specific enough. I think that, through the new bill, ministers are hoping to achieve a balanced approach to rights and bringing land back into use. I ask Gavin Henderson to talk about the detail.

**Gavin Henderson:** The committee will be aware that the bill includes some proposals that were included in the Scottish Law Commission
John King may be able to tell you more about the practical issues with the notification process, which is designed to track down the true owner. The committee heard from the earlier panel of witnesses that tracking down the true owner is something that they do anyway, thereby making a non domino titles redundant. However, I have seen a real life example in which one of the big firms in Scotland wrote to the Registers of Scotland to ask for a non domino title over a particular part of development land. The Registers of Scotland replied that the firm had to contact the true owner and provide proof that it had done so, and a couple of months later a letter came back to say that the firm had found the true owner, which had sold it the land, and the file could be closed.

That is the intention behind the notification process: to ensure that the true owner is searched for properly and that the process is sufficiently transparent. The committee may wish to consider whether we want to go further down the road of transparency, which the advertising suggestion would do. The question is one of balance: how do we balance the rights of true owners with the interest in the land being reused? The committee might want to ask the minister about that. If landowners and the Scottish Property Federation have no objections to advertising, perhaps that is a legitimate route to go down.

**John King:** During the first 15 years of the land register, we had no policy on a non domino dispositions or titles. If a solicitor submitted one, we accepted it. In the mid-1990s, we became aware that a number of people were doing that on a speculative basis: they were identifying land that, on the face of it, was abandoned and submitting a title through a solicitor. That caused a minor furor, particularly in the Edinburgh area, and prompted us to review our approach.

In conjunction with the Law Society of Scotland, we arrived at the policy that we have today, which is to make due inquiry as to the reason why the person wishes to submit an a non domino disposition; what their connection is with the property; and whether they have made inquiries to establish who the true owner is. If they have established the true owner, we want to know whether the true owner still has an interest in the land and, if they do, why they are not conveying the title to it. From our perspective, the policy appears to work reasonably well and seems to be well understood by the conveyancing profession. We used to receive just the a non domino dispositions, whereas they now come in supported by the evidence that we require. Solicitors seem to be familiar with the policy. They are aware that, unless they go through that due process, an a non domino disposition will not be accepted.

I emphasise that we do not have a blanket policy not to take those dispositions. We just want to be sure that there is a valid and legitimate reason why we should agree to take them on to the land register.

**Patrick Harvie:** No one has argued that use of the facility should be prevented in all circumstances. However, if the new provisions on notification are basically broadly in line with existing practice, I presume that the actual effect will be non-existent and will not change what is required or expected of people. Is that right?

**John King:** That seems to be a fair assumption.

**Patrick Harvie:** Therefore, if there is a problem with the current process, the implication is that the bill needs to go further. What would be the practical effects of any change in the bill to require advertising, neighbour notification or something that invited other applications, perhaps from community groups or from the Crown in wider circumstances? Would you find anything problematic in managing that process?

**Gavin Henderson:** Are you asking only about advertising or about scrapping prescription and starting a free-for-all bidding process?

**Patrick Harvie:** I am talking about the range of possibilities that the committee might consider and that have been mentioned in evidence, as you will be aware.

**Gavin Henderson:** In theory, there is no problem with an advertising provision. It would work. The question for the keeper, for registration purposes, would be whether there was evidence that sufficient advertising had been done. There are many examples of provisions on the statute book that require advertising in similar ways, such as on the nearest lamp post or in newspapers. That could be done in different ways.

The committee has heard evidence that we should perhaps just have a public auction for prescriptive land. For Registers of Scotland, the question is about who owns the land. The method by which somebody receives it is not necessarily a registration matter; it is about whether it is fair that they acquire the land in that way. It is really for the minister, rather than this panel, to say whether it is fairer to have a system in which a person can acquire land by prescription—which of course in itself creates a market, because it makes people want to find and use land that is abandoned—than a system whereby people have no incentive to find land because someone else with deeper pockets will just come along and take it and then use it.
That would be like “Homes Under the Hammer”, but for land. A market would be created in which people looked to buy up bits of land and sell it for its market value. Whether that is right is an open policy question.

**Patrick Harvie:** It has also been suggested to us in evidence from Andy Wightman that, because citizens do not have the right to proactively register common land—or there is ambiguity as to whether they have that right—the a non domino process can be used to take into private ownership land that is recognised as common land but which does not currently have title. Is that an issue and do you have comments on the potential solutions that have been suggested?

12:30

**Gavin Henderson:** Where land is genuinely owned in common, the provisions on notification exist to support the owners of that common land. The person who wishes to take prescriptive title will have been required to notify the owners of the common land before they can get the title, and those owners will be able in effect to veto prescription. The effect of the bill is to empower communities.

The issue is, as Mr Wightman would say, that a lot of those communities do not know that they own the land. The keeper would have to satisfy herself that the true owner had been notified, which may mean finding out who the common owners are and notifying them. Failing that, if it was reasonable to presume that there was no other owner, the Queen’s and Lord Treasurer’s Remembrancer would be notified. There is a relatively robust process for ensuring that the people who own the land are notified and have the ability to veto the sale, rather than there being—in Mr Wightman’s language—hostile takeover of the edges of common land.

**Patrick Harvie:** Mr Wightman argued that there could be a greater or more proactive opportunity for citizens to register common land. Following on from that, does anyone have any comments on the written evidence that we received from Robin McLaren of Know Edge Ltd on that point? He mentions the proliferation of spatially enabled technology. Many of us have such devices, and he suggests that someone could initially make a provisional registration, which could later be upgraded through some sort of quality assurance procedure.

That idea chimes a little bit with Sheenagh Adams’s comments about being more citizen focused or citizen friendly. Could there be a more participative relationship with citizens through such a process?

**Sheenagh Adams:** I want to ensure that citizens know about and can access the services that we provide. The bill makes no provision for citizens to play a role in trying to identify ownership of land. I do not know—would someone go about with their iPhone trying to sort something out?

If a community comes along and says, “We own this land,” and puts in an application for registration, we carry out the normal investigations, as we would for any application that came in. We would look at the title history through the sasine register—or indeed, at whether the title is not on the sasine register—and at the history of that land and who owns it. We would then take a view on whether a person or group could show that they were the owners of the land.

**Patrick Harvie:** If the witnesses have not had the chance to see the written evidence that has just come in, perhaps we could provide them with it and ask that they write to us with their responses, which I would find interesting.

**The Convener:** That is reasonable—it is probably not fair of us to spring that on them without notice.

**Mike MacKenzie:** I am slightly concerned that the suggestion about public advertising in such cases stems from the feeling that all development is carried out by greedy developers who stand to make trillions by successfully accumulating bits of land to which they may have no right.

Might publicly advertising land whose ownership is uncertain give rise to vexatious or spurious claims of ownership? If that was the case, how would you attempt to resolve such claims? Could that take a long time?

I am also concerned about the situations that have been described in which there are minor discrepancies and problems with the title to domestic dwelling-houses—for example, it may lack certain aspects to make it complete. There may have been a drafting error or an accident, and the bill provides a means of sorting that.

I wonder about the hardship that publicly advertising land might bring down on people, because mortgage lenders are—understandably—very risk averse. How helpful are such suggestions? I accept that they are perfectly well intentioned, but might they give rise to an awful lot of difficulties?

**Sheenagh Adams:** They could. As I said earlier, we are keen to have the right balance for the citizen, for people who own land and for people who want to bring land back into use. John King has a lot of practical experience, so I ask him to comment.
John King: From our perspective, the question is difficult to answer. The intended use of an area of land can be development or something more localised, such as a house extension. Where there is a contentious development, there will occasionally be somebody who, on the face of it, has a legitimate reason for applying for an a non domino disposition. When the application becomes known locally, it is not unusual for us to receive competing applications for a non domino dispositions. Operationally, that places us in a difficult position, as we cannot adjudicate between them. We will look at each one and base our consideration of them on our policy. There have been occasions on which we have accepted more than one a non domino disposition on to the register. We will leave it to the parties to fight that out or to resolve it in court.

What you suggest is possible. I suppose that it depends on the nature of the land and the intention for it.

Mike MacKenzie: Do you accept that the people who provide title insurance might run a mile from insuring property that might be blighted in that fashion, because competing claims could arise from all quarters?

Sheenagh Adams: We do not get involved in title insurance, so I do not have the expertise to offer the committee a view on that.

The Convener: I want to move on and ask you about another point that has arisen in evidence. Section 42(3) of the bill states the time periods that are required before you will accept an a non domino title for registration. There has not been much controversy about the obligation on the applicant to demonstrate that he has occupied the land for one year before the application, but we have heard quite a lot from people about the period of seven years for which the land must have been vacant and not possessed by any other person. A practical issue arises about that. How does someone prove a negative? As keeper, what evidence would you accept to prove the point in that section?

Sheenagh Adams: I ask John King to comment on that.

John King: Proving a negative is always a challenge. It is clear that we will be expected to provide guidance on that, and we can provide some guidance that is based on particular facts and circumstances. There will be occasions on which the evidence that is required is relatively straightforward.

The position depends on the history of the area of land. For example, if a large factory is being demolished and redeveloped and it comes to light that a sliver of land in the middle of the site has no known title, we could use the fact that the factory site has been there for a number of decades as a basis for evidence.

It becomes more difficult when somebody who is interested in acquiring an area of land has little knowledge of its history or there is no known history. In such cases, we will be asked what evidence we expect. We recognise that it will be a challenge for us to provide guidelines in those circumstances.

The Convener: You will understand that the matter is of some concern to practitioners who are looking at the bill and thinking, “How on earth can this be established?” Is the period of seven years an arbitrary figure that has been plucked out of the air or is there a methodology behind it?

Gavin Henderson: The period was suggested by the Scottish Law Commission. It should be remembered that the bill also includes a power to change the period by subordinate legislation. You might wish to ask Professor Gretton about it. I think that it is an arbitrary period, but it could be reduced if it was found to be the wrong length of time.

We accept that, in some cases, there are issues about how the seven-year period of abandonment can be established. The question is how we can strike the right balance between protecting the rights of true owners and allowing land that is genuinely not being used by anyone to be redeveloped. As the accompanying documents state, the bill sets the bar relatively high. There is no doubt about that.

In certain cases where someone is trying to correct an issue in the title—cases such as the one that Mr MacKenzie mentioned—it may well be fairly straightforward to establish the seven-year period. An example is where there is an error in relation to a bit of land that overhangs a path. If a person has been living in a bedroom that overhangs the path, the error can be resolved, because it is easy to prove occupation.

Admittedly, things become more difficult where a developer who comes on to a site does not own a particular sliver of land. The root cause of that is a conveyancing issue; for example, the conveyancing might not have been correctly carried out. I know that witnesses have said that a non domino dispositions are useful or convenient tools and, in some ways, such get-outs allow for mistakes to be corrected. However, the question is whether they encourage people to be as diligent in conveyancing property as they should be—I do not know.

John Wilson: I believe that Ms Adams said in response to my colleague Stuart McMillan that, in March, Mr King was going to present to the board a paper setting out the expected costs and
timetable for completing the register. Is that the case?

Sheenagh Adams: The paper covers two issues, neither of which is as grand as the issue of how the register will be completed. The first relates to our policy on voluntary registrations and how we should progress it. We have started the process of advertising that this is an open-door policy, but the paper will also consider how we should promote that work to landowners.

Secondly, the paper will set out initial thoughts on keeper-induced registrations, particularly with regard to properties in research areas on which we have already done some work. My understanding is that Professor Gretton thought that keeper-induced registrations would come in decades from now just to tidy up the land register. However, we think that they could be useful now in greatly speeding up the process of getting titles on to the land register and in a way that would be quite good value for money. The paper will cover such issues rather than how we get to the end of the road.

John Wilson: I welcome that response. When might the paper be available to the committee? Given that we are considering the bill, it would be useful to have that information as soon as possible, to give us an indication of additional issues that we might raise. After all, we have to complete our stage 1 report by, I think, the middle of February.

As we have made clear today, the committee is keen for registration to happen as quickly as possible. It would be good to get an indication of the timescale from the paper. Otherwise, all that we can do is to say in our report that, although we were aware of a paper to be presented to the board in March, we could not consider it before we published the report.

Sheenagh Adams: I can write to the committee on the matter. John King and I will discuss which bits of information can be provided to you in advance of the Registers of Scotland board meeting, but I do not think that the paper covers anything that will particularly affect sections in the bill as it stands. The paper looks at policy issues for me as keeper, including the approach that I want to take to the bill as it stands.

John Wilson: I am sorry, but I have to disagree. It is important for the committee to consider voluntary registration and the way in which the keeper takes the bill forward. After all, we are considering legislation. Surely it would be better to tie up as many things as possible in the bill instead of having to tidy things up with amendments or regulations down the road. The committee has to ensure that the bill as presented to Parliament is fit for purpose and is not some piece of legislation that simply suits a particular timescale and needs to be amended six months, a year or two years down the road.

Sheenagh Adams: I recognise that.

The Convener: We have covered a lot of ground in what has been a very good and long evidence session, but a number of members have what I hope are fairly brief follow-up questions.

12:45

Rhoda Grant: You will have heard the evidence on advance notices that the previous panel gave. Can you shed some light on the status of advance notices? We understood that they exist to protect somebody’s title but, from the evidence that we received this morning, it seems that they can be displaced by the registration of a disposition, even if it is not to the people in the advance notice. Is that the case?

Sheenagh Adams: That is not our understanding. Gavin Henderson has undertaken detailed work on the matter.

Gavin Henderson: The relevant provision is section 58. The effect is pretty clear and not necessarily as it was described this morning. The effect of section 58(3)(a), in particular, is that it is as if the later advance notice had not been registered—not that there would be ranking in the standard security example. We are happy to give more detail on that in writing if you would like, explaining fully the effect in each case.

Rhoda Grant: That would be useful. The issue is not so much that there would be competing advance notices, as it is quite clear that the first one to be registered would have priority. The concern is that, if someone then registered a disposition that was not involved in the advance notice, that disposition would take precedence over the advance notice.

Gavin Henderson: That is not my understanding of what the provisions do. If there is an advance notice that protects a deed and a later deed comes in, that is not protected by the advance notice, the deed with the protecting advance notice will prevail—that is the whole point.

Rhoda Grant: Okay. That was our understanding.

The Convener: If you could write to us on the matter, that would be helpful.

Rhoda Grant: Will advance notices show up in searches? Will they be searchable?

Sheenagh Adams: Yes. We will develop systems that will enable advance notices to be shown. Things get loaded on overnight, and they will be on our registers direct system—either the
current one or an improved version—depending on the timescale of their coming in. So, yes, they will be fully searchable.

Rhoda Grant: I have one small supplementary question regarding your answer to John Park’s question about public access to the register. Your answer was welcome. Would there be a cost to the public for accessing the register? They would probably want to look not just at one property, but at a range of properties in undertaking historical research on an area, a family or the like. Would there be a cost attached to that?

Sheenagh Adams: The setting of fees is a matter for the minister. If there were not a direct charge, the cost would have to be subsidised by some other method. When we reviewed information fees in 2007, there was a public consultation, and the view from all stakeholders, including those representing the Scottish consumer interest, was that fees should be charged and that it would not be appropriate to make such information free. It was felt that those who have to register property compulsorily should not have to pay extra to cover the cost of providing information to people who happen to have an interest in it or want to know something. However, that is a matter for ministers and would have to be consulted on in the preparation of any future fees order.

Chic Brodie: I have a very quick question. Is Crown Estate land fully or partly registered? How much of the near-shore Crown Estate land is registered?

John King: The general answer is that very little is registered. The odd part of the coastline is registered but, generally speaking, very little Crown Estate property is registered in the land register.

Chic Brodie: It is probably an opportunity for an a non domino disposition.

The Convener: You would have to notify the Crown first, and I do not think that you would get very far.

There are no further questions. I thank the witnesses for coming along. This has been an extremely helpful session in which we have covered a lot of ground.

12:49
Meeting continued in private until 13:01.
The following is the information requested in relation to the ARTL system:

“ARTL was introduced in July 2007. The project was initially conceived in 1999 and research design costs are included from this early stage. ARTL was launched in 2007 and there was an intensive implementation programme to support solicitors adopting this technology for two years following the launch. The costs are set out for the ARTL system and the Public Key Infrastructure (PKI) electronic signature system that underpins it. RoS considers that the PKI system for ARTL will be capable of being substantially re-used for any successor system.

**Development costs** to the end of December 2011 are £3,713,410 for ARTL and £640,770 for the PKI.

**Implementation costs** to the end of December 2011 are £454,259 in total. We do not have a further split for these costs.

**Supports costs** to the end of December 2011 are £504,347 for ARTL and £1,351,000 for PKI.

**Total costs** are £6,663,816.”

Registers of Scotland 18 January 2012
SUBMISSION FROM THE SCOTTISH PROPERTY FEDERATION

1. The Scottish Property Federation is a voice for the property industry in Scotland. We include among our members; property investors and developers, landlords of commercial and residential property, and professional property consultants and advisers. We have some 120 corporate members. The SPF understands the Committee may publish our comments and share our views with other public authorities.

2. We provide brief comments to the Committee based on its call for evidence. We understand that our previous comments to the Registers of Scotland on the draft Land Registration Bill have been considered by officials at the Scottish Parliament and therefore we reproduce the substance of these views in an annex at the end of this submission.

Proposals for Completion of the Land Register & Registration Issues

3. The Committee may be aware that during the Scottish Law Commission’s consultation on the draft Bill we expressed our support for the intention to facilitate, over time, completion of the Land Register (and replacement of the Register of Sasines). We confirm our support for the Bill’s intention to deliver this objective.

4. On the practical measures to reform certain registration procedures again we are largely supportive. Advance Notices are welcome although we draw the Committee’s attention to our earlier comments we made seeking to align the period of Advance Notice to England’s 30 business days. Our reasons for this is that as the majority of Scottish commercial property is owned and invested in by UK institutions or trusts it would be helpful to avoid differences where they may not appear to be absolutely necessary.

5. The Committee may be aware that we previously expressed concern with the measures for prescriptive acquisition of property, typically by means of registration of an a non domino disposition (or adverse possession as it is sometimes more colloquially known). We repeat these concerns as we feel the periods involved, namely evidence that the owner has not been in possession for 7 years, followed by 1 year's possession by the applicant, will significantly inhibit the non-abusive adoption of this process by developers as a device to facilitate property development by curing glitches in site assemblies (see annex) and may be an impediment to investment in some circumstances.

Proposals for Electronic documents

6. We have always supported an early introduction of measures to encourage further development of e-conveyancing. As the SPICe paper correctly asserts, the Bill is itself largely a provider of framework legislation for e-conveyancing with the key detail to follow at secondary legislation stage depending on the Bill becoming an Act. As an enabling measure we support the Bill’s proposals therefore but it will be important to ensure safeguards and examine lessons to be
learned from the ARTL process, which our members report has perhaps had less of a take up than might have been expected thus far.

Any Other Aspects of the Bill

Registration Fees

7. An additional point we would make here is the significant difference between Registration fees north and south of the border where Scottish Land Registration fees are sometimes considerably higher than their English counterparts. The maximum Scottish fee is some £7,000 whereas in England HM Land Registry charge at a maximum £920 for properties in excess of £1mn. This negative differentiation is hardly an incentive to investors in Scottish commercial real estate. We note that the Registers of Scotland have argued that the impact of the Bill should not lead to an increase in Land Registration fees and we believe this is an important commitment. Ideally fees should be coming down to encourage investors.

S108 – new criminal offence

8. Our members have drawn our attention to the introduction of s108 where a legal adviser could potentially face criminal charges in the event of professional negligence. We understand the measure is intended to be a deterrent to fraudulent registrations but we are concerned about professional advisers becoming inadvertently charged with this offence in cases of erroneous rather than intentional false registration. We understand that the Law Society of Scotland will be raising similar concerns which we would support. The Law Society of Scotland argues that there are sufficient existing criminal law provisions which make this new offence unnecessary; if the Parliament does adopt the proposed new offence then we would, at the least, propose that it should be linked to fraudulent intent.

9. The SPF will be pleased to answer further questions on these comments or those previously provided below to the Registers of Scotland.
The SPF supports the aims of the Land Registration (Scotland) Bill and we welcome the work of the Scottish Law Commission and the Registers of Scotland in bringing the Bill to this stage. In reply to Question 8 therefore we unequivocally say 'yes'. It is clearly nonsensical to continue to maintain two separate land registers and we welcome the aim of the Bill in bringing the process of updating the new Land Register forward and the eventual end of the use of the Sasine Register.

The Bill picks up from the reforms of the 1979 Act and we acknowledge and agree with the description of the consultation paper that these new provisions bring into statute the good practice that has been established since 1979 – or "pumping concrete into the foundations".¹ We also welcome the wider considerations that RoS have introduced to the consultation paper regarding expanding, with appropriate safeguards, ecommerce in the property industry.

Turning to specific points in the consultation paper.

Under Question One we agree that it should be possible through due process for a proprietor of unregistered land to achieve voluntary registration and that at the appropriate time the Keeper should no longer have the discretion to refuse such registration (aside from considerations of the probity of the application of course!).

First Registration should be compulsory for transfers of unregistered land – we agree with both SLC and RoS that this will not cause undue burdens.

Questions 6 and 7. Our members have reported some concerns about the proposals for the Keeper to register without the consent of the proprietor. One concern is where the Keeper fails to identify a proprietor -would this facilitate what one member described as ‘title raiders’ seeking to claim title to the previously unregistered land - this would not we assume be the purpose of the Keeper. And what if it was subsequently discovered that the title registered was inaccurate? The consultation paper explains the process whereby inaccurate registration is uncovered where the owners are known but not in the situation where title inaccuracy becomes apparent yet there remains no known proprietor.

Questions 9 and 10 - advance notice. Our members suggest that the Bill’s Advance Notices should be reconciled with the similar provision under the English system to period of 30 days. This would help to achieve welcome consistency for property investors across the UK.

Questions 12-15. We are keen to see progress towards greater use of ecommerce, so long as appropriate safeguards and rights can be maintained. Therefore we support the move towards the enablement of e-missives. Indeed in this context we hope that the Scottish Parliament will find time to progress these set of mostly uncontroversial measures sooner rather than later.

¹ Consultation paper: Paragraph 1.8, p2
Questions 16 and 17 – mapping and cadastral units. We agree there should not be registration without adequate mapping. The RoS also propose to replace the term ‘Title Plan’ with the more internationally recognised definition of ‘cadastral plan’. Paragraph 5.3 explains that: ‘A Cadastral Map is a map showing the boundaries and ownership of land parcels. This term is in common usage around the world for land register maps.’ This global view may be true, but not we think in our nearest neighbour and largest market south of the border in England!

While we do welcome moves to ensure appropriate information in the registration system and to adopt certain forms of internationally recognised terminology and the adoption of the term cadastral units, but we ask whether this is helpful if our largest investors remain of a different view and we would wish to forestall any potential for confusion between title sheets and cadastral units. Also, we question whether the RoS proposals really deliver what is understood as a cadastre by those jurisdictions that currently employ the term. It is our understanding that the cadastre is normally something more than straightforward title plan information and on this basis RoS may wish to reconsider if the use of this terminology is appropriate in this context.

Question 20. We have some practical reservations about the practicality of the proposals regarding common areas in new developments. We certainly support the principle of ascertainment maps to afford greater certainty to new title owners with an interest in a common area, but we are concerned that the proposals do not fully appreciate potential circumstances whereby a relevant developer will fall into insolvency for example. This is a matter that SPF corresponded on with the SLC team and therefore we do reiterate that we are supportive of measures to bring forward greater certainty for new owners with interests in a new development’s common areas.

Questions 23 and 24. Further concerns have been raised by members regarding the principles relating to adverse possession. Members have pointed out the difficulties of proving a seven year period of possession which when added to a ten year title ‘cleansing’ period means a 17 year process in total! This is surely too long and will not benefit the Registration system, or speed up the process of title coverage.

Although we have raised some practical and a few principled concerns above, we would like to reiterate our support for the Bill’s wider objectives and the need to quicken the process of Land Registration from its current level of 55% coverage.

The SPF would be pleased to discuss our comments with the draft Bill team.

Scottish Property Federation
20 January 2012
Land Registration etc (Scotland) Bill: Stage 1

10:01

The Convener: Under agenda item 1, we will continue our scrutiny of the Land Registration etc (Scotland) Bill. I welcome again Fergus Ewing, the Minister for Energy, Enterprise and Tourism in the Scottish Government, who is joined by Gavin Henderson, the bill team leader from Registers of Scotland, and by Matthew Smith and Valerie Montgomery from the Scottish Government.

Before we ask questions, would the minister like to give an introduction?

The Minister for Energy, Enterprise and Tourism (Fergus Ewing): Yes, briefly. First, I declare that I am still a solicitor registered with the Law Society of Scotland, although it is more than a decade since I was involved in any legal practice and I do not intend to engage in it at any time in the future.

Scotland has the longest history in the world of national public registration of rights in land. However, the general register of sasines, which dates back to 1617, is in need of retirement. The land register of Scotland, which was created under the Land Registration (Scotland) Act 1979 to replace the sasine register, is incomplete. Its completion is an important, albeit long-term, objective for the Scottish Government. Continuing to operate both registers indefinitely is inefficient.

As the committee is aware, the work that is involved in speeding up completion of the land register will be a time-consuming endeavour. The process might take decades, even with the reforms for which the bill provides. However, I firmly believe that accelerating completion of the land register is in our national interest.

Before I talk about elements of the bill, I want to pay tribute to the Scottish Law Commission for its outstanding work in developing many of the new policies that appear in the bill. It is clear that considerable thought has been given to the approach to the relevant law, for which I thank the commission.

The reforms in the bill provide for additional triggers for first registration. That means that titles will come on to the land register when they previously would not have done so. However, as the committee has heard, that will be insufficient in itself to ensure completion of the land register, as some titles will never transfer.

One principal tool in the bill for taking such titles into the land register is voluntary registration. The keeper of the registers of Scotland already has the
power to accept applications for voluntary registration, and few such applications are refused. Voluntary registration is a useful tool to stimulate economic growth in the legal sector, as it might very well provide work for junior young solicitors.

I understand that the committee has heard concerns from stakeholders about the power in the bill to undertake keeper-induced registrations. From meeting stakeholders such as Scottish Land & Estates, I know that that is a particular concern for large landowners in rural Scotland. Keeper-induced registration is an important tool that will allow the keeper to complete the land register. Without it, I would not be confident that 100 per cent completion could ever be achieved.

I offer the reassurance that, in relation to large and complex titles to land, keeper-induced registration will be used very much as a last resort. In particular, there will be no keeper-induced registration of large and complex land titles in this parliamentary session.

The Convener: Thank you. I am sure that we will explore some of those topics in more detail as we go through the issues that members wish to raise. We ought to start with the issue that you started on, which is the question of completion of the land register. I invite Chic Brodie to start off.

Chic Brodie (South Scotland) (SNP): Good morning, minister. You referred to the timescale for the completion of the land register. The policy memorandum states:

“Completion of the Land Register is considered to be the most important policy aim of the Bill.”

Will you expand on what is meant by that?

Fergus Ewing: It is important to complete the register for a number of reasons of good public policy. First, it is inefficient to have the twin system of the sasine register and the land register. It means, for example, that solicitors who carry out conveyancing work in Scotland have to learn at university how to operate both systems, and put that knowledge into practice. I spent more than two decades dealing with, inter alia, conveyancing, which involved me spending many more hours than I would have wished studying old manuscript documents—the handwriting was often barely better than my own—that were written in a previous century, such as charters of novodamus, feu dispositions, feu contracts and occasionally even contracts of excambion and the like. I had to sit and read them for hours at a time.

The land register replaces all that with a tightly written single document called a land certificate. The system is simpler, better and more modern. It is therefore desirable from the point of view of not only the solicitor but the consumer that we have that system. Fees are a complex topic that is not really encompassed by the bill, but it stands to reason that if lawyers spend less time on and deal more quickly with a service such as conveyancing, the fees that they charge will, one hopes, be lower—I formulated those words carefully.

The land certificate will allow the registration fees to be reduced because the amount of time that the keeper and their staff have to spend in poring over old documents is vastly reduced. Of course, much of the cost of the work that is carried out by the keeper relates to first registration, when all the work that I have described needs to be done for the title to be transferred from the sasine register to the land register. On the grounds of cost and the smooth transition of necessary business relating to property, which is a fundamental requirement of a modern economy, the land certificate is therefore important.

Secondly, there is a public policy interest, in that the public have a right to know who owns the land of Scotland. Thirdly, there is an efficacy aspect, too. Putting it at its most basic, local authorities want to know where they are collecting their council tax from. That is not obvious from some sasine titles, but it is obvious from land certificates, which will give the name of the landowner and identify the extent of the land on a plan.

Those are some of the reasons why it is desirable and in the interests of public policy to move from the sasine register to a land register. However, I used the phrase “long-term objective” earlier, because it will take a long time to do this, I am afraid. I do not think that it would be doing any service to this committee or the Scottish public to say otherwise. I am reminded that in a different era when our counterparts in Westminster were considering this matter, the advice seemed to be that the Land Registration (Scotland) Bill, which was considered and passed in 1979, would result in completion of the land register in under a decade. However, that did not happen in 1990. I therefore do not think that I will emulate the predictions that were made by my esteemed colleagues in Westminster circa 1979.

Chic Brodie: I take the minister back to Westminster circa 1911, when Lloyd George, as a result of his desire to apply land value taxation, completed a register in four years by applying the appropriate resource. So far, in Scotland, after 30 years, only 21 per cent of the landmass is on the land register. Do you foresee any changes that will speed up the process as a result of the bill?

Fergus Ewing: Yes, I do. I must admit that I am slightly flummoxed by Lloyd George’s emergence in the debate. I suppose that I should say that Lloyd George might have known my father—it is certainly technically possible.
Back in the current century, the purpose of the bill is to have a series of triggers that, together, will hasten the process of completion of the land register. The member referred to the figure of 21 per cent but, to put the matter slightly differently, well over a million titles have been registered in Scotland. However, some of the largest landed estates have not been registered, perhaps because of the mode of ownership—some of them might be held in trust, which will not induce a registration. It is certainly true that only a small proportion of the land in Scotland is registered. We want that proportion to increase through the various triggers in the bill.

The keeper estimates that the effect of the triggers in the bill, in cumulo, is likely to result in 7,000 first registrations a year. I think that that is correct—I see that my officials are nodding, so it is correct. Incidentally, that compares with 104,000 transfers, including first registrations, last year, which is down from nearly 200,000 in 2006-07. It is important to set the issue in context. Because of the recession, there has been a diminution in sales and purchases in the property market. In 2006-07, there were 198,000 transfers, whereas, in 2010-11, there were 105,000. The keeper estimates that there will be an additional 7,000 applications a year as a result of the triggers in the bill, which will be a fairly substantial additional volume of work for the keeper.

Chic Brodie: You make the point, with which I agree, that it is a matter of public policy and efficacy to have the register completed as quickly as possible, and it will certainly be economically beneficial. The keeper has announced that Registers of Scotland has reserves of £75 million. I do not have too much experience in the matter, but is there not a question of resource? Should the keeper be encouraged to increase the resource capability so that we do not have to wait another 30 years for the completion of the register and can do it within a decade, as we have discussed?

Fergus Ewing: I am aware of the reserves, but those are required to meet eventualities. It is not as simple as saying that the money can just be used now. It cannot—a significant reserve must be kept for reasons that I am not sure are germane to the bill but on which I am happy to write to the committee. We all want the land register to be completed as swiftly as possible. That is a desirable objective, but the costs involved in moving to a completed register within a few years would be absolutely massive, so it would not be a practical task. In addition, were public funds to be used for such a process, they would, by and large, have to be taken from support for other public services such as health, education and police services. I, for one, could not argue that that would be correct.

For completeness, it might be helpful if Gavin Henderson commented on the reserves and the status of Registers of Scotland, which has a bearing on the question.

Chic Brodie: Before Mr Henderson does that, I point out that we do not have to consider only public funding—there is the issue of the level of fees that are paid for registration, which might be used as the basis of speeding up the process.

Fergus Ewing: The purpose of fees is not really to speed up the process—it has not been seen in such a light. In any event, the process of land registration is largely voluntary. The triggers are largely transactions, or sales and purchases.

It is quite a big step to move from that position to compelling landowners to register their property—that is what Mr Brodie’s question implies. That would entail looking into issues of liability for the costs involved. It would also raise the issue of the European convention on human rights, which is never really far from our minds. We do not generally favour using compulsion, except as a last resort, and I have already made it clear that we do not envisage using it.

10:15

Chic Brodie: I am not suggesting that we use compulsion. The applicability of variable fees in inducing people to register voluntarily—not compelling them—might be a way of increasing the overall fee income.

Fergus Ewing: There is an incentive for large public and private landowners to register their interests in the land register. As members know, the table of fees is an ad valorem table of fees. In other words, the fees are based on a scale; they are not based on the actual cost of the work required for an application. The first registration of title of a large landholding of several thousand hectares in Scotland would require the keeper to do a considerable amount of work, and the cost to the keeper might far exceed the fee that the keeper is entitled to receive for that work. At the moment, there is an incentive for landowners to register their estates voluntarily.

The important point is that large landowners get a good deal from the keeper at the moment, precisely because the fees are levied not on the basis of the cost of providing the service but according to an ad valorem table. I have therefore advised, and perhaps encouraged, Scottish Land & Estates and certain other representatives of large estates that this might be a good opportunity for them to take advantage of the existing level of fees. By doing so, they will, in some cases, generate so much work—the work involved requires a substantial number of hours—that they will contribute to retaining junior solicitors in
Scotland in employment or to larger firms taking on junior solicitors. In other words, there is a potential economic opportunity that could lead to jobs being created or preserved to a modest but significant extent by holders of large tracts of land in Scotland deciding to register their land voluntarily.

I make that point because, when I came into my post, I was looking for opportunities to create jobs in Scotland, and this is one of those opportunities. I made the point very clearly in the meetings that I had with stakeholders before the bill was introduced to Parliament. The point is a minor but important one. We should all be looking for opportunities to create employment in Scotland.

The current maximum fee of £7,000 offers a good deal for many significant and large landholdings in Scotland. I think that landowners should take up the opportunity, and we are encouraging, rather than requiring, them to do so. If they do, they will benefit society by providing work for lawyers, whether in the Forestry Commission or private practice.

The Convener: Does Gavin Henderson want to come in on the question of the keeper’s reserves?

Gavin Henderson (Registers of Scotland): The minister asked me to make the point that Registers of Scotland is a trading fund, so a reduction in fees in one area might well result in an increase in fees in another. Although we might well want to incentivise certain types of application, such as applications for voluntary registration, the consequences might well be an increase in fees in other areas. Those things have to be weighed and balanced.

The Convener: Does Mr Brodie have a supplementary question?

Chic Brodie: No, but I should like to come back to the issue later, if I may.

The Convener: I want to follow up the minister’s last point about the cost of first registration. In some of the evidence that we heard about the prospect of keeper-induced registration, concerns were raised about the fees that would be charged. The minister said that there was no intention of having keeper-induced registration in this session. Furthermore, he acknowledged that in Scotland many properties on large estates do not change hands, and will probably never change hands, because of the way that estates are constituted—that is, they are held in trust. Likewise, many other types of land, such as that held by statutory bodies, including local authorities and the Forestry Commission, and by churches, community groups and unincorporated groups, will probably never change hands, or at least not for a long time. Therefore, the only way to get them on to the register is either to incentivise voluntary registration by having reduced fees or to go down the road of keeper-induced registration.

One of the issues that came up in relation to keeper-induced registration, if it were to happen as a last resort, was whether it was equitable to charge a fee for that. Even if there were no fee, there would often still be a cost to the landowner, because as part of the registration of a complex title, the keeper may have a large number of questions to put to the lawyers representing the landowner, and a substantial degree of work will be involved. Similarly, when a land certificate is issued, it has to be checked very carefully. It is not just a question of the fees but of the actual cost to the landowner in legal bills. Has any thought been given to having a provision in the bill whereby keeper-induced registration should involve not only a zero fee but the payment of reasonable expenses to the landowner to compensate them for the work that would be involved?

Fergus Ewing: Let me answer that with three points. First, I have already said that a very good deal is currently available for large estates through the ad valorem table. There have been developments in other services provided by the state whereby fees are charged on a cost-recovery basis. There is no policy of moving from ad valorem to cost recovery, but there is considerable benefit in large landowners availing themselves of reasonable fees for a service that would, in many cases, cost very much more than the amount that they pay the keeper.

Secondly, on keeper-induced registration, the registration process does not affect the status of the ownership of the land. The owner will be the owner of the land by virtue of a sasine title. It is not necessary for the landowner to employ a solicitor, and therefore it is not obligatory for the landowner to incur any fee. If the keeper, in carrying out keeper-induced registration, makes an error, under section 80 of the bill, the keeper must pay compensation for the reimbursement of reasonable extra-judicial expenses incurred by a person in securing rectification of the register, so that provision is already in the bill.

Thirdly, many old sasine titles are such that the holder of the land may not be absolutely certain of the extent of the land they own. That is not the case with a land register title. There can therefore be considerable benefits to a landowner in a keeper-induced registration, a voluntary registration or a first registration, because they will then have a clear title that is based on the Ordnance Survey map and which, in most cases, is registered with the keeper without exclusion of indemnity, and so can be used for securitisation purposes. The title can then be much more readily used in marketing, for example, should an area be sold off for housing development. It is a much
more straightforward business to sell off an estate of, say, 30 houses where the title is already registered in the land register than to have to pore over all the old documents with solicitors doing the extra work involved in that. There are benefits, too; we must see things in the round.

**The Convener:** I know that Patrick Harvie wants to come in with a supplementary, but I should like to pick up on your second point, which is absolutely fair. You said that there is no requirement on somebody whose land is being registered on a keeper-induced basis to employ lawyers to look at that, but we have heard evidence that suggested that many people would want to do so—and, indeed, they would be advised to do so. It is right that if there is an error in the land certificate, the reasonable costs of rectifying that should be borne by the keeper, but how is somebody who is dealing with a very large estate to know that there is an error unless they employ their own lawyers to do a thorough check?

We have heard in evidence that some large estates have had thousands of split-offs over the years, so the situation is remarkably complex. A landowner in that situation would surely be well advised to employ their own legal advice to correspond with the keeper and keep a check on what the keeper is doing.

**Fergus Ewing:** Ultimately, if I were to accept the argument that you advance and act upon it, the state would assume responsibility for the legal fees of large landed estates in the public and private sector in Scotland. That is not an initiative for which I have any great appetite.

**Patrick Harvie (Glasgow) (Green):** I seek clarification of a point that the minister made in his introductory remarks. You said that there would be no substantial keeper-induced registrations during this session of Parliament. From my reading of the section that will introduce keeper-induced registration, it is simply a power that the keeper is given. Nothing that I can see says whether there could be ministerial control over that power. Is it the intention, as you suggested in your introductory remarks, that ministers will instruct or forbid particular keeper-induced registrations?

**Fergus Ewing:** No. That is not an approach that I take in working with the keeper. The keeper and I enjoy excellent working relations; it is therefore not for me to “forbid” the keeper to do things.

**Patrick Harvie:** Can you explain the meaning of your remark when you seemed to make a commitment on behalf of the Government that there would be no substantial keeper-induced registrations in this session of Parliament?

**Fergus Ewing:** Yes, I can. It is important that we work with everybody involved to secure the best and, indeed, the swiftest practical transition from the register of sasines to the land register. I think that that will best be done in the way that we are going about it.

**Patrick Harvie:** I am sorry, but that does not seem to answer my question. Who will decide whether a keeper-induced registration is to take place? Will it be the keeper or ministers?

**Fergus Ewing:** These are matters of law, but also of policy as to how the law is applied, so we work together on them. We wish to encourage owners of substantial land holdings in Scotland to transfer their properties to the land register and to do so in a process of amicable negotiation and cooperation.

I have therefore pointed out—I think helpfully—to representatives of some of the largest landowners in Scotland that they currently have a very satisfactory deal, which I have recommended they consider very seriously. The impression that I have from the fruitful discussions that have taken place at various meetings is that those points have been well received and that there is a willingness to consider more registrations of land than there perhaps have been in the past.

Mr Henderson is anxious to make a point that is supplementary to what I have said. If he might be permitted the opportunity, that might help Mr Harvie.

**Gavin Henderson:** Can I clarify the question? Patrick Harvie asked—first in legal terms and, secondly, in administrative terms—whether the power to do a keeper-induced registration is with the keeper or the minister. The bill gives the power to the keeper, not to the minister—although the keeper is, of course, an office holder in the Scottish Administration and is answerable to Scottish ministers as part of the democratic process. As a consequence, the keeper and the minister have made agreements about a number of things with regard to the strategic direction and what should happen. The minister has made it clear to the keeper that he expects there to be no keeper-induced registrations in this session of Parliament and the keeper has agreed to that.

**Patrick Harvie:** I am grateful for that clarification, although it seems to slightly change how I read that section of the bill. The bill states: “Other than on application and irrespective of whether the proprietor or any other person consents, the Keeper may register an unregistered plot of land or part of that plot.”

When I read that provision I assumed that ministers would not give directions to the keeper on the exercise of that function.

**Gavin Henderson:** That is not what I was suggesting. I was suggesting that there is an agreement between the keeper and the minister.
Patrick Harvie: Okay. Thank you very much.

10:30

The Convener: I seek clarification on the level of fees, which you have just mentioned. You referred to the fact that, at present, the fees are set on an ad valorem scale. Does not the bill provide for a change to charge time and line for complex transactions? I am looking at paragraph 69 of the policy memorandum.

Fergus Ewing: At the moment, the fees are charged in relation to an ad valorem table. It is our intention to consider the matter in due course and to return to the committee on a number of issues relating to fees in general, but in relation to a statutory instrument. I do not know whether Mr Henderson has anything to add on that.

Gavin Henderson: Am I right in thinking that the question was about whether we are moving towards time-and-line charging for registration?

The Convener: Yes.

Gavin Henderson: As you know, the fee power in the bill is subject to affirmative procedure, and ministers will want to consult stakeholders on what an appropriate level would be before moving to time-and-line charging for only some—if any—properties. I understand that consultation on the use of the fee power will take place over the summer and that the committee will be required to vote through any fee order that is made under the bill.

The Convener: Thank you for that clarification. In looking at the policy behind the bill as a whole, I was struck by what the minister just said about the low-fees incentive for voluntary registration. However, if you are going to return a little later with a changed fees structure, that incentive might not be around for much longer.

Rhoda Grant (Highlands and Islands) (Lab): I am slightly puzzled. At the moment, there is a good deal for large landowners who want to register, but you are talking about introducing a different fees structure, which you will consult on in the summer, and one imagines that registration will become much more expensive. Does the keeper have the capacity to deal with a rush of large landowners who decide that it is financially expedient for them to register now, before the new fees structure comes in? That rings alarm bells with me.

Fergus Ewing: That is a reasonable question, which we have considered at various stages, including before the bill came along. There has been a diminution of nearly 50 per cent in the number of applications, including first registrations, that the keeper has considered. Formerly, there was a backlog and a delay in the completion of many titles—you will know about that, convener—and there is still work to be done in some cases, often for good practical reasons. However, it has been possible to address that backlog because fewer applications have been coming in for the past few years because of the recession.

The question whether the keeper would be overwhelmed by many voluntary registrations is a reasonable one, although I understand that the keeper has the discretion to accept or not accept voluntary registrations; therefore, an element of discussion and negotiation could be pursued. I am pretty confident that the keeper will be able to cope with the voluntary registrations.

We do not know quite what the appetite for registering will be among public and private sector landowners. We would like them to register and we encourage them to do so. That is the process that we are pursuing; not compulsion, but negotiation and encouragement. It would be a good thing, especially in the parts of Scotland that Rhoda Grant and I represent, if more of the land were on the land register. That would be desirable and fairly popular in places such as the Highlands. I think that the keeper has the capacity to deal with those matters, and it is intended that Registers of Scotland will build capacity over time—although they need to run the ship efficiently at the moment with the staff that they have. That has been a difficult area for the keeper in recent times, as you will appreciate.

It is a fair question, but I am confident that the keeper will be able to handle the additional workload. We have indicated the number of extra applications that we envisage being made, and the keeper has the legal power to say no to voluntary registrations, were Registers of Scotland to be overwhelmed by the work. However, I do not think that that is likely.

Keeper-induced registration is not only applicable to large estates and Forestry Commission land. It is also an important tool for completing the registration of modern housing estates where, for example, 29 out of 30 houses may have been registered in the land register and the keeper is keen to complete the process of putting the housing estate on to the land register so that no parts of it are still on the register of sasines. That is a practical example of keeper-induced registration that makes obvious common sense. There are other such examples. I say that because we have focused, perhaps unduly, on one general type of landholding in Scotland, although there is a great variety of types of landholding.

Chic Brodie: In an article in Journal Online in October, to which you and the keeper contributed, the keeper stressed the importance of the land register to the Scottish economy and spoke of it
It is interesting that she also says that she "rejected only 70 out of over 1,000 applications for voluntary registration" last year.

We talked about fees, but can anything else be done to promote voluntary registration? The keeper says that she wants "to encourage an open-door policy to requests for voluntary registration."

What more can be done to raise the profile of the public policy need and economic need in order to generate more voluntary registrations?

**Fergus Ewing:** Discussion in Parliament is a good way of promoting the opportunities, which I have now described on several occasions and will continue to describe.

The parliamentary bill process is also a good opportunity. I hope that the committee members will be persuaded of the approach that I have adopted and will consider the bill process to be a means of encouraging voluntary registration and encouraging landowners to move forward. I hope that will form part of the committee’s recommendations. I also hope that we can unite around that purpose and that, although there is a role for keeper-required registrations, compulsion will be considered an undesirable way to go about a task in which there are legitimate interests on both sides.

In addition to that, I mooted the general idea of voluntary registration with Scottish Land & Estates Ltd, the Law Society of Scotland and representatives of the Royal Institution of Chartered Surveyors at a conference to which a number of landowners came. I could see that it was a new idea, even to many of the learned friends who were present and who are well represented at such conferences.

I have done a fair amount to try to promote the benefits and value of registration, but a lot more can be done. The Parliament’s proceedings will play a major part in that.

The legal profession as a whole has, perhaps, the greatest propensity to act in the matter because solicitors act for long-standing clients whom they can encourage to register their properties voluntarily and, no doubt, can do so offering reasonable fees.

**The Convener:** I am sure that all solicitors charge reasonable fees, as you know, minister.

**John Wilson (Central Scotland) (SNP):** My question concerns the speed of registration. Unfortunately, some written evidence that we received this week from First Scottish Group after the keeper’s evidence last week raises questions on some of the issues surrounding registration.

In the middle of a paragraph that relates to the keeper’s information technology system, the submission alleges that "Experienced Land Registration staff are now scarce at the Keeper’s office after the second round of early retirements/voluntary severance (well over 200 senior/experienced staff have already left) and this is already having a serious impact."

Will the minister comment on that and assure us that, once the bill has been enacted, we will be able to implement it because the keeper’s office will have the appropriate staff in place to do that and to help to speed up the registration process? Everyone seems to be keen for that to happen.

**Fergus Ewing:** The question is perfectly fair. It is plain that the administration and smooth running of Registers of Scotland are matters primarily for the keeper, but the keeper must meet efficiency targets that the Cabinet Secretary for Finance, Employment and Sustainable Growth sets. In addition, we have put it on the record that the keeper has a reduced case load. It is plain that steps had to be taken to address that and the keeper has acted to do so.

However, at the same time I can answer with confidence Mr Wilson’s question by saying that the keeper will have the capacity to do the work that presents itself. It is not an easy task, because the keeper does not control the volume of work, which is affected by a number of factors including the property market, recession and the economy. I have looked at the statistics and I think that the keeper has taken sensible measures to deal with the difficult financial situation that faced Registers of Scotland in the light of a case load that fell by almost 50 per cent in some respects.

Steps had to be taken to ensure the smooth running of Government and the efficient use of public resources. However, as I said in response to Rhoda Grant’s question, we are confident that the keeper has the capacity to deal with the workload in the times ahead. She is also building up capacity to cope with that, in particular the complex work that is required in relation to examination of title.

**John Wilson:** I thank the minister for his response.

**The Convener:** The next topic is public access to the land register.

**John Park (Mid Scotland and Fife) (Lab):** One main policy issue that you mentioned was improvement of public access to, and the availability of, information on the register. We have been given examples, in particular from England and Wales, where it is simple for individuals to pop
a postcode into a website and find out detailed information about land ownership and registration. That would obviously be desirable in Scotland, mainly because we want to improve public awareness and availability of the land register and access to it. Can any measures be implemented in the bill and through policy developments that would improve access to the land register for members of the public?

**Fergus Ewing:** At present, members of the public can apply to Registers of Scotland to search the register and the search is carried out by a member of the keeper’s staff on behalf of the applicant. That can be done in a number of ways. I assure the member that it can be done by e-mail, and members of the public are also free to attend a Registers of Scotland customer service centre, so it can be done online or in person. I have always found the keeper’s staff to be uniformly courteous and helpful to members of the public, which is appreciated.

The fee that is charged will depend on the information that is sought and the number of searches that are required. The typical fee is between £11 and £14 and a nil result attracts no fee. Individuals or businesses that require more regular access for commercial purposes, such as surveyors, estate agents or solicitors, can set up an account with the keeper’s registers direct service. You have had evidence from the searchers, Millar & Bryce. It uses that system, which allows it to conduct its own searches using the same system as the keeper’s staff. It is free to set up a registers direct account. There is a fee of £3 per search and a nil return does not attract a fee.

In response to a consultation in 2007, stakeholders made it clear that charging a fee for access is appropriate. Otherwise, home buyers would have to subsidise searchers. Given the constraints that we face, I do not think that that would be correct. I hope that that has reassured you that the current system is fairly good and provides ready access to the public, to enable people to search the register and obtain the information that they need or want.

10:45

**John Park:** Thank you for clarifying how the system works. I have dealt with constituents who have tried to access information from the land register. The process, particularly for identification of land, can be complicated in comparison with the process of accessing much other public service information that is available online.

In England and Wales, people can identify land through a postcode search and there is a check-out process whereby they pay at the end of their search. The system is a little easier for individuals to use. In my experience, there are barriers to working out exactly how to access the information, so improvement of any kind would be beneficial.

In his evidence, Andy Wightman disagreed with the minister’s point about passing on the cost to people who access the information, particularly people who are using it to buy and sell property. He thinks that there should be no charge if there is to be an increase in the amount of land that is registered, and if we want wider public access to the information. Will the Government consider such an approach, in connection with the keeper?

**Fergus Ewing:** We consulted on the issue in 2007, as I said, and concluded that a fee is appropriate. If there were no fee, home buyers would be subsidised by the keeper.

I will be happy to be proved wrong on this, but I think that it is reasonable to say that a common reason why individuals want to access the land register of Scotland or the general register of sasines is not to study title deeds but to find out how much a property was sold for. That is generally the information that people want to check out. If I am right about that, the information is usually being sought for a commercial purpose—that is, to enable someone to decide how much to offer for a house.

That is a perfectly fair inquiry to make, but it is also fair to say that in the overall scheme of things in public services in Scotland—the national health service, teachers, the police and fire services and so on—such inquiries are not a top priority for the taxpayer to pay for, one way or another. A fee is reasonable. We want fees to be as low as possible and consideration is being given to improved IT systems in that regard. Of course, in developing any IT system we want to ensure that it works.

**John Park:** You made an interesting point about how people are generally trying to find information on house prices. That service is provided free of charge by other organisations that access the information. I was thinking more about community groups and individuals who are looking at land ownership with a view to doing something in their community and who might find the process a little difficult.

I accept that someone has to pay, somewhere along the line. However, the point has been well made about the availability of such information. I am sure that information is made available in other parts of the public sector without it attracting a charge. I understand the point that the minister made. The cost must be absorbed somewhere.

**Fergus Ewing:** Thank you.

The Convener: If nobody else wishes to comment on that topic, we will move to the next
one, which is a non domino titles. The minister may be aware from evidence that the committee has heard that this topic has created a lot of interest. We have two areas of questioning, the first of which relates to section 42 of the bill and modification of the current system. The second area of questioning will be on broader policy issues in which some committee members have an interest.

Section 42 will bring in a new provision: somebody wishing to register an a non domino title will have to show that no one has possessed the property for the preceding seven years. The provision has raised concerns, mainly from a practical point of view. How do you prove a negative? A couple of weeks ago, we took evidence from the keeper of the registers of Scotland, and she was not entirely clear herself about the sort of evidence that would be sought in order to support such a registration application. Do you acknowledge that practical difficulties may arise because of specification of the seven-year period? Where did the figure come from? Is there anything particularly magical about seven years? If not, might the matter be reconsidered? Might the seven-year requirement be dropped altogether, or might a shorter period be substituted for it?

Fergus Ewing: I am aware that the committee has considered this issue, and that it has arisen in evidence. Under the law of prescription, a person who has registered an a non domino deed in their favour needs 10 years of peaceful possession of the land, without judicial interruption, in order to obtain full title to it. As you suggest, the bill puts three additional requirements in front of a person who is seeking to register such a disposition—a prescriptive claimant. The claimant must satisfy the keeper, first, that the land has been abandoned for the previous seven years; secondly, that he has occupied the land for the year preceding the application; and thirdly, that the true owner of the land has been notified.

You asked who had recommended the seven-year rule. I understand that it was the Scottish Law Commission. I also understand the possible problems with compliance with the first rule, in practice. When will the keeper be satisfied that land has been abandoned for seven years? It has been explained to me that the seven-year period can be proven fairly easily in types of a non domino disposition in which, for example, a family farm has been passed down the generations and there is a missing link in title, such as a missing will, and in which an a non domino disposition has been used to correct the title position. However, in a development-type scenario, to prove seven years of abandonment may be more difficult.

The bill includes a power to change the seven-year period in regulations. Therefore, if the problems were realised, scope would exist to amend the requirement by subordinate legislation. However, I would like to go further than just saying that if the bill were passed in its current form we could amend the requirement later. In the light of the concerns that have been raised, I have decided to remove that particular duty from the bill.

The Convener: Thank you—that was helpful clarification. It dealt very satisfactorily with the committee’s and with witnesses’ concerns.

That first discussion having been shortened considerably, we can move on to consider broader issues and a non domino titles more generally. As you will know, minister, we have heard evidence from Andy Wightman. I believe that Patrick Harvie wishes to put a question.

Patrick Harvie: Is there not an argument in principle that someone who wants to acquire a piece of land that they do not own ought to pay for it?

Fergus Ewing: Yes—unless it is a gift or a transfer without consideration. However, generally speaking, the answer is yes, and, generally speaking, that is what happens.

Patrick Harvie: If a piece of land has no identifiable owner, whom would the prospective buyer pay under the arrangements that the Government is presenting in the bill?

Fergus Ewing: The need for a non domino dispositions is a mystery to many lawyers, including me. I did not encounter one in more than 20 years of practice. However, the need arose in order to deal with situations for which the system did not really provide proper title. To have a system of property rights, we need a system for registering deeds, and to assume that a perfect system could arise by happenstance would be to make a big assumption. Most countries do not have such systems of registering title. Fortunately, we have had a system since 1617, which has been developed and improved ever since. I am sure that the convener will remember from his time in practice that some of the titles and descriptions that were used in the early days were a model of brevity but not clarity. For example, there is the three merk land of old extent—goodness knows what that sort of description can be taken to mean.

Part of the problem—and where a non domino has been the solution—is the imperfect nature of the land register for historical reasons that we can readily understand and which would have been the case in countries all over the world. Where there are imperfections in the land registration system, there must be a means of tackling them. As I understand it, that is why a non domino dispositions have arisen. However, I never encountered one or had to do one when in practice.
To try to put this into perspective for the committee, I asked for and got some statistics on the number of such dispositions: I am told that, of 110,000 title transfers over the past 12 months, 127 such applications were received. To put that in context, such applications represented 0.1 per cent of transfers, and 99.9 per cent were applications where the acquisitions will have been for full value.

It is important to set that in context, because otherwise those who are following this engrossing debate about a non domino dispositions may get the wrong end of the stick, to put it baldly. I do not know whether Mr Henderson wants to say something about a non domino dispositions, because it is a long time since I studied them, I am happy to say. He will have studied them more recently, so he may have a fuller knowledge of them.

The Convener: Before I let Mr Henderson in, I observe in passing that, in my days in practice, I dealt with several a non domino dispositions, usually just to clear up ambiguities or disputes in the title internally. I do not know whether that says something about my client base compared with yours when we were both in practice—we will leave that hanging.

Gavin Henderson: We know that a non domino is a useful tool. You may agree with that point, convener.

To answer Patrick Harvie’s question about who sells land that is not owned, I say that there is no such thing as ownerless land in Scotland. The Crown owns the land that is not owned by anyone else. I understand that the Queen’s and Lord Treasurer’s Remembrancer, who administers ownerless land in Scotland, can provide a Crown grant of such land to a person and transfer ownership for value or as a gift.

Patrick Harvie: So the question is simply how the Crown should handle that, or how such land should be handled. Correct me if I am wrong, convener, but I do not think that we have had any evidence from anyone to suggest that there should be no mechanism for dealing with the small number of circumstances in which land does not have a readily available or identifiable owner. Everyone accepts that there should be a system; it is just a question of what is the fairest and most appropriate system.

On the various alternatives that we have heard, some people have suggested that there should be a period of advertising so that other interested parties could come forward, including the local community, which might say that it has as legitimate a stake as a commercial developer in a piece of land. It has been suggested that there should be a process of assessing the various interested parties and that land could be put up for auction. It has also been suggested that there should be a process that is similar to the way in which lost property is dealt with, whereby the finder might have the opportunity initially to pay for the lost property that they have reported to the police but, if they do not want to do that, the property can be sold or disposed of otherwise if no one wants to buy it.

There are therefore various options that could be used for ownerless land. Of the various options, how many were considered during the drafting of the bill and why were they ruled out?

11:00

Fergus Ewing: I would have to go back and check to what extent the keeper considered fully all the options. I will give Gavin Henderson a bit of time to think about that. I must say that that aspect was not uppermost in my mind when considering the bill; what was uppermost in my mind was the bill’s financial cost, as it is an important matter for the public purse. The bill was introduced after long deliberation by the Scottish Law Commission and the Registers of Scotland, so a great deal of thought was put into it. I therefore have every confidence that the bill is absolutely necessary and pretty much in a robust and good state.

Patrick Harvie is correct that there has to be a system for the 0.1 per cent of cases that we are talking about that are a non domino. He mentioned advertisement. There are two types of a non domino cases—speculative and non-speculative. There is the case of the farmer when nobody bothered with a will because it was assumed that the land would pass down the family through generations and that is exactly what has happened. Do you really want to have advertisement of farms in those circumstances? Would that not be an invasion of privacy? It would certainly be unwelcome among the farming community and it would also be intrusive and disproportionate. It might also encourage speculative claims that would not otherwise be made.

I find the proposal that there should be auctions quite extraordinary. Are we really suggesting that the person with the deepest pockets should be able to claim and secure ownership of land in Scotland? That seems to be a very strange proposal.

Having said that, I accept that it is a perfectly fair question. I cannot say how much time was spent considering all those options before the bill was introduced, but I can say with absolute candour and honesty that, before the bill was introduced, I spent zero minutes and zero seconds studying the issue that has been raised. That is
simply because it seemed to me that there were far more important matters of public policy to consider.

Gavin Henderson: The Land Registration etc (Scotland) Bill is about registration law and property law to the extent that it affects registration, but it does not challenge a number of underlying assumptions in Scottish property law. As the committee’s expert adviser will know better than I, prescription has existed in Scots law for hundreds of years. It is outwith the scope of the bill to challenge those assumptions, as the bill is not about reforming the law of property in Scotland; it is about land registration and the completion of a land register. Reforming property law may well be a matter for a bill in the future, but it is not something for this one.

Patrick Harvie: It is perhaps a little disturbing that the minister says that he gave not one second’s thought to this aspect of the bill. Given that the committee has clearly scrutinised this aspect of the bill in more depth than the minister did before he introduced the bill, I hope that he will be willing to be open-minded if and when amendments are proposed to the relevant sections.

The Convener: That is a matter for the minister to consider.

Fergus Ewing: I am always open-minded.

The Convener: I am sure that you are.

For members’ information, I have been advised that the Scottish Law Commission did not look at the issue in any detail when it produced the report that led to the bill—I suspect for the reason that Mr Henderson mentioned, which is that it did not regard the matter as being within the scope of its work.

Mike MacKenzie (Highlands and Islands) (SNP): I have a further point, although the issue has probably been covered quite well. Can the minister envisage a situation in which the suggestion that Andy Wightman made could be used vexatiously to blight development that is benign or very useful? I am thinking about affordable houses being built in a community where there was desperate need for such houses. The public auction system that has been proposed would in effect create an opportunity for someone to buy what might be a ransom strip. Does the minister share my concern that, if that route were to be followed, it could be quite damaging?

Fergus Ewing: To be fair to Mr Wightman, he gave a wide range of evidence. I am not sure to which part of it Mr MacKenzie is referring. I do not want to respond unless I am clear which of Mr Wightman’s recommendations Mr MacKenzie is criticising.

Mike MacKenzie: It is Mr Wightman’s suggestion that land of uncertain ownership should be advertised and subject to a public auction.

Fergus Ewing: It does not seem to me that that is a sensible way ahead. However, I have said that I am open-minded. If the committee believes that the suggestion is one on which we should spend time, I am happy to do that and to study it in all seriousness, because Mr Harvie is correct that there has to be a system.

I am confident that the system that we have is a good one. The point about establishing rights by prescription is that, by definition, the proof is difficult, because it will not necessarily appear in a document; what is required is proof of physical activity, such as possession of a property, which requires evidence from individuals. As far as I can recall, affidavit evidence used to be required to be given to the keeper to prove that a prescriptive right could be established to the keeper’s satisfaction. From research that I carried out earlier this morning, I understand that the keeper changed that process for the understandable reason that oral evidence can be contradicted. The mere provision of an exclusion of indemnity by the keeper is the state giving an insurance policy, which should not be readily granted and certainly not where there cannot be a reasonable degree of certainty that the keeper will not face a call on that indemnity. Practice has changed and the keeper now requires a judicial declaration of such a prescriptive right before she will accept an application for a prescriptive right.

I hope that I understood that; I never professed to being top of the conveyancing class at the University of Glasgow. I understand that that is the policy.

Matthew Smith (Scottish Government): That is the policy for prescriptive servitudes.

Fergus Ewing: The establishment of servitudes is a difficult area by nature, but the keeper pursues a correct policy that is based on the need for certainty, and that policy has been tightened up. Indeed, I am surprised that the policy was not introduced in 1979 because the process was always open to serious challenge.

The Convener: Patrick Harvie has a brief supplementary point and then we will move on.

Patrick Harvie: Just for the record, I am keen that the evidence that we have heard is not inadvertently misrepresented. To be clear, although in giving oral evidence Andy Wightman discussed the possibility that auction might be appropriate in some circumstances, though not all, the proposal that he has given us in written evidence is that there could be a period of advertisement and investigation, during which time
other potential owners, including the Crown, might be legitimately able to lay claim, and that "Only after the expiry of this period should the Keeper have any power to admit an a non domino deed for registration."

That leaves discretion with the keeper under certain circumstances to admit an application, but only after advertisement and the opportunity for other legitimate claims to be laid.

The Convener: Thank you. You do not have to respond to that, minister.

Rhoda Grant: I have a question about process. The bill has provision on the registration of a non domino titles. I need clarification of what Mr Henderson said about property law. My understanding is that someone can take on a title by prescription only when the title is registered so, in a way, registration rather than property law almost governs this point in law. Am I right or wrong, or does another piece of legislation cover it? If the committee wants to amend this point in law, can we use registration or do we have to plough back into previous legislation?

Gavin Henderson: To clarify what I thought I said—the Official Report will show whether I did—the bill relates to property law only as it is affected by registration law. Land registration decisions can give real property rights to individuals. To my mind, the line between what is in the bill and what should be for other legislation is the fact that registration decisions that affect property rights are in the bill but other topics, such as abolishing prescription, for example, are outside the scope of the bill. The Government might want to consider that in a lot more detail before looking at amendments.

The Convener: For clarity, determination of the scope of the bill for stage 2 amendments is in my gift and in the Presiding Officer's gift for stage 3 amendments.

Rhoda Grant: What other legislation covers prescription?


The Convener: If members are content, we will move on. The next topic is the resolution of disputes, on which we have heard quite a lot of evidence.

Mike MacKenzie: The minister might not be aware that we have heard a considerable amount of evidence to suggest that all is not perfect in the current system and that it has errors, which range from typos to more serious errors. Given that it is expected that the bill will speed up and increase the number of registrations, does the minister agree that a relatively low-cost and quick dispute resolution mechanism might be appropriate, especially as part of the bill's focus seems to be to remove such a role from the keeper?

Fergus Ewing: That is a pretty technical area, so I would prefer to let Mr Henderson give evidence on it. I have not studied that aspect of late.

Gavin Henderson: As I understand it, the way in which the bill operates will mean that the keeper may register something if it is manifestly clear but, where it is not clear, the keeper will not, for example, change the register to remove an error. However, as you know, there is provision in the bill to allow an appeal against a decision of the keeper to the Lands Tribunal for Scotland. It would then be for the Lands Tribunal to resolve the question as to whether the keeper should have changed the register. There is therefore already a process in the bill whereby the Lands Tribunal can review a decision of the keeper.

Mike MacKenzie: I was not necessarily referring exclusively to errors by the keeper. I was referring to the panoply of potential errors, which include surveying and conveyancing errors as well as keeper errors. We have heard evidence that the system has a number of errors, such as mapping inaccuracies. There is an intention to move from Ordnance Survey plans and maps to a cadastral plan, which I assume and hope will be more accurate. All such activity inevitably gives rise to errors, some of which are historical and some of which are without blame. However, there should be a reasonable mechanism for relatively simple errors, but perhaps not the most complex or disputatious errors, to be resolved quickly and at low cost. Has any consideration been given to that?

Fergus Ewing: Mr MacKenzie has referred to a wide range of errors, some of which will be errors in the register. Of course, some errors can be corrected by the parties involved if they make appropriate application for that to be done by agreement. However, it is not the role of the keeper to be a judge. The keeper is the keeper and it is not her role to adjudicate on property rights.

Parties may not agree about, for example, the alignment of a boundary between two houses, which I recall is an issue that used to arise frequently when I was in practice. The boundary line might not be shown accurately in the land certificate, but that can be corrected by agreement between the parties in a process that the keeper will try to facilitate. The situation is often complicated if the security rights have to be amended as well and permissions obtained. However, be that as it may, there is a procedure.

Where parties do not agree, though, section 99 will allow the decisions of the keeper to be...
Mike MacKenzie: I have a concern about rural areas because, as we have heard, the scales used in maps of rural areas tend to be much less precise than the scales used in maps of urban areas. Given that a lot of the land that has not hitherto been registered appears to be in rural areas, that seems to be a reason for introducing a reasonable dispute resolution mechanism or a mechanism to resolve not only disputes but uncertainty.

Fergus Ewing: This is a very important area of inquiry for the committee to pursue. It is not a straightforward area. In the interests of openness, I should say that a former constituent—straightforward area. In the interests of openness, I have asked the keeper to explore with the Lands Tribunal in advance of stage 2 whether anything more can be done to ensure that the Lands Tribunal resolves disputes, especially boundary disputes.

I have not come on to the other aspect of Mr MacKenzie’s question, which I think is regarding the use of the Ordnance Survey map as a base map, but I am happy to do so if asked.

11:15

Mike MacKenzie: I have a concern about rural areas because, as we have heard, the scales used in maps of rural areas tend to be much less precise than the scales used in maps of urban areas. Given that a lot of the land that has not hitherto been registered appears to be in rural areas, that seems to be a reason for introducing a reasonable dispute resolution mechanism or a mechanism to resolve not only disputes but uncertainty.

Fergus Ewing: This is a very important area of inquiry for the committee to pursue. It is not a straightforward area. In the interests of openness, I should say that a former constituent—he lived in Lochaber, which I no longer represent—pursued the matter tenaciously and diligently over a number of years. I pursued it on his behalf as his MSP, before I became a minister with this portfolio. The issue has therefore been considered fully and in great detail by myself and the keeper. The conclusion is that the Ordnance Survey map is fit for purpose. The Law Society of Scotland and the Royal Institution of Chartered Surveyors have both said that that is the case.

The OS map has been the base map since the introduction of the land register in 1981 and, for the vast majority of titles, there has not proved to be a problem with basing them on the OS map. Obviously, the boundaries of land register titles may follow features on the OS map, but they will do so only when those features agree with the legal title. An obvious example is that the legal boundary of a title may well exceed a physical boundary, such as a fence.

I think that Mr MacKenzie’s point is that errors of that type are more commonly found in rural areas where the OS map is prepared on an insufficiently adequate scale and therefore there is a propensity for error or the chance of greater error than there may be for OS maps of urban titles. As I understand it—I am not a technical expert in this area—that is more or less agreed. The keeper has therefore recently set up a mapping group with Ordnance Survey, the RICS and the Law Society to deal with mapping issues.

I believe that the committee has a copy of the keeper’s report of December 2011, which addresses these matters in greater detail. They are important matters to get right. I have given you our broad response, but we are happy to work further with the committee on this important and complex issue to ensure that we serve rural Scotland as we do urban Scotland.

Rhoda Grant: I have a question about an issue that could lead to disputes. I understand that when, for example, a right of access into a new estate or the like is to be registered, it has its own title and obviously that refers to the different properties that have rights over it, but it is not recorded on the title of the home that has the rights over it. Could that lead to disputes? The same is true of burdens, rights of servitude and the like. They are not always recorded on each title that they affect. Is this the right way to do it? Would it be better to have a title that gives the last word on all the rights that pertain to that property?

Fergus Ewing: I am sorry, as it is probably my fault, but I did not quite understand that question. Did Gavin Henderson understand it?

Gavin Henderson: Can I clarify whether I understand the question? Is the question about whether the provisions on shared plot title sheets in the bill are appropriate and whether everything in relation to, for example, pertinents or extra parts of land that relate to a property should be on the initial title sheet?

Rhoda Grant: Yes—that is part 1 of my question. Maybe I tried to fit too much into my question in the interests of time.

Gavin Henderson: Can I answer that question first?

Rhoda Grant: Yes.

Gavin Henderson: The provisions on shared plot title sheets in the bill are intended to make the land register clearer, not more difficult to understand. That means that, when you look at the map, you can tell which areas are shared areas and which are not. In addition, the title sheet will have a mutually enforcing cross-reference to the shared plot title sheet. We should therefore not miss out shared areas or mislead people when they look at the title sheet. They should be able to see what the shared plot title sheet is. We think that the process is robust.

Rhoda Grant: You do not think that the process is complex or that it could give rise to registration problems where shared access remains with the previous owner.
Gavin Henderson: The shared area will transfer automatically with the sharing plot on transfer of the main premises.

Rhoda Grant: The second part of my question is connected—although perhaps not clearly so—and concerns burdens and rights of servitude, which tend to be more historical and are not always recorded on both titles. They might be recorded on the title for the property over which an individual might have rights, but they might not be recorded on another title to show the individual that they have right of access. Does that not cause problems and disputes?

Fergus Ewing: Mr Smith will be able to answer that.

Matthew Smith: Historically with servitudes there has to be a burden and a benefited property or a dominant and servient tenement. Up to 2003, there was no requirement to record or register a servitude against both properties, but that requirement was introduced in the Title Conditions (Scotland) Act 2003 and now, for a servitude to be created, it has to be recorded or registered against not only both properties but all the affected properties. If a road running to a house runs across five other properties, it will be registered against the house that has the benefit of it, but it will also be registered or recorded in the general register of sasines against all the other properties. The 2003 act solved that problem.

Rhoda Grant: We received evidence that it caused problems and could lead to disputes, but that might have been the case prior to the passing of the 2003 act.

Matthew Smith: On first registration, all the prior burdens, deeds and rights in a title are examined. If any servitudes burdening a property are evident from previous titles or the titles that are recorded in the general register of sasines, they should be shown on the title sheet. Again, the deeds that are submitted for registration should narrate any rights in the title and any servitudes that the property might benefit from. If the servitude is in the deeds, it should be represented in the land certificate.

The Convener: As the meeting has been running for an hour and 20 minutes and the minister has other pressures on his diary, I suggest that we move on. The deputy convener has a question about the new criminal offence created in section 108, which has caused some concern.

John Wilson: As the convener suggested, we have received some interesting oral and written evidence on section 108. The keeper has indicated her preference for it and in its written evidence the Association of Chief Police Officers in Scotland supported it—although I point out that ACPOS has been reluctant to provide oral evidence on the matter and that, in fact, no one from the association has given oral evidence to the committee. Given the views expressed in the written submissions, particularly those from legal organisations such as the Law Society of Scotland, why does the minister think that section 108 should be in the bill? Is such a provision crucial when the issues in question, particularly the unlawful behaviour of solicitors and other agents acting on behalf of property and land purchasers in Scotland, might be covered by other legislation?

Fergus Ewing: Mr Wilson raises an extremely important matter. We spent a great deal of time on it before the bill was introduced, primarily because the Law Society of Scotland, whose advice we take very seriously, believed that section 108 was not necessary. We respectfully disagree; indeed, we think that it is extremely important and should be included in the bill. Our position is based on advice from the Lord Advocate, who supports the offence and, like the Scottish Crime and Drug Enforcement Agency, believes that it is necessary.

Plainly, the new offence created by section 108 is designed principally to deal with fraud, of which mortgage fraud is the main example. The relevant fraud authority has estimated that mortgage fraud in the United Kingdom costs £1,000 million a year. The problem is massively significant and has substantial repercussions for the ordinary consumer, because lenders must obviously implement all due safeguards against fraud and they need to be satisfied that the state is doing everything possible to protect them and the public against the tiny minority of professionals who may be engaged in assisting or carrying out such illegal activity.

I recently met the director of interventions at the Law Society. She has been routinely appointed for 20 years as judicial factor of law firms when there have been instances of professional misconduct, including fraud. When discussing mortgage fraud with me, she told me that in her professional opinion the biggest issue in bringing fraudsters and their solicitors to account is that the Crown has difficulty prosecuting mortgage fraud. The Lord Advocate’s advice is that the new offence that section 108 creates will address such difficulties to an extent. He referred in particular to the recklessness element of the offence.

I understand that the Law Society’s view is that the creation of the new offence is not appropriate and that in any case the element of recklessness is not appropriately incorporated or sufficiently clear. In fact, it stated in its written submission that the inclusion of recklessness in the provision is not compatible with the rule of law. Perhaps I can respectfully draw the Law Society’s attention to...
section 89(1) of the Housing (Scotland) Act 2006, which states that an offence is committed if a person

“knowingly or recklessly makes a statement ... in an application for a grant or loan ... which is false in a material particular”.

There is also section 42 of the Marine (Scotland) Act 2010, which states that an offence is committed if a person “makes a statement” intentionally or recklessly that is “false or misleading” in an application for a marine licence. We came across another relevant example in the Reservoirs (Scotland) Act 2011.

I give those references because it seems to us that, despite the Law Society’s objection to the term or concept of recklessness, it is a well-established part of law. Equally, the Law Society takes exception to the phrase “all due diligence” in section 108(3) and argues that it is not sufficiently clear. I understand from a search that my officials carried out that there are 113 different acts of the United Kingdom and Scottish Parliaments where the phrase “all due diligence” currently applies, which seems to me to be a fair amount of precedent.

The matters to which I have referred are serious and I hope that we can persuade the Law Society that the offence created by section 108 should be incorporated in law. Needless to say, honest solicitors, who are the overwhelming majority, have absolutely nothing to fear and section 108(3) makes it clear that that is the case. I strongly believe that it is extremely important to create the new offence. I think that that is the view of not only the Lord Advocate and the SCDEA but the Council of Mortgage Lenders, whose views we need to listen to very carefully; if we do not, the risk is that the costs for checks and diligence that the consumer must pay to lenders before they get a mortgage will rise.

It is therefore not a cost-free exercise, but it is an important one. We must recognise that there are difficulties in prosecuting fraud—that comes with the territory. Because of its nature, it is not a crime that is easy to prosecute or to prove, so we must take every measure possible to address that. I imagine that committee members will readily see the strength of the arguments that I have outlined, which I commend to the committee.

11:30

John Wilson: I thank the minister for his response, but I must draw to his attention the latest written evidence from the Law Society of Scotland, in which the society responds to the keeper’s evidence to the committee on 25 January. As the Law Society points out, the keeper said:

“Obviously, section 108 has been included in the bill on the advice of the police force, those who are responsible for dealing with serious crime and the Lord Advocate. Indeed, the judicial factor in the Law Society of Scotland has taken the view that the section is a necessary and helpful addition to the tools that are available to combat fraud.”—[Official Report, Economy, Energy and Tourism Committee, 25 January 2012; c 873.]

The Law Society’s response to that is:

“This statement is incorrect in so far as the Judicial Factor of the Society has given no such view that the section is either necessary or helpful.”

It would be useful if the minister provided clarification on that in further written evidence to the committee. The Law Society of Scotland has challenged the keeper’s statement about the judicial factor. Clarification would be helpful for the committee so that we can fully understand exactly where the arguments for including section 108 are coming from. Based on the Law Society’s written submission, the arguments are not coming from it.

It has been pointed out that the equivalent offence in England and Wales is confined to cases of intentional wrongdoing. Is it the minister’s intention that the bill should introduce a more strenuous regime that criminalises conduct that is unintentional but reckless? There is an argument that some issues for solicitors and lawyers might be a result of unintentional activity rather than deliberately criminal activity.

Fergus Ewing: I do not see the issue in that way— I do not see a sort of competition about who has a more severe approach to fraud. I can say with total certainty that my counterpart south of the border in the Westminster Government wishes to take every practical and sensible step to combat fraud. That is what section 108 does. To be fair to the Law Society, its point is that other offences and measures currently provide the protection that the proposed offence seeks to provide, but we respectfully disagree. That is for the reasons that I have stated. The Lord Advocate, who after all is the person who is responsible for prosecution in Scotland, states that the new measure will make it more straightforward and less complicated to prosecute cases where necessary.

I am absolutely convinced that section 108 is necessary. In any event, if the Law Society’s argument is that the offence is duplicatory, is that such a serious argument? If the offence is included in the bill, what is lost? Nothing. We will simply give the Lord Advocate the option of charging someone with that offence rather than another one. I hear what Mr Wilson rightly says about the Law Society. I do not seek to speak for any officer of the Law Society, although it is open to the committee to decide whether to obtain such evidence. However, I do not approach the process as in any way an adversarial one with the Law Society. Just before Christmas, I had an amicable
meeting with representatives of the Law Society at which we discussed the matter.

As the minister, I am determined that we do everything that is necessary to tackle fraud. If the Lord Advocate says that section 108 is necessary to prosecute fraud in Scotland more successfully and effectively and to protect the public—which means not only preventing people from becoming victims of fraud, but preventing the indirect consequences of that fraud for the wider consumer—it would be irresponsible of me, as the minister, to take any approach other than the one that I am taking.

Jim Eadie: I have listened carefully to the minister, and I would like to test the assertion that he is always open-minded. My question is about the application and scope of section 108. The Law Society has reservations about introducing that provision. One of its concerns is that the measure covers not only money laundering and mortgage fraud, which the minister addressed in detail, but any error or omission on any subject. Is the minister prepared to consider the scope of section 108 again?

Fergus Ewing: Of course we are happy to consider the wording of the section. That is part of the process of scrutiny. I hope and expect that the committee will address that at stage 2.

If the wording of the section can be improved, of course, we are ready to do that, as all Administrations have been during the passage of any bill through the Parliament. It is relevant to point out that section 108(3) specifically provides a statutory defence for a person who is charged with an offence, which is

"that the accused took all reasonable precautions and exercised all due diligence to avoid the commission of the offence."

If the Law Society’s argument is that the reference to an error might criminalise activity of a trivial or technical nature, I assure you that no one would prosecute on such matters. Plainly, however, we need to ensure that we get the terms of the legislation right. It is not the Government’s intention to criminalise administrative or other errors.

Jim Eadie: In fairness, I think that the Law Society’s point is that there may be professional service that, although unsatisfactory, falls short of being fraudulent. It is concerned that the scope of the bill is too wide and would criminalise those practitioners whose service falls below the expected standard.

Fergus Ewing: That is a serious point and we will take it seriously.

My attention has been drawn to the word “materially” in section 108(1)(a). For the offence to have been committed, the person must have made

"a materially false or misleading statement in relation to an application."

It could be argued that that does not address the precise point that Mr Eadie has fairly raised. Although we disagree with the Law Society on the principle, we have a common interest and agree that, if there is to be an offence, it must be correctly stated and should not go further than is necessary and appropriate. I am grateful to Mr Eadie for giving us the opportunity to clarify that.

Jim Eadie: I am sure that the committee and the Law Society appreciate that helpful clarification.

When you come to address all the points that have been raised, will you also address the following point, which has been raised by the Law Society? It is of the view that

"it may be no easier to prosecute recklessness conduct under the proposed new offence as it is with intention, under the existing criminal law offence of fraud."

Will you also look at that, please?

Fergus Ewing: We will certainly look at it, but we formed our view after I consulted the Lord Advocate specifically on these issues. We were aware of the strength of the Law Society’s view and of its range of objections, some of which Mr Eadie has fairly pointed out. The Law Society takes a different view. The Lord Advocate takes the view that the term “recklessness” and the concept of recklessness will allow him to prosecute, which must be a good thing. There are safeguards in section 108 and, if they need to be tightened up, we are happy to look at that. However, there seems to be a difference in principle between the approach that the Law Society or its committee has taken and the approach of the prosecuting authorities. We are backing the Lord Advocate and the SCDEA.

It gives me no pleasure whatever to say that the SCDEA has advised that there are 291 individuals identified as professional facilitators and specialists who provide vital advice and support to crime groups in Scotland, and some of those individuals are solicitors. It is a serious matter, which we will seek to address in working with the committee and the Law Society in the passage of the bill.

The Convener: Thank you, minister. I am concerned that, when we took evidence on the issue, we received no evidence from the SCDEA, the CML or the Lord Advocate. We received written evidence from ACPOS, but it was unable to send anybody to the committee to support that verbally and to be scrutinised. It is interesting to hear you quote all those bodies in support of your
position, but we have not seen any of that evidence. It would be extremely helpful if you could let us have the evidence to which you refer before we conclude our stage 1 report. We need to see it. It is disappointing that the committee was unable to get anybody from any of the bodies to which you refer to give us oral evidence in support of your position.

Before I bring in other members, I will ask a follow-up question, which comes back to the Law Society’s concern. As you will know, the money laundering regulations already place stringent requirements on an intermediary such as a solicitor in terms of their actions on behalf of a third party in financial transactions. What additional steps would a solicitor require to take when they submit an application for registration of a title, over and above what they are required to do by the money laundering regulations, in order not to be caught by the provision on recklessness in section 108?

**Fergus Ewing:** Our advice is that the new offence will enable the Lord Advocate to prosecute cases of fraud more readily and that it will go further than the existing provisions. The offence is based on an analysis of the incidence of fraud and the way in which fraud occurs. It is also based on analysis of cases, some of which are current and which I therefore cannot talk about, but details of which I have had explained to me. The offence deals with practices in relation to fraud and examples of fraud that are, usually, carried out at the expense of mortgage providers on a very large scale. It is based on the determination of the prosecution authorities to use every possible means to stamp that out.

That is the advice that I have received from the Lord Advocate. The advice specifically refers to the provision on recklessness being a useful tool. The provision is based on the fact that solicitors are the gatekeepers to the land register and therefore they are generally in a privileged position and have a responsibility to act as officers of the court, particularly in relation to patterns of fraudulent behaviour when a series of transactions means that, for any reasonable solicitor, alarm bells should be sounding.

The argument that the convener and the Law Society have quite fairly put is that there are already measures in place that provide protections. Solicitors must, for example, exercise the requirements of the money laundering regulations to ascertain the identity of clients. We believe that the new offence will further equip and assist the prosecuting authorities in Scotland to take action when formerly it has not been taken.

Incidentally, we do not believe that the offence provision will have any effect on solicitors who are doing their job diligently, properly and honestly. In that respect, we do not think that there is any argument of substance against the inclusion of the new offence in the bill.

**The Convener:** That is very interesting, minister, but it is not really an answer to my question. What practical steps does an honest solicitor require to take, over and above what they are required to do under the money laundering regulations, to ensure that they do not face criminal prosecution if acting in good faith?

**Fergus Ewing:** None.

**The Convener:** So why is the legislation necessary? If solicitors are already committing a criminal offence by breaching the money laundering regulations, why do you need another offence that says the same thing?

**Fergus Ewing:** When I used the word none, I was seeking to refer to the question of what extra things solicitors will require to do. They will not require to do anything else. I thought that that was the question that you were asking.

Solicitors must comply with the money laundering regulations and must show that they have done so by having evidence on file. For example, as I am sure you will recall, they must copy their client’s passport or driving licence or other evidence of identity and put it on file to show that they know who they are dealing with. I recall examples of cases, before the regulations came in, when clients assumed a false identity to try to perpetrate a fraud. That is one reason why the money laundering regulations were brought in.

Solicitors actively require to keep on file evidence to show that they have complied with requirements such as the money laundering requirements and that, for the very sensible reason outlined, they know who their client is. It may sound rather obvious but, in practice, when a solicitor is dealing with business over the phone it is quite easy for fraud to happen. I am sure that in the past it would have happened regularly. A busy solicitor who was dealing with matters over the phone might never have seen the client. That may well have happened, but it is plainly not desirable and the money laundering regulations deal with it. Solicitors have to keep records on file.

I answered in the way that I did to make the point that all that a solicitor has to do to avoid any possibility of facing prosecution for the offence is act honestly, properly and diligently. They do not have to make any notes on their file, but they must act honestly, properly and diligently in the execution of their business.

11:45

**The Convener:** Right. I want to be absolutely clear. If a solicitor follows what is required under
the money laundering regulations, he will have a
defence against the charge of acting recklessly
under section 108.

Fergus Ewing: I was just giving an answer to
the question what the solicitor is required to do not
to fall foul of the regulations.

The Convener: You will appreciate that the Law
Society of Scotland was concerned about that. In
its evidence, it was quite clear that its concern is
that a solicitor who acts in good faith but is duped
by a fraudster client will not want to face a criminal
offence for acting recklessly. It wants to know what
practical steps a solicitor needs to take to ensure
that they are not caught in that trap and are not
prosecuted for an offence when they have done
nothing wrong. They might have been caught out
by a wicked third party for whom they are acting.
The danger is that the definition of “recklessness”
may catch them. You have just said that a solicitor
requires to take no further steps other than comply
with the money-laundering regulations. If that is
the case, that is reassuring, although it calls into
question the point of section 108.

Fergus Ewing: I do not think that it does,
because we are looking at potentially different
types of criminal activity. Not all criminal activity is
carried out by solicitors who are ignorant of their
client’s identity. Frauds can be carried out by a
solicitor as part of a conspiracy with a client.

The Convener: But that would not be
recklessness; it would be a deliberate act.

Fergus Ewing: Or wilful blindness as to the
consequences.

Patrick Harvie: I love it when lawyers talk to
lawyers. [Laughter.]

I want to move on to a related issue rather than
ask about the specifics that are being discussed,
so other members may want to come in first.

The Convener: Okay. Does Mr MacKenzie
want to follow up on the point that we are
discussing?

Mike MacKenzie: Yes. I want to follow up on
the effect on property-buying or property-selling
members of the public who legitimately go about
their business and the steps that solicitors have to
take. Given what we have heard from the Law
Society, solicitors may feel that it is necessary to
ensure that they are in an unimpeachable position
at all times. We have talked about the money-
laundering regulations. I tried to open a bank
account in the branch of a bank in which I already
hold three accounts. The member of staff who
dealt with the matter was my cousin, whom I have
known for 50 years. My difficulty was that I was
unable to get there in person to show the bank my
passport, which it already holds copies of, I
believe. People will appreciate that such an
approach sometimes causes difficulties. I have a
personal concern about the crime of identity theft
and think that sometimes there is a perverse
consequence of that, but my general concern is
about the implications for the property-buying
public of any measures that solicitors may think
that they have to adopt to protect themselves.

Fergus Ewing: As I said in answering a
previous question, we do not think that the
 provision will have any effect on solicitors who do
the job honestly and diligently, and we do not
believe that the offence should or will have a
negative impact on consumers who are seeking
legal advice. Obviously, when a client’s actions
should raise a solicitor’s suspicions, it will be the
solicitor’s duty to take appropriate action. Once the
solicitor has done what we would expect any
professional in their shoes to do, there is no
reason for them to withdraw from acting for a
client.

We do not expect there to be any ensuing
difficulty for consumers. On the contrary, unless
we take every measure to tackle fraud, we may
well see the CML and lenders in general
increasing costs to protect and cover mortgage
providers against the incidence of fraud that is
perpetrated by very few people.

The argument is readily understood in relation to
insurance companies. We all know that our
insurance premiums are inflated by the amount of
insurance fraud that goes on—anyone who has
thought about it knows that to be broadly true. If
there was no fraud against insurance companies,
our premiums would be a lot lower. The position is
not so obvious in relation to the provision of
mortgages, but lenders have to protect themselves
and, by definition, they will focus on the instances
of fraud that there have been and then go to the
ninth degree to protect their future dealings and
loans against such eventualities. I am just making
the point that the danger lies in not taking all
necessary measures to protect the public against
fraud, not in taking them.

Patrick Harvie: The minister tells us that his
intention is to deal principally with mortgage fraud
and we have discussed the practical application of
section 108. Was any consideration given to a
wider range of issues, including criminal activity
such as money laundering and tax evasion and
legal tax avoidance, which has attracted a long
overdue degree of political attention across the
political spectrum?

Andy Wightman gave evidence on the issue of
tree or beneficial ownership, citing comments
made in the review of the Land Registry in
England and Wales on the problem caused by the
lack of any record of the true or beneficial owner. It
said:
“the fact that the Registry neither records on the Register nor knows who the true owners of property are becomes ever harder to defend”

in the context of crime and money laundering, tax compliance, law enforcement and regulatory enforcement. The review went on to say:

“Without such information, the transparency of land registration must always be seriously qualified.”

Andy Wightman also tells us

“Such concealment also formed part of the background to the Mohammed Al Fayed court case against the Inland Revenue Commissioners in 2002 where the Special Compliance Office of the Inland Revenue had launched a Who Owns Scotland project to try and investigate the tax affairs of landowners in Scotland who had registered land in offshore jurisdictions.”

A couple of approaches have been suggested in evidence: either there should be a requirement to register the true and beneficial owner; or restrictions should be put on registration in the name of companies or entities that are not registered in European Union member states. It is acknowledged that we might not be able to achieve a perfect position, but those approaches might go a significant way towards reducing the opportunity to use land deals to avoid tax or make use of offshore tax havens.

Can we have the minister’s response to the options presented in the evidence that we have heard?

Fergus Ewing: Which particular options?

Patrick Harvie: One option is to require the true and beneficial ownership of land to be registered as part of the land registration process. Another is that registration should not be accepted in the name of an entity that is not registered in an EU member state. That would go some way towards reducing the opportunities for tax avoidance and criminal activity such as money laundering.

Fergus Ewing: First of all, we are determined to stamp out criminal activity, and I hope that my earlier evidence has indicated that we are nothing less than 100 per cent determined to use the powers that we have in this Parliament to do precisely that. We do not have powers over taxation so we cannot address issues relating to tax avoidance. I wish that we did but we do not, so we cannot. We also cannot do so through the bill, because it is not to do with tax avoidance; it is about the registration of property.

That said, I will respond to the two options that Mr Harvie has presented. The land register shows the owner of a property and, in some cases, a property is owned by limited companies, trusts or other vehicles that do not reveal the beneficial ownership. For example, if Marks & Spencer owned a shop in Sauchiehall Street, in Glasgow, the land register would not require there to be appended to the title sheet a list of all the shareholders in Marks & Spencer. If it did, the cost of the registration process would rise significantly. When a limited company owns a property, the owners of the company are not required to be marked on the title sheet, and the situation is similar for property that is owned in trust.

On Mr Harvie’s first option, ultimately the land register is concerned with the registration of ownership of property, not with amending property law. If Mr Harvie wanted a requirement that the beneficial ownership be shown, property law would have to be amended to take account of that. We do not think that that would be a sensible exercise to pursue, for reasons that are obvious from the example that I have just given. Those who want to inquire about the owner of a company can do so through other means such as by applying to the register of companies and obtaining the company file. Indeed, that is what people do. With respect, what Mr Harvie suggests does not seem to be within the ambit of the bill; it is a matter for reform of property law and, possibly, taxation law.

On the second option, I understand that Mr Wightman proposes that it should be incompetent to register title to land in the name of any legal entity that is not registered in an EU member state. I am not in favour of such a proposal, even if it is within the scope of the bill—I have not looked into that question, but I suspect that it would be answered in the negative—because there would be a significant risk that introducing such a system would have a negative effect on investment by companies that are registered outwith the EU. Yesterday, I visited two major employers in Ayrshire—aerospace companies that employ nearly 1,000 people each. I do not know whether the US companies that own those companies own the land on which the factories that I visited are built, but I would not want to discourage them from increasing the excellent investments that they have made in Scotland, which provide many valuable jobs for our citizens.

Also, it is unclear whether, if we took that action, we would take land by force from those who refused to set up an EU company or whether we would seek to confiscate or nationalise land that was owned by non-EU entities. That would be the logical determinant. Nor can I see the difference—in theory, at least—between a company that was set up as a tax vehicle within the EU and one that was set up outwith the EU for the same purpose. Why is outwith the EU bad and within the EU good? It seems slightly strange to think in those terms, and I do not. In short, I am absolutely not in favour of such a proposal and do not think that it would be workable even if it were relevant, which I suspect that it is not.
The Convener: You could have cited the example of a piece of land in Aberdeenshire that a certain Mr Trump, or his organisation, is currently in ownership of.

Patrick Harvie: I think that I am right in saying that, in that example—as in very many examples of overseas development—a domestic legal entity has been established as the owner. For any legitimate foreign investor whose interest in owning land in Scotland many of us would welcome, that is the normal course of action and would not pose a barrier.

Notwithstanding the argument about foreign investment, is the minister open to a debate—in the context of either the bill or a different legislative vehicle—about addressing the other questions of property law that he identified in the early part of his answer? He and I share the hope that, in the very near future, the Scottish Parliament and the Scottish Government will take responsibility for and will have to deal directly with the consequences of tax avoidance for the Scottish finances. We do not have the legal power to deal with tax law at the moment, but we can ensure that property law and land registration law do not give rise to loopholes for those who would seek to exploit the system and avoid paying the taxes that most people would expect to pay in their ordinary daily lives.

12:00

Fergus Ewing: I am always happy to have a debate, convener.

The Convener: Thank you, minister. We need to cover a couple more areas, so how is your timetable? Can you stay for a few more minutes?

Fergus Ewing: Yes.

The Convener: Fine. I want to deal briefly with the question of electronic registration. Mr Brodie has a question on it.

Chic Brodie: Section 92 of the bill deals with electronic documentation and has provision for electronic registration. Given all the conversations that we have just had about fraud etc, how much importance do you attach to that?

Fergus Ewing: I am sorry, but can you rephrase the last sentence of your question?

Chic Brodie: How much importance do you attach to the provision made in the bill for electronic registration?

Fergus Ewing: It is extremely important. Electronic registration is an effective and much swifter way of dealing with the conveyancing process. Conveyancing law was developed before the invention of the internet and e-mail and it used to involve a cumbersome, long-winded and protracted process of lawyers exchanging paper documents. Plainly, electronic technology is extremely useful and has already been put to good use. Work is on-going to determine which other legal documents should be capable of being self-proving in electronic form under the bill’s provisions. The provisions will allow Scotland to come into line with the e-commerce directive and—I am told—the e-signatures directive. I confess that I have not studied either of those directives in any detail, so mea culpa.

Electronic enablement of the conveyancing process will also allow lenders and others to streamline their processes. That is important because it can simplify what has become the complicated process of obtaining a mortgage. For example, when I was first in practice, loan instructions from the Bank of Scotland might be on one sheet of A4, but when I ceased practice, which was about a decade ago, I got a telephone directory of rules that I had to study and if as a solicitor I did not follow them, I had to pay for any mistakes that arose.

So, anything that we can do to protect the public and make the process simpler is generally better. I should say that, at the request of the Law Society, Registers of Scotland has already, with the automated registration of title to land process that was launched in 2007, made considerable progress along that route.

Chic Brodie: I have a point on the ARTL process that may refer to an administrative rather than a policy issue, so perhaps it might just serve as an aide memoire for Mr Smith. We heard from the CML that the ARTL process is not fit for purpose. Before you and the keeper were in your positions, minister, a contract was signed in 2004 with Registers of Scotland for £66 million. However, the current cost of the contract is £132 million. Last year, £3.1 million was written off in the accounts and £17.1 million-worth of change notices were issued between 2004 and 2009. The situation is very serious. The provisions in section 92 of the bill are predicated on the success of electronic documentation and electronic signatures. I do not expect you, minister, to respond to what is an administrative issue, but will you ensure that whatever systems are in place will wholly support the bill’s provisions?

Fergus Ewing: Plainly, we all want IT to be effective and I am acutely aware, from general reading, that IT projects have not always been a huge success. The member refers to a number of figures that I think relate to matters that are slightly outwith the province of the bill but which are, nonetheless, matters of considerable concern. I believe that those matters may be under consideration by the Public Audit Committee.
ARTL has to date cost £6.7 million, which has come from the Registers of Scotland trading fund. ARTL was designed with a particular market in mind—remortgaging and related discharges of standard securities. When it was designed, the remortgage market was buoyant and Registers of Scotland was kept busy with such applications. That is plainly no longer the case. The potential benefits of ARTL have not been fully realised, perhaps in part at least because of the slowdown in the Scottish remortgaging market. However, those who have used it for transactions have made significant savings, given that ARTL fees are lower than those for paper-based transactions.

ARTL has shown that secure electronic registration is possible, which needed to be demonstrated because there were doubters in the legal profession—as there were, incidentally, when the system moved to typewritten documents instead of handwritten documents. I think that I am right in saying that lawyers back then doubted whether the typeface would not fade in such a way that the print would fade and become indecipherable, so there have always been luddites in the legal profession—now and then.

Chic Brodie: With all due respect, it is unfair to suggest that Conveyancing Direct, the Scottish Property Federation and the CML are luddites when it comes to the use of IT systems.

I am concerned about any complacency going forward—although I am sure that there will not be any—if we have to develop a new system to make the bill a success. It is incumbent on the keeper to ensure that that happens. The example I gave is historic, but the sums that I mentioned are in the report by the Auditor General, which was published in November 2011. Those who some may think are luddites should be fully involved in producing a new system or, indeed, successfully implementing and upgrading the existing one.

Fergus Ewing: I was thinking of myself and a tiny minority of solicitors, not making a general smear of the profession in general.

The member is correct. It is plain that IT must work and that it must be effective and economic. There has been a propensity for IT projects to go very sadly wrong. Let us make no bones about that. The Public Audit Committee will no doubt look at the matter you mentioned. It is beyond the scope of the bill, but I am determined to work with the keeper to ensure that the lessons from introduction of the ARTL system are learned to assist with the implementation of any successor system and to help achieve more effectively and readily the bill’s objectives.

I do not know whether I have covered everything or whether Mr Henderson or Mr Smith have anything to add.

Matthew Smith: My only comment is that ARTL was developed along with the Law Society and the CML. It was designed with them in mind and with their input. The people at Registers of Scotland did not come up with ARTL on their own; it was considered with the Law Society and the CML.

There are lots of checks and balances in the system, because it was the first time that there had been electronic registration in Scotland, or in Europe—I think that the only other such system was in New Zealand. ARTL was a baby step and, as such, it had checks and balances in it. Those have proven to be problematic because they make it less workmanlike than it should be.

Chic Brodie: I accept that. I am just raising a flag; it is the CML that said that ARTL is not fit for purpose.

Matthew Smith: It was involved in the development of ARTL.

Chic Brodie: That is fine. We do not want to get into that sort of argument. All I ask is that, for the success of the bill, we ensure that going forward—not going back 10 years, although it beggars belief that we would sign a contract of that size for 10 years without having any checks and balances in it—there is robust, properly serviced involvement and participation of users, so that we do not have the sort of comments that we have had from previous witnesses.

Matthew Smith: As was done with ARTL will be done with any future electronic registration systems. Users will be involved and the invaluable or expensive lessons that have been learnt from ARTL will obviously inform any future system.

The keeper recently employed a new IT director who has been bringing in new members of staff for what is called an intelligent client function. When the systems were being developed in 2004-05, we did not have that in-house, but we do now. Rather than an outside supplier leading on such matters, people from Registers of Scotland will lead on them and undertake appropriate procurement.

Chic Brodie: Okay. Make sure that it works this time.

Stuart McMillan (West Scotland) (SNP): Regarding ARTL and the bill, I suggest that you have as much buy-in as you can from the industry, particularly from those who do the work on the ground. I suggest that a range of companies—large, small and medium-sized—should be allowed to offer input on the system. We have heard oral evidence in which the word “clunky” was used to describe the system. I referred to the bill while I was chatting to a lawyer at an event in the Parliament. He also used the word “clunky” about it, which surprised me. Clearly, the current system is not operating as we would like it to.
Going forward, you will need maximum buy-in and you will need to gather as much intelligence as possible from across the industry.

Matthew Smith: We understand that. Legal firms such as Thorntons and Peddie Smith Maloco were involved in the development of ARTL and are, obviously, bulk conveyancers. When we are developing a new system, we will consult widely and get people involved, including the users, so that the criticisms that have been laid at our door will not be laid there in the future.

Stuart McMillan: I am also conscious that new hardware or software immediately becomes out of date when it leaves the factory because of the speed of developments and so on, so I fully accept that it is difficult to future proof hardware and software. I worked in the IT industry for a while, so I understand and accept that there are difficulties. At the same time, I hope and expect that whatever system comes in will be continually and regularly improved—not necessarily every week or day—to ensure that it remains up to speed and is as robust and efficient as it can be.

Matthew Smith: I believe that the reasons why ARTL has not been updated or has not been running as well as it could are related to problems that are inherent in the IT contract. As I said, the keeper has taken steps to deal with that. I therefore hope that any electronic systems that come along in the future will be more robust and flexible and will allow for development. As you said, IT systems become obsolete; we have a digital mapping system that was developed in 1996, for example. Technology moves on, so it is time for the technology in Registers of Scotland to move on as well.

Gavin Henderson: I know from speaking to our new IT director that the intention is not to have an order for a new system that will then be developed at some later point and might end up being “clunky”. The idea is to have smaller packages of bespoke products that are continually developed and innovated on so that they meet the needs of our customers—small and large firms of conveyancers. The idea is to have a bespoke system for each type of application and customer.

The Convener: Thank you. Just in terms of a final—

Fergus Ewing: Can I make a point, convener? I understand that evidence has been given to the committee by solicitors to the effect that the ARTL system has limited application, and that some have said that it is not fit for purpose. In the light of the questions from committee members and the evidence that you have heard, I will ask the keeper to explore further the issues with me, and we will come back to the committee when we have had an opportunity to do that. We all have the common

aim and desire to ensure that these matters are properly dealt with, as Mr Brodie and Mr McMillan have argued quite correctly.

12:15

The Convener: Thank you. That is very helpful.

The last issue that we want to cover briefly—if we can—is registration of common land.

Rhoda Grant: Andy Wightman pointed out that common land tends to disappear, because it is not registered as common land and disappears due to prescription by other people. We raised the issue with the keeper and she told us that there is no reason why common land could not be registered. The problem appears to be who registers it and who pays for that registration. Has the minister given any thought to adding to the bill a provision on who would register common land and who would pay for its registration?

Fergus Ewing: I have looked at the matter, but it is an area of particular difficulty and complexity so, in consequence, I will pass on that question and Mr Smith will give you perfect answers.

The Convener: That is a high threshold to set.

Matthew Smith: The answer depends on what you mean by common land. People can have a title to common land. For example, 50 people can own shares in a salmon fishing—that is common land. The people who have the titles and own the shares are the people who will pay for it to be registered.

If you are talking about common land as in commonties, that is a much more peculiar concept to deal with, because a commonty does not have an owner. Although people have the benefit of the right and there may be ownership, it has been lost in the mists of time in Scots law. There was a division of commonties act in the back end of the 17th century, so obviously they existed at some point, but whether they still exist to this day is another matter. Mr Wightman has pointed out that a title in Carluke refers to a commonty. However, the commonty itself is not registered and nobody has tried to register it so far.

The answer to the question is that the owners of the land would pay for its registration. If the owners cannot be identified, it may be that the way to do it would be by a keeper-induced registration, when the proprietorship section of a title sheet can be left blank, because the proprietor is unknown. In the case of a commonty, if it is truly land that is owned by no one, although people have the benefit of the use of it, that may be the most appropriate way to register the land.

Rhoda Grant: I think that the argument would be that it is owned, but by the community in
general rather than by an individual. The problem, particularly with prescription, is that if you leave the owner out, or even if you say that the owner is unknown, somebody can start using that land and take it over with prescription, so it is lost to the community.

Matthew Smith: For a registered title to an area of common land for which it was not clear who the owner was—the proprietorship section was blank—someone who wanted to get a prescriptive title on the land would have to go through the tests in the bill. Obviously, as we have said, the seven-year requirement is to be dropped, but they would have to prove that they had occupied it for a year and had notified the true owners. If the true owners of the land are the community and it has 50,000 people, the person would have to prove that they had contacted those 50,000 people before they could get their prescriptive title. That is quite a high bar.

Rhoda Grant: It is not if the 50,000 people are not able to register the land in their ownership prior to that.

Matthew Smith: But if they are the true owners of the land and somebody else wants to register a title, for a prescription to run that person would have to find out who the true owners are, notify them and have their consent.

Rhoda Grant: You are turning the argument on its head. If, for example, common land was used as a sports field, the community might decide that it wants to build showers, changing rooms and whatever on it. If the community applies to the lottery for some funding for the project but the keeper of the registers will not register the land in common ownership, how can it raise funds to have something built on the land when it cannot prove ownership? The situation becomes extremely complex.

Matthew Smith: That is not a registration issue; it is a property law issue. The register can show only people who have real property rights and who can prove ownership of property under property law. If the people in a community who have the right to common land can prove that right, they can have a registered title to it.

John Wilson: There is an issue to do with land that has been gifted to people or a community, and which the local authority holds in trust. The law on that has been tested. If the local authority decides to carry out development work on that land, who has the right to decide what happens on it? That question comes up. There have been a number of cases in which land has been gifted to the people—Hamilton palace grounds are an example of that. The grounds were gifted to the people of Hamilton and the local authority held the land in trust. It then decided to put a shopping development on the site and the people objected, but the courts ruled in favour of the local authority. How can we resolve that common-land issue?

Gavin Henderson: I echo what Matthew Smith said. The land register is for registering land rights. Where it is clear that someone owns the land, it will be registered. If a court determines that a local authority owns a piece of land, the keeper of the register will register the local authority as the owner. The keeper is an administrative body, not a judicial authority, and it would be for the courts to determine such cases.

Matthew Smith: In those instances, the land is slightly different from a commonty, say, or land that is owned by people pro indiviso. Someone has set aside the land and said that it should be for the benefit of the community. The council is the administrator of the land for the community, so the council will hold the title, but it will be held in trust. If the council is not in the trust of the community, that is not really a matter for land registration; rather, it is a matter between the people and their council.

The Convener: It is clear that some of those issues are outwith the scope of the bill, which deals with land registration. If the committee were to write to you with thoughts on the registration of common land, minister, would you look at that?

Fergus Ewing: Of course.

The Convener: Thank you. We have an issue to do with subordinate legislation, but in the interests of brevity, we will write to you about that rather than raise it today.

As members have no final pressing questions that they want to ask, I thank the minister and his officials very much for their attendance and their comprehensive responses to our questions.

I suspend the meeting for five minutes.

12:23

Meeting suspended.
Scottish Parliament

Economy, Energy and Tourism Committee

Wednesday 22 February 2012

[The Convener opened the meeting at 10:02]

Land Registration etc (Scotland) Bill: Stage 1

The Convener (Murdo Fraser): Good morning, ladies and gentlemen. I welcome members, witnesses and our visitors in the public gallery to the sixth meeting in 2012 of the Economy, Energy and Tourism Committee. I remind everyone to turn off mobile phones and other electronic devices. We have received apologies from Rhoda Grant, who is not able to join us.

Agenda item 1 is continuation of our consideration of the Land Registration etc (Scotland) Bill. I am pleased to welcome Lesley Thomson QC, the Solicitor General for Scotland, who is joined by Danny Kelly, principal depute in the Crown Office policy division, and Ernie Shippin, deputy head of serious and organised crime division in the Crown Office. Thank you for coming. The principal purpose of having you here is to consider section 108, which has caused interest from a number of witnesses. Before we move to questions from members, I ask the Solicitor General whether she wants to say anything by way of introduction.

The Solicitor General for Scotland (Lesley Thomson QC): Good morning. I have nothing to say by way of introduction, but I am perfectly happy to assist by answering any questions.

John Wilson (Central Scotland) (SNP): As the convener said, the main purpose of this evidence session is to examine section 108. We have taken evidence from a number of organisations through written submissions and through oral presentations to the committee. One issue that is raising most concern is whether section 108 should be included. The Law Society of Scotland and other bodies have said that they do not think that it is appropriate or necessary to include the measure in the bill. I ask the Solicitor General to say why she thinks that it is appropriate to put it in the bill and whether other legislation addresses the issues that section 108 seems to address.

The Solicitor General for Scotland: I am happy to do that. I support the inclusion of the offence in the bill, and I will briefly indicate the background to my support. I will not go into detail on the purpose of the bill, as the committee will have heard about that from many people, but my understanding of the basic premise is that we are looking for a modern, secure and accurate land register that provides a system of registration of property rights that gives certainty in relation to credit that is secured over property. That means certainty to every one of us as individuals and to businesses and the financial sector. That will inspire public confidence and be good news for the economy and for business all round. That is the background.

The other side of the equation, which is where I am coming from in my support for section 108, is that a modern and trustworthy system of land registration is attractive not only to ordinary individuals but, unfortunately, to the undesirable element of serious and organised criminality. It is well known that organised criminal groups seek to legitimise their proceeds of crime through money laundering; to legitimise their property by following all the steps that are required; and to legitimise their activities in any way that gives them the air of respectability that is accorded to those who operate in a genuine and businesslike fashion. It is important to emphasise that background of serious and organised crime because, in that environment, it is appropriate to be innovative and to take every opportunity possible to protect the legitimate system from those illegitimate activities.

I probably should not say that I have been in serious and organised crime for years, but I think that members will understand what I mean. Unfortunately, in my experience, those who make that type of illegal activity their business are innovative and focused and they know the law inside out. The challenge for law enforcement and prosecution is to be innovative. I see the offence in section 108 as another opportunity to add to the existing legislation and offences as part of the effort to disrupt and detect organised criminality.

John Wilson: You say that section 108 will “add to” existing legislation. Does the section add anything fundamental to the existing legislation on money laundering and proceeds of crime, or is including it a belt-and-braces approach?

The Solicitor General for Scotland: It is more than a belt-and-braces approach, although there will be overlaps between the legislation on fraud, money laundering and proceeds of crime and the additional offence. The offence has an additional element, although it is not unusual to have different offences to cover the same criminal behaviour. For example, for acts of vandalism, there is the common-law offence of malicious mischief and the statutory charge of vandalism. It is not uncommon to have that choice. That gives the public a focus that there is a particular type of offending. In relation to applications to the land register, that is part of the purpose of section 108.
There is a focus, which is the proposed new statutory criminal offence in relation to applications for registration. However, the offence goes further than that, because it includes the element of recklessness, although I am aware that concern has been raised about that in evidence from the Law Society.

John Wilson: I accept that section 108 is more than a belt-and-braces approach, but what evidence is there to indicate that it must be included in the bill? The committee has tried to examine the issue by asking the Law Society and others to find out whether there have been any cases of reckless behaviour—as defined in the bill—by solicitors in dealing with property transactions. Can you point the committee to any such evidence to show why you and others feel that section 108 has to be in the bill? Can we have practical examples of how the current legislation and workings of solicitors and others in the field have led you to believe that section 108 must be included to capture those individuals who are involved in criminal activity? Are we simply trying to put people off ever attempting to carry out bad practice when doing property transactions?

The Solicitor General for Scotland: Section 108 is trying to do both, and there is absolutely nothing wrong with our seeking to deter or put people off, although I understand that that is not your main point.

Is there an evidence base of much of this type of offending going uncaptured? No, I am not saying that there is a big evidence base for that, but a minority of instances have come to the attention of law enforcement agencies and the keeper that indicate that there is a certain type of activity in the category of recklessness, or the turning of a blind eye, or wilful blindness, that could be prosecuted under the proposed new offence, but cannot be prosecuted at the moment.

Section 108 targets mortgage fraud, which is a crime of intent. Someone has to intend to do something. There could be quite a lot of scope to such a crime. A lot of people could be involved and it might be difficult to show where everyone is placed in relation to proof of the crime. The proposed new offence will provide that those who might be involved at the stage of application for registration in the land register will be under an additional duty not to act recklessly. In other words, they will be under a duty not to act with an utter disregard for the consequences or with wilful blindness.

John Wilson: I was interested to hear you refer to mortgage fraud. Current United Kingdom legislation is, I assume, sufficient to deal with mortgage fraud and many of the mortgage companies are also monitoring what happens. You did not talk about money laundering, although you mentioned it earlier. How will section 108 assist with legislation on money laundering? Do you have any examples of what you see as money laundering? In the committee’s pre-meeting briefing, one of my colleagues referred to someone coming along with a suitcase of money to buy a house and making a purchase based on the fact that they have the cash. How would that be viewed by a solicitor? How does a solicitor deal with a client who comes along and says, “I want to purchase a property. I’ve got £150,000 in this briefcase”? How would those circumstances be dealt with under the proposed new section? Could it mean that a solicitor, acting in good faith by accepting that the client has enough cash to purchase a property and going ahead with the purchase, could be accused of acting recklessly?

10:15

The Solicitor General for Scotland: No solicitor who acts in good faith will be accused of acting recklessly. No solicitor who makes a genuine error or mistake can be accused of acting recklessly. The term “reckless” is well understood in the criminal law of Scotland. It is understood at common law and it is statutory. It involves an objective test and it will not cover people who act genuinely and who honestly follow the guidance and so on.

The money laundering legislation—the Proceeds of Crime Act 2002, supplemented by the Money Laundering Regulations 2003, which were reconsidered and revamped in 2007—is designed to ensure security for the movement of money through the financial sector and for all those who are involved in that. It places duties on a wide variety of people, including solicitors, to carry out their activities in a way that does not facilitate any aspect of money laundering.

The regulations give clear indications of the areas that are targeted, which relate in the main to identification of the client. People should know who their client is, know who they are dealing with and know what their business is. There is a lot of excellent guidance for solicitors from the Law Society of Scotland on ensuring that they comply with the legislation, which indicates what identification procedures solicitors need to follow to meet customer due diligence, if they are in contact with the client, or enhanced due diligence, if they are not in contact with the client.

Section 108 is additional to that—it is a further step in relation to the point at which contact occurs with the land register, when property rights will be legitimised and a state guarantee of property rights will be given. If the offence remains in the bill, it will indicate that all people, including solicitors, require to take into account an additional element, which is not merely intending not to make
a misleading or false statement, but not being reckless.

If the offence came into play, I expect that the normal, honest and genuine solicitor would re-examine the practices and guidance that are in place in their firm under the regulations in the light of the new offence, which imposes an additional duty not to be reckless or wilfully blind at a particular point in a transaction, and would ensure that their practices did not allow wilful blindness. I have seen some of the larger firms’ guidance on money laundering, which contains phrases such as “not turning a blind eye”. Some solicitor firms already operate under such guidance.

Mike MacKenzie (Highlands and Islands) (SNP): I have a general concern. At our previous meeting, I told a story about going to my bank, with which I have three accounts, to open another account last June. The bank told me that, because of the money laundering legislation, I needed to go in with my passport, my driving licence and a utility bill. I said, “Look—I opened an account with you only a month ago, when I went through that whole rigmarole. I don’t have that with me. I live in a rural area and it takes me half a day to come in to see you. Are you sure that’s necessary?” The person who was dealing with the matter was my cousin. Not only have I dealt with the bank in that rural area for many years, but I know almost every member of staff there.

Such requirements are an impediment. In the spirit of helpfulness, my cousin said, “Don’t worry, Mike—just e-mail me scans of your passport, driving licence and so on.” I said, “Look—I appreciate that you’re trying to help me, but I’d really rather not do that, because I’m much more worried about the problem of identity theft. E-mails can easily go astray, and I might inadvertently hand somebody an identity theft kit.”

I am led to believe that, despite the legislation that has been put in place, money laundering is increasing, not decreasing, although the burden on ordinary people doing ordinary business has increased significantly.

I am struggling to understand what extra precautions my solicitor would have to take if I were to buy a house in future, to ensure that he is not accused, under section 108, of inadvertently or otherwise assisting me in what may be illegal activity.

The Solicitor General for Scotland: You are not planning this illegal activity, are you?

Mike MacKenzie: No. It is a hypothetical question.

The Convener: I doubt he would be telling you if he was.

Mike MacKenzie: You make a very good point, because often the people who we are trying to catch are two or three steps ahead of the rest of us and it is the honest person who is penalised. That is what gives me concern. The Law Society has made representations to us expressing their concern about the position of solicitors and I am equally concerned about the ordinary member of the public, the honest person who is going about the legitimate business of buying a house.

There seems to be no merit in making one part of the process much simpler, which is what the bill is about, if at the same time other aspects of the process are made more difficult. I recently talked to a colleague—an MSP—who was in the process of buying a house. He was having difficulty arranging the mortgage. It was not that he was not able to repay it or any of those things; it was the paperwork and the detail attached to the process that caused the difficulty.

My concern is that section 108 might make the process more difficult. Can you tell me specifically what steps an honest solicitor with an honest client would have to take to safeguard themselves from being accused, somewhere down the line, of having acted improperly?

The Solicitor General for Scotland: In the situation that you are talking about, in which you are a client well known to your solicitor and your single transaction moves in the normal fashion—you are buying another house and it is for the right price and so on—your solicitor will already have sufficient information about you from dealing with you in the past and you are not doing anything unusual in the circumstance of buying another house.

However, let us take a scenario in which you are undertaking a transaction with your solicitor who knows you very well but, instead of buying one house, you are buying half a dozen houses, the price is more than would be expected and the mortgage is coming from a variety of companies, some of which he does not know. In that scenario he would not be entitled, without any further inquiry into the situation, to think, “Ach, I’ve known him for years and he’s a good guy—I’ll let him get on with this.” It is about a solicitor paying attention to the unusual and not turning a blind eye to it, either by applying knowledge to a different situation or for business reasons in current financial circumstances. It is about focusing on that particular aspect.

Mike MacKenzie: You make a number of assumptions—

The Solicitor General for Scotland: I did not mean to be rude—

Mike MacKenzie: Your comments were not taken in that way at all. It is sometimes useful to
speak in this manner, because it sheds light on issues that are more difficult to grasp when the discussion is a bit more abstract.

I suggest that we consider two scenarios. Let us say that I fall out with my solicitor, for whatever reason. I feel that he is no longer acting for me as assiduously as he once did, so I decide to change solicitor. I am therefore not well known to the next solicitor who I phone up and ask to represent me. Beyond my giving him my passport and doing the usual things, what extra steps would he have to take?

In the second scenario, I come into some good fortune and decide that I want to invest in property, because I think that that will be a good long-term investment, and buy half a dozen or so houses—perhaps at a property auction or whatever. What extra steps would the solicitor have to take to assure himself that I was honest and legitimate?

The Solicitor General for Scotland: A solicitor in that environment would need to take whatever steps he thought were appropriate to make those inquiries in order to satisfy himself. You are talking about the steps that a reasonable and competent solicitor would take. In deciding what steps to take, a solicitor can get all sorts of advice from the Law Society of Scotland.

If the offence is to be included in the bill, I would anticipate that the Law Society—despite its opposition at this stage to the inclusion of such an offence—would review the circumstances and consider what additional advice it should give to its membership on what must be done.

I will make one further point, which I did not address earlier when you were describing your unfortunate experience of being asked questions in the bank. I sympathise, as I have been there—in fact, I was in that exact situation in 2003 or 2004 when I was going around the country lecturing on money-laundering legislation. I had to bite my tongue when I was asked to provide information. To a certain extent, that inconvenience should provide reassurance that those who are involved in serious and organised criminality or in terrorist financing do not have an easy time in getting in to our financial sector or—if the offence is included in the bill—on to our property register.

Mike MacKenzie: I have one final, brief question on the difficulty that I have with the offence. I ask you to imagine—I know that it is a big imaginative leap—that I am a hardened and practised liar. My solicitor makes what he believes to be reasonable inquiries, and I just tell him lies, because I am involved in criminal activity. What steps must he take—beyond what he currently has to do—to reasonably assure himself that I am not a criminal?

The Solicitor General for Scotland: He must take the steps that are currently in the guidance. If the offence comes in and there are additional steps, he must take those steps. If you are asking whether solicitors can protect themselves against every wicked lie that is out there, I would say that they cannot. I would not expect anyone to be able to protect themselves against those who are as deceptive and devious as you are saying that you would be in that situation.

However, there is an area in between, and it is suggested that solicitors must go that wee bit further in what they are doing and that a duty not to act recklessly should be imposed. It is important to take every opportunity to ensure that criminality does not seep any further into legitimate areas, and property is a very important legitimate area in that regard.

Mike MacKenzie: Okay—thank you.

The Convener: I know that Chic Brodie is desperate to get in—Stuart McMillan has a follow-up question on that point, but Mr Brodie has been very patient. John Park also has a question on the same point, but I will let in Mr Brodie as he caught my eye first.

Chic Brodie (South Scotland) (SNP): Thank you, convener, and good morning, Solicitor General, Mr Kelly and Mr Shippen.

A large element of the offence seems to involve the issue of recklessness and whether solicitors are acting in good faith. Can you comment on the minister’s views on the number of people who were engaged in money laundering and mortgage fraud, including solicitors? Have you any indication of whether there is a growth in illegal activities among some solicitors?

The second part of my question also relates to recklessness. I can understand that someone may be—as the thesaurus says—careless, irresponsible, precipitate, rash or negligent perhaps once or maybe twice. Is there any possibility of monitoring whether someone is being negligent more often than you would expect?

It would be simple for somebody—if they were plausible—to say that they had been careless or foolhardy but had acted in good faith. What is the check and balance? How do you know whether a solicitor has been careless or has acted in good faith? What criteria persuade you that a solicitor has acted in good faith?

10:30

The Solicitor General for Scotland: Section 108 does not deal with people who do not act in good faith; it deals with people who have been intentionally false or misleading or who have been reckless.
Chic Brodie: Forgive me, but some of the debate has concentrated not on the intention behind the activity but on the recklessness of it. Somebody could be reckless but be acting in good faith. Where does recklessness cross the boundary into intentionality?

The Solicitor General for Scotland: Sorry—I understand where you are coming from. There is disagreement between where I think recklessness sits in the criminal law of Scotland and what has been said by the Law Society. I want to set out my position in relation to recklessness, so please bear with me—I might take a wee while to do that. We need to distinguish between people who act genuinely, people who act carelessly and people who act recklessly.

Recklessness is a well-recognised concept in Scottish criminal law. It is recognised both at common law, in relation to culpable and reckless conduct, and in a wide variety of statutes. When I read some of the evidence that has been given to the committee, I was concerned that there is perhaps not sufficient information about how often the concept of recklessness is used in the common law of Scotland, so I found a number of examples of recklessness across the piece to give the committee an idea. The most common of those, which probably everybody would recognise, is vandalism, whereby somebody wilfully or recklessly destroys or damages the property of another. In 2009-10, about 3,600 people behaved in that fashion, so it is a well-understood concept.

The concept of recklessness is used in section 30 of the Wildlife and Natural Environment (Scotland) Act 2011 in relation to information that is given about deer culling. It is also used in section 3 of the Computer Misuse Act 1990 in relation to any unauthorised act that can be carried out recklessly. It is used throughout the Sexual Offences (Scotland) Act 2009 in relation to a number of offences. Under section 2, for example, a sexual assault by penetration can be committed recklessly. The fact that the concept of recklessness is used in circumstances ranging from the provision of information on deer culling right through to sexual assault by penetration shows the wide scope, understanding and familiarity with the term “reckless” that already exist in Scots law.

Importantly, in relation to the type of offence that we are discussing, section 26 of the Charities and Trustee Investment (Scotland) Act 2005 is on “False or misleading information etc.” Section 26(1) states:

“It is an offence for a person to provide any information or explanation to OSCR ... If ... the person providing the information or explanation knows it to be, or is reckless as to whether it is, false or misleading in a material respect.”

That is pretty similar to the type of situation that we have with the land register and is a useful example for comparison, because many trustees in such a situation will rely on lawyers and accountants to advise them what “reckless” means.

Chic Brodie: My difficulty, which is probably down to lack of understanding, is that in such cases someone might say “Well, I filled that in, but I was acting in good faith.” It could be argued then that there was no intention to commit a criminal offence. Is it not a grey area if someone says that they acted in good faith but you say that they did not, that they were reckless and that they must pay the penalty for being reckless—as per custom and use in Scots law? As Solicitor General, do you feel that the definition is clear? It might be clear in your mind and in the minds of some lawyers, but I question whether it necessarily covers the spectrum of legal activities by solicitors across Scotland. I do not know whether you understand my difficulty. Where is the clear distinction between being careless or reckless and acting in good faith?

The Solicitor General for Scotland: There is a clear definition in Scots law—both common law and statutory law—in relation to being reckless. There is case law on that. There is an objective test for whether it would be sufficient for someone to say, “I was acting in good faith”. The test that would be applied is not whether someone stated that they acted in good faith but whether a reasonable, competent solicitor had behaved recklessly in the circumstances.

You have used terms such as “careless” and “good faith” in seeking to get to the core of the examples. I fully understand that, but what we are talking about here is reckless behaviour, which is wilful blindness to or an utter disregard for the consequences of an action.

Chic Brodie: Thank you.

John Park (Mid Scotland and Fife) (Lab): Good morning. I want to return to Mike MacKenzie’s point. Having listened to the evidence this morning, I remain quite open-minded about the issue. However, I am still unclear about what exactly a lawyer or solicitor would have to do in the future that is different from what they do now to ensure that they operate within the law. For us, that is the fundamental issue. It is all very well for us to have this discussion in Parliament and to take the bill through in the way that we are doing, but what specifically would have to happen to ensure that people in the legal profession, and those who seek a legal service, protected themselves? I give you the opportunity to answer that, Solicitor General, because your exchange with Mike MacKenzie has left me unclear about the issue.
The Solicitor General for Scotland: If you are asking me for examples today, that is not where we are. The exact same situation arose when the money laundering legislation came in. Any organisation that thinks that it will be subject to a new form of criminal control looks at what it currently does to see whether it needs to change anything. Following the money laundering legislation, people took a real look at activities in order to comply with the legislation and there was a lot of guidance and advice.

All that I am saying today is that what we have before us is an additional piece of regulation. Solicitors are already well regulated. The upside is that they are used to being regulated, so new regulation does not add anything in that regard. However, solicitors would have to ask not just whether their practices ensured that they complied with the money laundering legislation and the due diligence and enhanced due diligence that are included in that, but, now, whether those practices covered not acting recklessly. That is the difference.

John Park: I suspect that the Law Society of Scotland would say that its members are complying or likely to comply because of the steps that they already take and the hurdles that they already have to jump. It comes back to the issue of whether section 108 is going to make a difference. It will give you another lever for prosecution, but what does it mean on the ground? I think that that is the nub of the issue.

The Solicitor General for Scotland: On the ground it means that those who are involved in a professional capacity in an application to the land register have to be sure that their practices are not reckless. Recklessness is a concept that is well understood in Scots law, and there is an objective test. Also, a defence is provided within section 108 itself.

Stuart McMillan (West Scotland) (SNP): Good morning, Solicitor General. I will pick up your comments to Mike MacKenzie, when you said that there is already advice from the Law Society of Scotland, and John Park’s question about what activities or actions a lawyer should undertake.

I go back to Mike MacKenzie’s house buying example, although I will change it slightly. Mike goes to his lawyer and says that he has come into some money and wants to invest it by buying a couple of properties. A few months later, he goes back to his lawyer and says that he wants to buy another couple of properties. He does the same thing a few months after that. He does it in a piecemeal fashion, and the lawyer thinks, “He’s obviously come into more money than I thought.”

At some point, the lawyer starts trying to establish the truth behind the rumours, and realises that Mike is laundering money through the purchase of properties. Mike comes back and says that he is going to buy another couple of properties. By this time, the lawyer knows that, although on the face of it what Mike is doing is legal, the money is ill-gotten gains. What should the lawyer do at that point to ensure that he or she is not accused of being reckless under section 108?

The Solicitor General for Scotland: If the lawyer reaches a point in their dealings with a client when there are suspicions of money laundering, that is when they are under a duty to report. That has been the legal position for a number of years, and lawyers are well familiar with it. If a lawyer has reasonable suspicion that their client is facilitating the passage of illegitimate money through the system by means of money laundering, they have a duty to report that and a duty to stop it.

Recklessness in relation to such activity is not what section 108 is about. Section 108 specifically relates to the point at which an application is being made to the land register. In your scenario, the suspicions that form in the lawyer’s mind are based on behaviour that would already have been brought to a halt under the money laundering measures.

The additional duty and onus come in at the stage at which property is being registered and an application is being made to the keeper. The offence is not intended to be wider than that.

10:45

Patrick Harvie (Glasgow) (Green): Given the wide range of views that we have heard on the issue, is there not a case for going back and consulting on it in more depth and, perhaps, including it in the next criminal justice bill that comes along?

The Solicitor General for Scotland: In my view, no. I do not mean that to sound abrupt, but it is extremely important that every single opportunity is taken to prevent serious and organised criminality despite the inconvenience and additional measures that are then imposed on others. The bill represents an opportunity to deal with the matter at the point when the land register is being dealt with, and the keeper has indicated that the offence would be of assistance.

When it comes to serious and organised criminality, those who are best placed to know how widespread and insidious it can be are those on the law enforcement side. The provision is supported by the Crown and the Association of Chief Police Officers in Scotland—I think that the Scottish Crime and Drug Enforcement Agency
feeds into ACPOS, which is the reason why it has indicated its support—as an additional tool. It is a small measure that will not be used in a huge number of cases, but it will be helpful in relation to both deterrence and detection.

The provision will flag up offences in relation to the land register, but it is specifically designed to ensure that solicitors do not act recklessly in the sense of opening a door for those who are involved in criminality to walk through. That is it in a nutshell.

Patrick Harvie: When is it intended to commence the section?

The Solicitor General for Scotland: I do not have information on that, I am afraid.

Patrick Harvie: It seems to me that to leave it for the next criminal justice bill might not cause a delay in bringing the offence into operation.

The Solicitor General for Scotland: I do not have information on commencement. The importance of having the offence in the bill is that it is within the legislation that covers the issue that it relates to, and the offence relates to the land register.

The Convener: As I understand it, commencement is at the minister’s discretion, as the bill stands. What is your view on the proposal that the offence be made subject to the affirmative procedure in the Parliament, pending the issuing of guidance to lawyers and others on what practical steps they might take to avoid committing an offence? You have heard the concerns that members have expressed this morning. Do you agree that making the offence subject to the affirmative procedure would be a practical step?

The Solicitor General for Scotland: I think that that is a matter for the minister.

We work closely with the Law Society—indeed, I am a member of it.

The Convener: So am I.

The Solicitor General for Scotland: The Law Society is extremely supportive of the fight against serious and organised crime and the putting in place of measures in relation to mortgage fraud and measures to catch the small number of solicitors who become involved in criminality. Should the offence be introduced, I would be happy to discuss with the Law Society what practical guidance and advice should be given. That would be done in any event, but it might give us an opportunity to get rid of some of the myths that surround the belief that genuine, honest solicitors might unwittingly find themselves caught up in this.

The Convener: That is helpful. I think that the committee would encourage you to explore that further with the Law Society. Perhaps the minister could write to the committee before the provision is commenced, assuming that it is in the bill as passed, to set out what has been achieved in that respect.

Mike MacKenzie: I am perhaps beginning to regret some of our conversation so far. Given the interest that solicitors have in what we are discussing, if I attempt to buy a property in the future some of them might decline to act for me—or might even report me. There is a wee bit of humour there, but I am making a serious point. Given the difficulty of disproving the negative, if I were to find myself in such a situation, how would I be able to prove otherwise to a solicitor who had somehow formed the impression that I was not a trustworthy individual, perhaps after hearing a rumour or watching the committee proceedings? The same could apply to anyone else.

I am beginning to get the feeling that you think, perhaps with great merit, that there are some solicitors—albeit a tiny number—who aid and abet organised crime. Why are you not able to prosecute them under the current law? Is there a loophole that the section is intended to sew up? If not, why bother?

The Solicitor General for Scotland: Yes, there are solicitors who aid and abet—assist and participate in—criminality; yes, it is a small number; and yes, we will prosecute when there is sufficient evidence. The section is directed at mortgage fraud, which is a crime of intent, and the additional factor here is the element of recklessness. Although the burden of proof would not change, the offence created in the bill would, in certain circumstances, be a better—easier—offence to use. It is a small additional element.

Mike MacKenzie: I am slightly uncomfortable with this. I accept that there is a wee bit of a conundrum, but if there is evidence that solicitors are operating illegally or improperly, why are you not prosecuting them under the current law? Are you unable to do so?

The Solicitor General for Scotland: If there is sufficient evidence that someone is involved in criminal activity they will be prosecuted under the current law. I am not indicating that the section will solve general prosecutorial problems in relation to fraud. It introduces an additional offence, with an additional duty in relation to recklessness, which might make prosecutions possible in circumstances in which they are currently not.

Mike MacKenzie: Can you give me a hypothetical example of a case in which you are pretty sure, although you cannot be certain until the outcome of the prosecution, that illegal activity is taking place, but you are frustrated because the
current law does not allow you to prosecute, whereas section 108 would?

**The Solicitor General for Scotland:** An example would be a case in which we could not prove intent under the current law but could show recklessness. Recklessness is different from deliberate intent, in that it means behaving in a fashion that shows utter disregard for the consequences, or turning a blind eye. It is a slightly lesser test than intent.

**Mike MacKenzie:** Thank you.

**Chic Brodie:** I do not really have a question. I want to support the request that the Solicitor General get together with the Law Society.

In his evidence, the Minister for Energy, Enterprise and Tourism stated that the director of interventions at the Law Society had advised him that

"in her professional opinion the biggest issue in bringing fraudsters and their solicitors to account is that the Crown has difficulty prosecuting mortgage fraud."—*[Official Report, Economy, Energy and Tourism Committee, 8 February 2012; c 974.]*

I do not want to return to intentionality or recklessness, but can we get some commonality of view on how we can more easily prosecute mortgage fraud under section 108?

**The Convener:** I think that that was a rhetorical question, Solicitor General.

**The Solicitor General for Scotland:** Yes.

**The Convener:** When we had the minister before us, he said that he would be happy to look again at the exact wording and scope of section 108. Does the Crown Office have a view on how the wording might be improved, for example to restrict the offence to fraud or for the wording to apply only to genuine mistakes?

**The Solicitor General for Scotland:** The offence is targeted not at genuine mistakes, but at deliberate, misleading or reckless behaviour. To ensure that the section targets what I have indicated this morning, I am more than happy to look at the wording.

**Murdo Fraser:** Thank you, Solicitor General. You have been very helpful. I also thank your officials, who have got off lightly with regard to answering questions.

I suspend the committee for a couple of minutes.

10:55

*Meeting suspended.*
Other written evidence received by the Economy, Energy and Tourism Committee

ACPOS
Anderson, Andrew
Brodies LLP
Brymer, Stewart
The Cockburn Association
Companies House
Council of Mortgage Lenders
The Crown Estate
Dale, Prof Peter
Dundas and Wilson CS LLP
First Scottish Group
Gordon, Prof William M
Integrity4Scotland
Know Edge Ltd
Lands Tribunal for Scotland
Law Society of Scotland (supplementary submission)
Law Society of Scotland (further supplementary submission)
McDonald, Clifford
McGrigors LLP
Registers of Scotland (supplementary submission)
Rennie, Robert
The Scottish Government (supplementary submission)
Scottish Land and Estates
Solicitor General for Scotland (supplementary submission)
Turcan Connell
Wightman, Andy (supplementary submission)
This submission relates to the proposed new statutory offence of knowingly or recklessly making a false or misleading statement in an application to the Keeper of the Registers of Scotland or intentionally or knowingly or recklessly failing to disclose or concealing material information in such an application. The following comment is provided following consideration by members of ACPOS Crime Business Area.

At this stage it is not possible to judge how significant an enforcement opportunity the new offence would provide. However, financial investigations play an important role in tackling serious organised crime and there is a law enforcement focus on the use of specialists, including lawyers, by Serious Organised Crime Groups (SOCGs) to facilitate money laundering in order to ‘legitimise’ the proceeds of crime. As indicated, there are new provisions under the Criminal Justice and Licensing (Scotland) Act 2010 for assisting or failing to report serious organised crime. A new statutory offence under the Land Registration Bill would, at the very least, provide an addition to the wide-ranging use of disruption tactics available to law enforcement in addressing the threat from SOCGs.

The existence of the new provisions in the Land Registration Bill should also act as a deterrent to solicitors and other professional enablers involved in fraud, where criminality by a client is either known or suspected. By reducing the amount of false or misleading information submitted to the Land Registry, the system would become a more accurate and valuable resource for investigators.

In conclusion, ACPOS considers the proposed new statutory offence to be beneficial to the Scottish Police Service and our criminal justice partners.

ACPOS
27 January 2012
INTRODUCTION

I am an individual with an interest in land issues and land reform in Scotland. I think that the Scottish Parliament should be looking in a more serious way at land reform and at addressing the large amounts of land which have been obtained by illegal or corrupt means in the past, however, I accept that this is beyond the scope of the current Bill.

LAND REGISTRATION BILL

I want to support the submission of Andy Wightman in its entirety but I have a particular interest in the issue of Common Land. I was born and bred in the Royal Burgh of Selkirk which I am pleased to say has managed to maintain, even if in somewhat reduced form, a substantial area of Common Land. However, I am concerned that the responsibility and accountability of Borders Regional Council with regard to Selkirk's Common Land does not inspire confidence.

I would like to support Andy Wightman's submission regarding Common Land:

“The Bill is relevant here for the simple reason that the law of prescription and a non domino titles have been (and continue to be) responsible for the theft of our commons. As the Bill stands, those devices can continue to be used to appropriate commons. The central problem is that in Scotland there is no means to register common land and it stands vulnerable to prescriptive claims. A means needs to be devised to protect them by assertive action by citizens to register them. What is needed is a simple solution that provides a statutory mechanism for members of the public to submit an application for recording titles to areas of common land. This could take the following form.

The Land Register recognises commons as a class of property and admits applications for registration from any member of the public residing in the civil parish in which the land is situated. For so long as the application is pending, no other private claims will be entertained by the Keeper. The application will advertised publicly on the Registers of Scotland website for a minimum period of six months and circulated to the local authority, community councils and published in local newspapers. The publicity should include the name of the claimant and their grounds for the claim, the extent of the land being claimed, a report on investigations into its legal history, and an invitation to lodge rival claims.

The Lands Tribunal shall adjudicate on any contested claims but if none are made, then the Keeper shall record a title and the land shall be registered as a common. Statutory power for their management would be vested in local authorities.”

I would add that local authorities should be obliged to maintain an accessible register (preferably on a free to access website) of all the common lands for which it is responsible. I would also add that the statutory power which should be vested in local authorities should be clearly specified in such a way that they must consult with
the specific local community about the management of the land and that such land may not be disposed of without the agreement of the specific local community through the mechanism of a local referendum.

Andrew Anderson
19 January 2012
Introduction

Brodies LLP is a large commercial practice of solicitors which acts for various types of clients who buy, sell, lease and grant and take security over property throughout Scotland. We have around 80 property lawyers who deal with various types of property transactions involving residential developments, retail, office and industrial properties, rural estates and farmland and renewable energy projects, in particular, wind farms.

Having examined the provisions of the Land Registration etc. (Scotland) Bill as introduced to the Scottish Parliament on 1 December 2011 ("the Bill"), a number of points have come to our attention that may need further consideration as the Bill progresses through the Parliament.

Key Provisions

The key provisions of the Bill on which we would like to comment are: s19 on converting shared plot titles; s.29 on keeper induced registration; s.38 on the order in which applications are to be dealt with; ss42-44 on prescriptive claimants; Part 9 of the Bill dealing with acquisitions in good faith; Part 4 on Advance Notices; s89 on extinction of floating charge when land disponed and s.108 creating a new offence. We also discuss the burdening of pro indiviso shares of property.

Section 19 – Conversion of shared plot to ordinary plot title sheet

This section of the Act gives the Keeper the power to revoke a designation of shared plot and to designate the property as an ordinary plot. We are concerned that the provision in its current form does not limit or explain the circumstances in which this can be done. We would assume that safeguards will be put in place to protect any potential proprietors of the shared plot.

The Explanatory Notes for the Bill ("Explanatory Notes") make reference to the Keeper exercising this power if a proprietor buys up all of the shares in a shared plot. Will this be the only instance when this power will be used or will it be used, for example, when shared plots have been abandoned (areas of housing developments which were intended to be used for common amenity purposes but never completed) and are subsequently developed by one party?

Section 29 – keeper induced registrations

We would assume that the proprietor will not be required to pay any of the costs involved in a keeper induced registration and also that the Keeper would consult the proprietor on any larger complex titles and pay for the costs involved in responding to requisitions and answering queries. The Bill should confirm the position.

Section 38 – order in which applications are to be dealt with

The Bill currently provides that applications will be placed on the Application Record in the order that they have been received. We would be interested to
know if there will be one central point for receiving all such applications or if there will be multiple points. If there are multiple points, will it come down to who presents first or who takes in the application on behalf of Registers and deals with it first that will preside?

5.2 The system of registering land in Scotland is clearly moving towards becoming an electronic system. We welcome the provision in the Bill at s.36 for Scottish Ministers to prescribe the time of registration by order and would welcome a similar facility to that used in England whereby the time of registration is noted in a title as well as the date of registration? This would assist with any issues relating to order of presentment.

6 **Sections 42-44 – Prescriptive Claimants**

6.1 We act for rural estate owners who want to be assured that the current stringent requirements imposed by the Keeper when dealing with a non domino disposions continue to be imposed.

6.2 We also act for developers who on occasion struggle to find the owner of a gap site needed to unlock a development. Being unable to locate the owner of such a gap site can prevent a development going ahead or a sale proceeding.

6.3 The Keeper has adopted strict procedures to prevent title raiders registering title to areas of land by way of disposition a non domino. The Bill proposes to add to the current requirements by, amongst other things, requiring a prescriptive claimant to prove that the true proprietor has abandoned the site for 7 years. The Bill does not specify what criteria will have to be satisfied but we would assume that it will include some evidence taken from neighbouring proprietors. Such evidence may be very difficult to obtain. How could one prove that, for example, the verge of a road has not been possessed for 7 years and has been abandoned?

6.4 We would assume that the Keeper will continue to scrutinise prescriptive claims. We would therefore suggest that the requirement for one years' possession by either the seller or the purchaser or the two combined prior to the application in addition to the requirement of ten years' open and peaceable possession without judicial interruption should be sufficient to protect true owners of land being denied their rights. The introduction of a system of provisional titles and the notification requirement will also assist with this protection. We would suggest that the requirement to prove 7 years' abandonment should be removed from the Bill.

7 **Part 9 – section 82 acquisition from disponer without valid title**

7.1 The requirement for the seller or the purchaser or both combined to have one years' possession of property to which the seller had an invalid title causes us concern. We are not clear as to how we can find out if a seller is not the proprietor if the seller's name appears on the proprietorship section of the title and the seller is in possession of the property? We are of course meant to trust the Land Certificate and not look behind it.
7.2 We are concerned that the effect of the provision as drafted will mean that one year's possession will be looked for in every transaction as there is no way of knowing whether a seller has a valid title or, alternatively, that the seller has an invalid title. If this is the case, every transaction could be in danger of being reversed at any point within the first year of possession.

7.3 We do not believe that the intention is for every transaction to be subject to the requirement of one year's possession before good title can pass. We would therefore suggest that the Bill be amended to reflect the circumstances in which a seller's title will be deemed to be invalid.

7.4 If the provision remains in its current form, if a purchaser cannot show that one year's possession has expired, will the title granted to the purchaser be noted as provisional until the possession requirement has been met?

8 Part 4 – Advance Notices

8.1 We welcome the proposed introduction of a system of advance notices. This will assist us greatly with cross border transactions as well as paving the way for us to get rid of letters of obligation.

8.2 We understand from the provisions that a notice will be registered in respect of each deed which is to be protected. This could lead to a number of notices being required in complex commercial transactions where several deeds may be involved, for example, more than one disposition and standard security. We do not believe that this will cause great problems for the solicitors involved but it could add a large administrative burden on Registers of Scotland and increase the chance of error. Would it therefore be possible for the parties to register one advance notice with the details of all parties involved and property affected without having to go on to specify the type of deed which is to be protected? This would allow for buyers and lenders to be covered by one notice.

8.3 We also understand that once registered, a notice ("Notice A") cannot be changed. If a Notice A requires to be changed, a fresh notice ("Notice B") will have to be registered. Notice B will trigger a new protected period and will rank behind any other notices which were registered after Notice A but before Notice B.

8.4 It is often the case that transactions change as they progress, for example, the name of the company which intends to take title to the property changes or the name of the company granting the security or taking the security changes. In such situations, would it be possible to amend the Notice A, and then to benefit from the remainder of the protected period which was outstanding when the amendment was made instead of having to register the new Notice B?

8.5 The Bill currently allows for deeds not protected by an advance notice or subject to a later advance notice to be registered during a protected period. Any such deeds would then become invalid or in the case of securities, we
assume postponed to the deed which was protected by an advance notice and duly registered within the relevant protected period. We understand that the land registration system in England would not allow the registration of deeds which are not covered by an advance notice during a priority period (known as the protected period in Scotland). Any such deeds would be held in abeyance until the priority period had expired. This would be a more preferable approach in Scotland.

8.6 If however, Registers wish to continue to accept applications for registration during a protected period, would the title sheet for the "unprotected" applications note that an advance notice had not yet expired and will the Keeper be excluding indemnity until the protected period has expired? Would it be possible for those titles or securities to be given a provisional status, ranked in accordance with time of presentment? If yes, the provisional status could then be lifted at the end of the protected period. If the protected deed was registered within the protected period, any competing provisional title would fall and similarly, if the protected standard security was registered within the protected period, any provisional security would rank postponed to the protected deed.

9 Section 89 – Extinction of floating charge when land dispensed
9.1 This section provides that a purchaser will acquire a property free of a floating charge granted by a predecessor in title of the seller. It would perhaps be unusual and only occur on a rare occasion, but, if a property was sold twice within the "blind" 21 day period for the appointment of an administrator under a floating charge, the floating charge holder would be denied his right to the property under the floating charge. Such a chain of transactions may be put in place to deliberately avoid the floating charge.

10 Section 108 – Offence relating to applications for registration
10.1 We share the views which have been expressed by the Law Society and others about this proposed provision and would call for it to be removed from the Bill in its current form. In our opinion, the provision could result in a solicitor being held criminally responsible for an error in completing a form which seems to be a heavy handed way of dealing with the purported problem.

11 Ability to burden pro indiviso share of property
11.1 Sections 4 and 6 of the Title Conditions (Scotland) Act 2003 provide that a constitutive deed (creating a real burden) cannot be registered against a pro indiviso share of property. This causes us problems in a number of situations, for example, with salmon fishing rights which are often owned in pro indiviso shares but which shares cannot be burdened and in shared ownerships of family estates. In the latter situation, we cannot, for example, register pre-emption rights against pro indiviso shares and have to resort to registering contractual arrangements in the Books of Council and Session. The Bill may present an opportunity to amend the Title Conditions (S) Act to permit the burdening of pro indiviso shares.
12 Conclusion
We welcome the introduction of the Bill and are happy to assist further with any of the points raised above.

Brodies LLP
23 January 2012
I am a supporter of the main aims of the Bill and strongly believe that its enactment will bring considerable benefits to both citizens and practitioners alike. The 1979 Act needs to be repealed – and soon. I have the following comments in no particular order, namely:-

Advance Notices are an urgent necessity to protect against intervening competing deeds and diligences. I have written extensively on this subject over the course of the past 20 years – as has Emeritus Professor MacDonald. No modern system of land ownership should be without such a facility.

I approve of the provision which allows the Keeper to confirm acceptance of an application.

I wholeheartedly support the fundamental change in relation to rectification and realignment - the previous law preferring the registered proprietor in possession did not operate fairly and was impossible to explain to clients who lost land and then had to argue for compensation.

The new statutory right given to the Keeper to sue solicitors where an inaccuracy in the Register is caused by the carelessness of a solicitor is controversial but, in my opinion, is appropriate. A solicitor has a basic duty of care.

I approve of the powers which the Keeper wishes to have in order to maintain flexibility in the Scottish system of landholding. As I have commented previously however, these powers should only be introduced after full consultation with stakeholders.

Finally, and in my opinion very importantly, I approve of the bringing into line of Scots law with the EU Directive authorising electronic conclusion of contracts. I and other members of the Professorial Panel gave an opinion to the Keeper prior to the introduction of ARTL by secondary legislation to the effect that Scotland should enshrine the Directive into Scots law at the earliest opportunity. That has not yet happened and that should be rectified now. Appropriate safeguards vis a vis fraud etc. are already being worked on by the Law Society. The introduction of this provision should not be delayed. See more detailed comments in the Consultation Process and also Rennie & Brymer, Conveyancing in the Electronic Age. There are vested interests who have expressed arguments against this move away from traditional ways of working. However, it is now time to enable Scotland to have a thoroughly modern system of landholding and title transfer from contract to conveyance. There has been extensive consultation on this point and all views have been discussed in a series of meetings. I firmly believe that this is in the best interests of Scotland.

I trust that these brief comments are of assistance to you.

Stewart Brymer
Professor Stewart Brymer WS
Solicitor
SUBMISSION FROM THE COCKBURN ASSOCIATION

The Cockburn Association is Edinburgh’s Civic Trust, established in 1875. The Association campaigns on planning and environmental issues and our remit is to protect and enhance the City of Edinburgh and its setting. We have a longstanding interest in all issues relating to transport, the planning process and the safeguarding of Edinburgh’s civic amenity.

The Association supports the objectives of the Bill to move to completion of the Land Register and to support electronic transactions. However, we feel that the opportunity must be taken to redress injustices enshrined in the 1979 Act in light of the Human Rights Act with regard to property. We also have comments about the working of the mapping process and the registration of multi-storey buildings.

1. We are wholly supportive of Andrew Wightman’s comments regarding prescriptive claimants and a non domino titles, which at present we agree is little more than legalised theft. It is not the purpose of the Register to deny any person of their legal rights in order to satisfy efficiencies in the working of the register. We would point out that this must have implications with the Human Rights Act. We do not support the principle behind clauses 42, and would wish to see them abolished or at least tightened up further. The notion of occupying land to establish ownership is flawed, as the very act of appearing to be the owner can suggest to neighbours that there is no question over title. A more honest way to deal with the matter would be to insist on non-occupation and the placing of a noticeboard or plaque on the site for the duration of the notification period setting out the basis for the claim and parties involved. Advertisements only placed in newspapers or by the Keeper are inadequate in the face of a claimant behaving like an owner.

We would like to see the timescales for advertising extended. One year appears to be too short for legitimate owners who may be out of the country or ill. We would suggest that five or ten years would be more appropriate. We see no benefit in speeding the process up as it is only likely to lead to more costly injustices which then need to be taken through the courts.

2. We wholly support Andrew Wightman’s comments on Common Land.

3. Regarding map-based titles we would draw attention to the very poor quality of existing titles in the Sassine Register, the general lack of dimensions or angles between boundaries and the requirement to read several titles in sequence to understand how land is divided up. We feel this will inevitably lead to inaccuracies in the mapping of title deeds. We wholly support the move towards allowing such errors to be redressed through the civil courts, again because of the Human Rights implications.

We would suggest that a sensible way to move forward would be to only recognise title boundaries when both plots either side of a boundary had been registered and when any discrepancies had come to light.
We agree that financial remuneration is not always a satisfactory means of resolving disputed boundaries, when there could be implications for access, services, daylighting, fire distances in relations to openings in walls facing boundaries, and other general requirements for the beneficial use of land.

4. Regarding tenement and other multi-storey titles we suggest it may be misguided to register each floor of a multi-storey block as if it were land. It is not, it is a type of air rights. In certain circumstances such as the destruction of a building in fire it may well be the case that the owners could not gain planning permission for rebuilding the properties which had been destroyed. This would present a peculiar legal conundrum. A more appropriate way would be to record a percentage ownership of the land given to each flat. In that way the situation where the building was destroyed could be dealt with. Similarly if one of the tenements was extended or sub-divided and this changed the ratio of floor areas this should not affect the percentage ownership of the owner as that would have been determined when the building and plot was sub-divided. A value-based sub-division is less easy to justify over time, where a shop floor might have much higher value than the upper floors.

Therefore we do not agree with commentators who have recommended including detailed tenement plans as part of the land registry process.

Marion Williams
Director, Cockburn Association
20 January 2012
Section 6.1

Since we responded to the consultation Companies House has been involved in reforming Part 25 of the Companies Act which relates to registering charges with the registrar of companies.

The existing approach is to list all those charge types which are registerable. As you can imagine the existing law is largely based on the changes introduced in 1900 and we have many customer enquiries around the registerability of their particular charges, which in a modern economy may not fit neatly into the existing statute.

The approach we are taking for the regulatory reform is to simply list those charges which are not registerable. This way anything that is outside the excluded information is registerable as a charge. This is much easier to understand and will reduce the amount of Legal resource utilised in dealing with this type of enquiry.

Mark Buckley
Senior Policy Adviser
Companies House
16 January 2012
Introduction

1. The Council of Mortgage Lenders (CML) is the representative trade association for mortgage lenders. Our 111 members and 88 associates comprise banks, building societies, insurance companies and other specialist mortgage lenders who, together, lend around 94% of the residential mortgages in the UK. In addition, the CML members have lent over £60 billion UK-wide for new-build, repair and improvement to social housing.

2. CML Scotland welcomes the opportunity to submit written evidence on the Land Registration (Scotland) Bill to the Scottish Parliament Economy, Energy and Tourism Committee.

Proposals for completion of the Land Register and registration issues

3. We are supportive of the desire to have all land in Scotland registered in the Land Register and for the Sasine Register to be eventually closed. We note that this will be achieved by the use of additional triggers for first registration, voluntary registration and keeper induced registration.

4. From the perspective of our members the main interest which they will have in this matter will to be ensure that Standard Securities granted in their favour as security for lending which they have provided are registered as quickly as possible in the Land Register and there are no delays which could expose our members to additional risk.

5. We would therefore urge the Keeper to have in place processes which will monitor the time taken for registration and to ensure that any delays are addressed as quickly as possible. The speed of registration in Scotland compares unfavourably with that in England and Wales, particularly on a first registration and this is an area which in our view needs to be addressed.

6. We remain concerned particularly around the time taken to register new build properties which means that our members are often left exposed to risk as they do not have an effective security. A number of the issues around registration we believe relate to the common areas and the ruling of the Lands Tribunal in the PMP Plus case. We note that the previous proposal of provisional shared title plots has now been dropped from the Bill and we certainly would welcome assurances from the Keeper that the current delays in registration of new build can be addressed.

7. The proposed introduction of advance notices is welcomed by lenders. It is something which they are familiar with in England and Wales where a very similar system known as priority notices apply. Such a system should provide additional protections which are not available in the existing system.
8. There is perhaps a need for clarification around where a Disposition is being granted by seller to a purchaser with the purchaser then granting a Standard Security in favour of the lender if one or two notices are required.

9. With regard to the proposals for rectification of the Register we do agree that the true owner should be restored as owner as opposed to receiving monetary compensation. Where a lender who has in good faith advanced monies under a Standard Security from the party to be removed from the Land Register we would expect them to be compensated.

**Electronic documents, conveyancing and registration**

10. We are supportive of the move towards e-conveyancing. We believe it offers lenders many opportunities to streamline processes and will mean a better experience for consumers. Provided that sufficient protections and safeguards can be built into the system we would support both deeds conveying rights in land and land contracts being permitted in electronic form.

11. From the perspective of our members they need to be able to rely on electronic documents and electronic signatures in the same way as they currently do in the paper based system. The need to protect against fraud and forgery is vitally important for lenders.

12. It is however important that Registers of Scotland learns lessons from its Automated Registration of Title Project (ARTL) which lenders were supportive of and saw as having many benefits for them including a reduction in risk and the dematerialisation of deeds. Unfortunately the ARTL system has had limited use and questions are regularly raised of whether it is fit for purpose.

**Further contact**

13. This response has been prepared by the CML in conjunction with its members.

Council of Mortgage Lenders
19 January 2012
The Crown Estate welcomes the Bill and its terms and objectives. The Crown Estate has no difficulty with any of the principles of the Bill. The following comments are not intended to seek alteration to any of the principles or objectives of the Bill but to provide clarity which it is considered is appropriate given the unique nature of some Crown interests and to ensure that unintended consequences do not flow from any lack of clarity.

We appreciate that the below are technical legal matters but they are of practical importance. They have been raised with the Keeper’s office at the earlier Keeper’s consultation process at which the amendments within Sections 42-44 of the Bill had not yet been issued.

**Section 42 (3) (a)**

The Committee will be aware that under the Crown Estate Act 1961 the Crown Estate Commissioners manage all assets forming the Crown Estate. These assets include interests in land in Scotland forming part of the “regalia”. Regalia” in summary for the purpose of this submission, now comprises all foreshore and seabed along with salmon fishings to which no title has ever been validly granted by the Crown to a 3rd party or validly claimed by a 3rd party by virtue of prescriptive possession. In fact this comprises approximately 50% of foreshore around Scotland and virtually all seabed around Scotland and several areas of salmon fishings.

Where there is no use being made of Crown foreshore, seabed or salmon fishings, there will be no lease or other right granted to any occupier. The Bill requires an applicant under this section to provide evidence that the land in question has not been possessed by the proprietor for 7 continuous years. In the case of dry land that is relatively simple. In the case of salmon fishings, foreshore and seabed which is neither let nor developed, it is unclear how the Crown would evidence its possession. It is not the purpose of the Bill to allow 3rd parties to acquire ownership of large tracts of foreshore, seabed or salmon fishing rights at no consideration simply because there is no current activity taking place. We recommend that there be added at the end of this clause the following for clarification:

“declaring that where in respect of any part of foreshore, the bed of the territorial sea or salmon fishing which is the property of the Crown as owner of the regalia, there shall be a presumption that the Crown has possessed, and continues to possess, all such interests or areas unless it can be expressly shown another party has been in active possession”

**Section 42 (4) (c)**

The Crown has never granted transfers of title to seabed except some small areas contiguous to foreshore. This is because currently it is not considered competent to register title to seabed in the Land Register of Scotland, hence the provisions in this Bill extending the Land Register to the territorial seabed. So, unlike land based titles we have a unique position of all seabed being virtually within a single ownership. It follows from that, that any attempt to register title to seabed must be inappropriate unless it is derived from a Crown grant. To protect the assets from predatory
attempts to acquire ownership by stealth we recommend the following is added at
the end of this clause:

“declaring there shall be a presumption that the proprietor of any part of the
territorial seabed is the Crown unless the application contains within it details
of a Crown grant of the area to which the application relates”

Section 44 (1)
Section 14 of the 1979 Act (being repealed in this Bill) contains provision for
notification to the Crown. However it is clear in specifying that the notice must go to
the Crown Estate Commissioners, not simply the Crown, to distinguish it from any
other branch of the Crown. In this Bill there are 2 branches of the Crown involved in
notices from the Keeper. It will avoid errors in sending to the wrong party if the
practice in Section 14 of the 1979 Act is maintained for that reason. This can readily
be achieved by adding a new subsection (d) as follows:

“(d) Where notice is to be given to the Crown, it shall be given to the Crown
Estate Commissioners in respect of any land forming part of the regalia and it
shall be given to the Queen’s and Lord’s Treasurer’s Remembrancer in respect
of any land falling within either bona vacantia or ultimus heares”

Sections 97 -120 – Miscellaneous and General
1 The Bill does not intend to alter any statutory rights to buy created under the
Land Reform (Scotland) Act 2003, either by extending or reducing any of them.
Seabed was excluded from the statutory rights to buy in 2003 both by design in
framing the terms of that Act and also by virtue of seabed being beyond the scope of
the Land Register, which is an essential constituent of the statutory right to buy
procedures. Foreshore is subject to the statutory right to buy provisions where
applicable. Whilst it may be clear to some, others may find it less clear that in
extending the Land Register to seabed the existing provisions for the statutory rights
to buy are unaffected. If there is uncertainty in the minds of some this could only be
clarified by a court. We recommend the matter is put beyond question by adding a
new clause somewhere within the Miscellaneous and General Section as follows:

“For the avoidance of doubt nothing in this Act has the effect of extending or
restricting any statutory rights to buy under the Land Reform (Scotland) Act
2003 as applicable immediately before the [date of this Act coming into
effect][designated date]”.

2 The Keeper is empowered under Section 43 (2) to remove the
“provisional” element of an entry when the relevant prescriptive period under Section
1 of the Prescription and Limitation (Scotland) Act 1973 has been satisfied. That
Section 1 (4) of the 1973 Act provides for the period for prescription of rights to
foreshore or salmon fishings against the Crown as owner of the regalia to be 20
years rather than the period of 10 years applicable to other rights. The reason for
that is in recognition of the nature and extent of the regalia. The Bill contains no
amendment to Section 1(4) of the 1973 Act that we have found. Without such
amendment there is an anomaly that salmon fishings and foreshore are subject to 20
years prescriptive claim but seabed would be subject to only 10 years. There

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requires to be an amendment we suggest somewhere in the Miscellaneous and General Section by adding a new clause as follows:

3

“Section 1 (4) of the Prescription and Limitation (Scotland) Act 1973 shall be amended by inserting before the word “foreshore” where it appears in line 1 the words “seabed or”

The Crown Estate
20 January 2012
SUBMISSION FROM PROFESSOR PETER F. DALE

INTRODUCTION
Although now retired, I have been actively involved in aspects of land administration since being commissioned by the then Overseas Development Administration to prepare a study on *Cadastral Surveys within the Commonwealth* (HMSO, 1976). Since then I have acted as an academic and been a consultant on land administration in a wide number of countries around the world. I was the prime author of three publications by the United Nations Economic Commission for Europe - *Land Administration Guidelines* (1996), *Guidelines on Real Property Units and Identifiers* (2004), and *Land Administration in the UNECE Region – Development trends and main principles* (2005).

LAND REGISTRATION BILL
Although I have only very recently had my attention drawn to the Bill, I would like to offer several comments

1. I welcome the Bill, which clearly tidies up several loose ends and provides a sound framework for the future. In particular I welcome moves towards electronic conveyancing and initiatives to facilitate the registration of all land in Scotland. The latter is of particular importance if the use of land is to be optimised. I have however a few technical points to raise.

2. I note in §3(4) that a plot of land is defined as an area or areas of land all of which are owned by one person, or one set of persons. This implies that a set of scattered fields belonging to one farmer or even a chain of stores in different towns could be defined as one plot of land. Although there has been precedence for this (for instance on the Isle of Man) it is normal to insist that a plot has areas that are contiguous.

This requirement might appear to cause confusion where, for instance, the garage for a house is further down the street. The UNECE *Guidelines on Real Property Units and Identifiers* suggest the use of the term Property Unit to cover the combination of non-contiguous plots (which are more commonly referred to as parcels - see Chapter V, Section B of the Guidelines). From a land management perspective it makes sense to differentiate between non-contiguous areas.

Many insist that not only must areas be contiguous but also they must have homogeneous property rights. Thus a farmer who owns a field in freehold and an adjoining field in long-term leasehold would normally be regarded as having two plots although under §3(4) these could appear as one. The requirement for homogeneity need not apply in the case of shared areas such as a driveway, which can be treated as an exception, as with servitudes.

The terminology is important when operating within an international land market – for instance linked to EULIS, the European Land Information Service (see [http://eulis.eu/](http://eulis.eu/)).

I suggest that the definition of a plot be reviewed.
3. I note the references to cadastral units and that these are based on what in the English-speaking world is known as cadastral surveying. The Bill ties these units to ownership rather than value. Throughout mainland Europe there are moves to unite the fiscal records that are used for taxation and sometimes for the allocation of subsidies under the Common Agricultural Policy, with the land ownership records held in, for example, the Land Books.

§12(1) of the Bill defines a cadastral unit as a unit that represents a single registered plot of land. This to my reading fails to make the distinction that I think is intended between a plot (or what I would prefer to call a Basic Property Unit) and a cadastral unit.

I suggest that the definition of a cadastral unit be revisited in line with the review of the definition of a plot.

4. The Bill as it stands appears to me to treat some of the legal aspects of land ownership in isolation from the bigger picture. I use the phrase “some of the legal aspects” as there is little reference in the Bill to the nature of tenure or rights that are to be registered – apart from several mentions of access rights and one of sporting rights. Use rights are a key element in land resource management and in property valuation but these do not appear to be addressed. There should at least be a definition of what rights should be registered and what may be considered as overriding interests, including leases that are short in duration.

I suggest that the nature of property rights that are to be registered should be defined.

5. In some jurisdictions there has been confusion over the legal nature of a Land Certificate / Certificate of Title / Title Deed. I am not clear from my reading of the Bill whether any such certificate will be issued after a property has been registered. What proof will a landowner or a mortgage company have that the assumed landowner is the registered owner? What is the legal status of that proof vis-à-vis the information held in the Keeper’s database?

I suggest clarification of the role of Certificates of Title.

6. As I read §103, access to information on the registers is at the discretion of Scottish Ministers. This to me implies that there is no statutory right of access to information held by the Keeper, even for me to see what data are being held about my own property. Likewise there can be no public access to the cadastral map unless the Ministers authorize it. Whereas it is conceivable that some information should not be in the public domain in the interests of national security there should be primary assumption that the public have a right to know who owns what land and under what restrictions. Transparency is fundamental to good land governance and the Registers should be open and accessible to all as a matter of principle with minimal exceptions. The data held by the Keeper are essentially a resource that can be used to benefit citizens and the Scottish economy as a whole.
I suggest that the terms of access to data in the land registers should be reviewed.

7. Underlying all my comments is a concern for the use of land registration information in the wider field of land management. The Bill as it stands reflects attitudes of the 1990s more than the 2010s. In many countries there is a process of convergence between those responsible for land ownership rights, those for use rights and those for the valuation of land. The reasons are complex but are essentially driven by the need for better governance and a more joined-up approach to the exploitation of resources of which land is one of the most important. I do not see this reflected anywhere in this Bill, which seems to stand in isolation. In my view the Land Registration Bill should address the wider fields of land administration and land management and land policy.

Prof. Peter F. Dale, OBE, PhD, FRICS, FInstCES
19 January 2012
**Oral Evidence**

We refer to the oral evidence given by Fiona Letham to the Economy Energy and Tourism Committee at the committee meeting held on 11 January 2012. This written submission is intended to supplement that oral evidence and should be considered in conjunction with it.

**Completion of the Land Register and Fee Levels**

As stated in our oral evidence and in our response to the previous consultation carried out by Registers of Scotland, we are generally supportive of the proposals to complete the Land Register. However, we would not support the introduction of increased fees as a consequence. We would support the introduction of discounted fees for voluntary registrations as any such discount could encourage property owners to register their properties in the Land Register without waiting for a transaction to trigger first registration. We have concerns regarding any proposal to charge on a time and line basis for complex registrations as this could be offputting to parties intending to transact with such properties.

**Section 82 - Acquisition from disponent without valid title**

We support the principle of adjusting the guarantee of title to make it less likely that a true owner will be deprived of their property and have no objections to the proposed qualifying period of one year provided for in section 82(3). However, we think that these provisions will affect the curtain principle. If these provisions are enacted, we think it likely that conveyancers acting in the acquisition of property from a seller who has possessed the property for less than one year will look behind the seller's land certificate to verify that the seller is the true owner of the property. This could result in additional costs for the buyer.

**Sections 42 - 44 - Prescriptive Acquisition**

While we agree that robust protections should exist to protect true owners from losing their property to a title raider, *a non domino* applications can be extremely useful as a legitimate way of tidying up, for example, title to a site assembled over a number of years from a number of separate titles, where previous conveyancing has inadvertently left a gap area within the site and the former owners are no longer around to sort matters out. We would reiterate the view expressed in our oral evidence that the proposed 7 year period of abandonment by the true owner before *a non domino* disposition can be submitted to the Land Register is too long. The fact that a further period of 10 years would require to run before the applicant under the *a non domino* disposition could obtain the Keeper's title guarantee should be borne in mind. The true owner of the property would be able to challenge the *a non domino* title at any time within that 10 year period. We also consider that the requirement to prove a period of abandonment by the true owner will lead to evidential difficulties as it will be extremely difficult, if not impossible, to prove abandonment over a lengthy period.

**Section 108 – the new offence**

We would reiterate that we do not support the introduction of the new offence, which we consider to be unnecessary. We are concerned that this section could
criminalise the conduct of an innocent solicitor who makes a genuine error in a registration application or who relies on incorrect information provided by their client. We also have concerns regarding the general nature of the wording used in subsections (3) and (4). It is not clear what steps solicitors would require to take to enable them to establish the defence of taking "all reasonable precautions" and exercising "all due diligence" to avoid commission of the offence. We endorse the views contained in the written submission made by the Law Society of Scotland in advance of them giving oral evidence to the Committee on 11 January 2012.

**Advance Notices**

As mentioned in our oral evidence, we would welcome clarification in the Bill as to whether an advance notice submitted in respect of a disposition from A to B would also protect B's funder, or whether a separate advance notice would be required in respect of the standard security to be granted by B to its funder.

**Section 33 – the one-shot principle**

As expressed in our response to the consultation carried out by Registers of Scotland on the Scottish Law Commission's draft Bill, we have concerns about the proposed "one-shot principle", whereby an application may not be substituted or amended after the date of application unless the Keeper consents. While we agree that conveyancers should take care to ensure that any application submitted to the Keeper is complete and accurate, the current system of requisitions can be very useful. We consider that it is reasonable for the one-shot principle to be used where an error or omission is so serious as to result in rejection of an application within one or two days after receipt by the Keeper, but we have significant concerns about it potentially being used to cancel an application many months after the application was accepted by the Keeper. If the Keeper proposes to cancel an application which was accepted for registration more than a few days earlier, our view is that the applicant should be given an opportunity to attempt to resolve the relevant issue before the application is cancelled. Consideration should be given to specifying an appropriate period after which the Keeper would not be able to cancel an application without giving the applicant such an opportunity.

Dundas & Wilson CS LLP
20 January 2012
SUBMISSION FROM FIRST SCOTTISH GROUP

BACKGROUND.

The Bill proposes a radical change to the basis of registration law which will mean that the system will move from a positive to a negative system. Basically, this means that the rules of property law will be the basis of the new system rather than a mixture of property law and registration law itself. There will be more scope for rectification of the register but along with this will come less certainty in reliance on the register. There will be more division of title sheets in that areas that are shared will have their own individual title sheets. Advance Notices will be included as part of the Application Record and will explain that a transaction should take place within the next 35 days. Many of the changes will have a significant effect on the Keeper’s IT system and will necessitate major changes in this regard.

These are the areas which are of most concern.

SHARED PLOT TITLE SHEETS.

These will comprise areas of ground that are shared between proprietors, a simple example would be a driveway that is owned by two different properties. Instead of appearing on the house title of each property the driveway will have its own title sheet and will be referred to in the title sheet for the house. The title sheet for the driveway will refer to the title numbers of each of the titles which have an interest in it. In other cases, of course, this could mean hundreds of references. This will mean that additional searches will be required to cover both the house and driveway. Naturally there will also be additional work for the Keeper’s staff and huge scope for errors in the referencing and cross-referencing of title sheets. At present the number of errors which are brought to the Keeper’s attention by users is very significant and the implementation of shared plot title sheets may very well cause a significant increase in the errors to be corrected.

The whole proposal is symptomatic of the legislation which introduces complexity and thus increases the potential for error in the system. This will increase costs for users in search time and in time for correction of errors.

ADVANCE NOTICES.

These will note a proposed transaction that should take place within the next 35 days and will be shown on the Application Record. The idea is to prevent a Rodgers v Fawdry situation (the offside goals rule) where a transaction takes place in the face of an already binding contract. The Advance Notices will be an additional item to be searched by users and again there is potential for error if the Notice is placed against the wrong title number. The Notices should be removed after the 35 days have elapsed but again this is dependent on the Keeper’s staff and on the IT system. There will be additional work and costs for users in the suggestion and further potential for errors in searches and corrections to the Application Record. It is worth noting that the Application Record would become part of the register as a result of the legislation.
NEW TRIGGERS FOR REGISTRATION.

The Bill proposes new triggers for registration for example any disposition would trigger first registration as well as all standard securities. It also allows for dates for closing the Sasine Register to be fixed by secondary legislation. This will mean an increase in Form 10 work which may call for a review of pricing structures and training for those offering reports services. Such a price review for all reports would be likely due to the shared plot and advance notices proposals as well.

ARCHIVE RECORD.

The Archive Record is to become part of the register and as such may be required to be searched as well by users and the providers of reports. Although solicitors will not be taken to have knowledge of the Archive Record in the normal course of a transaction it may be that they will expect those providing them with reports to give any relevant information from that source. Although this could be an additional income stream it will contribute to a price review and possible reorganisation of services.

CADASTRAL MAP.

This envisages that each title plan would be part of a megamap encompassing the whole of Scotland. This map would be called the Cadastral Map and each registration would have a Cadastral Unit number which would be marked on the Cadastral Map. Again this will involve a massive change in the technology required to register and search the Map.

CHANGES TO KEEPER’S IT SYSTEM.

The greatest concern must be the numerous changes that will be required to the Keeper’s IT system to cope with the new legislation. The current Registers Direct system is cumbersome and slow and errors recorded by users which require amendment to the system by the Keeper’s staff are numerous. The changes required to allow all the proposals in the Bill to be implemented are very significant and on the evidence to date it seems highly unlikely that the Keeper will be in a position to provide a robust system. Experienced Land Registration staff are now scarce at the Keeper’s office after the second round of early retirements / voluntary severance (well over 200 senior/experienced staff have already left) and this is already having a serious impact. The latest Annual Report states that two major IT projects have been abandoned by the Keeper at a cost of over 6.8m and the partnership with BT is in significant trouble. Already the Keeper’s Management Board are suggesting that they might need an extension to the proposed timescale for adding Advance Notices to the Application Record. None of this inspires confidence in the Keeper’s ability to cope with such significant changes.
INACCURACIES IN THE REGISTER.

There are three different ways in which inaccuracies in the Register are dealt with. Firstly, by way of a Rectification Application (Form 9), which is a formal statutory method of correcting errors. Secondly, by way of CX (informal correction without the use of a Form 9) and finally by DA1 (a Form by which Private searchers bring errors to the attention of the Keeper). Although the Keeper states that there only between 250 and 300 rectification applications per year the number of CX and DA1s are very significant. CX section comprises approximately 12 full-time staff and the numbers of corrections were counted only if they were within one year of their registration date. Most errors tend to be discovered on a re-sale which would be beyond one year from the registration date. These figures are not kept but have a major impact. First Scottish alone submit an average of 20 DA1s per day to the Keeper for correction. This would equate to 4260 per year. I would imagine that Miller and Bryce will submit a similar number. Often these corrections are not corrected properly and are then required to be submitted to the Keeper again.

Another significant issue is the dilution of expertise at the Keeper’s office. By the end of March this year more than 300 experienced staff, many of higher grades will have left the Keeper’s employment either on early retirement or early severance. This loss of knowledge will have a significant impact on the Keeper’s ability to implement this legislation.

In summary, the new Bill will change the conveyancing world dramatically and the experiences of the last 30 years of knowledge of the 1979 Act will be lost. The conveyancing world will be starting from scratch with new legislation whose basic foundations will be different. The Conveyancing world understands the 1979 Act and will be faced with a major change bringing uncertainty and complexity with it. The benefits are hard to discern and the costs to users in additional searching and training could be significant. Overarching this is the major problem of the IT system which the Keeper will be expected to produce to support all the changes. The number of errors produced by the existing IT system and methods of working, does not give confidence that a more complicated legal system and a more complex IT system required to service it, will reduce the error rate.

First Scottish Group
1 February 2012.
SUBMISSION FROM PROFESSOR WILLIAM M GORDON

1. Proposals for the Completion of the Land Register and Registration Issues

(a) The policy of completing the Land Register seems obviously sound. In view of the size and cost of the project a gradualist policy for compulsory registration seems inevitable. Voluntary registration, which is being more encouraged, will assist but Keeper-induced registration as provided for in s.29 of the Bill will be required to give 100% coverage as some land may never otherwise be included. However, it would seem preferable to include in the primary legislation a requirement to inform the owner or presumed owner or other interested parties of the Keeper's intention to act with land register rules on the procedure to be followed to deal with any disputes e.g. over boundaries, pertinents or mineral rights.

(b) So far as the process of registration is concerned it seems right to include in the legislation matters which were left to the practice of the Keeper because the 1979 Act was so skeletal. The "one-shot" principle seems reasonable particularly in light of the duties of care spelt out in the Bill.

(c) As a register of rights should be essentially a record of rights that exist rather than a means of creating rights the new policy of removing the Keeper's "Midas touch" and allowing greater scope for challenge of right mistakenly entered in the Land Register is preferable to the present position. Money is not necessarily adequate compensation for the loss of rights lost through a mistaken entry in the Register although in theory compensation might allow by negotiation recovery of the right lost. Litigation shows that people can be extraordinarily difficult over what seem minor issues e.g. of boundaries and the person who has lost the right is in a poor negotiation position.

(d) Advance notices are a good idea to help protect acquirers and the inclusion of cases of first registration fits in with the policy of encouraging registration. One might, however, ask why the helpful examples of the working of advance notices in the Scottish Law Commission bill have been relegated to the Explanatory Notes to the bill. It is something of an innovation in a modern statute to have such a useful device to assist understanding by giving examples to make the provisions more intelligible. Users are more important than the admittedly expert parliamentary draftsmen.

(e) It is right to put provision for a non domino dispositions on a regular basis although the abolition of the Keeper's Midas touch makes their registration less of a problem.

2. Proposals for Electronic Documents, Conveyancing and Registration

(a) The extension of the use of electronic documents in conveyancing is likely to be popular with legal practitioners who increasingly use electronic documentation. However, it seems unfortunate that the necessary amendments to the Requirements of Writing (Scotland) Act 1995 have been made partly by inclusion of provisions in the body of the bill and partly by provisions in a Schedule. There seems much to be said for the re-enactment of the amended Act as the new and reconstructed provisions will now have to be put together by commercial publications and the
Statute Law database (itself never up to date in an easily accessible form) to give a clear picture of the law. Should Parliament itself not be making the law it makes easily accessible?

(b) It seems clear that to make the best use of electronic documentation the ARTL system needs to be improved – something on which work is already being done. Articles and correspondence in the Journal of the Law Society of Scotland e.g. make it clear that there is a good deal of dissatisfaction with the current system which cannot be used as easily or as widely as would be desirable.

(c) I cannot help wondering about the security of an all-electronic register when it is so easy to destroy large quantities of electronic data. No doubt technological experts will say that this is nonsense but experts said that the Titanic was unsinkable.

3. Other Aspects of the Bill

(a) It would have been helpful if the Explanatory Notes on the bill had referred back to the corresponding provisions of the bill annexed to the Scottish Law Commission Report and so correlated the provisions of the two bills. There are considerable changes of arrangement and less considerable changes of substance in the two bills and the SLC bill has notes explaining its provisions and relating them to the Report which would have helped to explain the present bill and the deviations from it. Many of the changes are clear and helpful but others are more obscure, such as the separation of the provisions on inaccuracy from the provisions on rectification of the Register and the notes to the SLC bill make it clear why there is no provision for electronic registration in sheriff court books (not all sheriff courts will have the necessary facilities).

(b) It would have been more helpful to re-enact the amended Registered Leases (Scotland) Act 1857 than to split the amended provisions between the body of the bill and a Schedule.

(c) One wonders why the sensible suggestion of the Scottish Law Commission in s. 86 of its bill to amend the Prescription and Limitation (Scotland) Act 1973, s. 1 in such a way as to make separate provision for registered and recorded deeds was not followed. Clarity is sacrificed to save a few words.

(d) There may be a question whether s. 104 is too wide in providing for services going beyond the obvious expertise of the Keeper’s staff.

(e) It seems a pity to drop the suggestion of the Scottish Law Commission to re-enact the provisions on acquisition of ownership by a tenant-at-will introduced rather anomalously into the 1979 Act. They could perhaps be fitted into the Long Leases Bill which is due to be re-introduced. They would fit more naturally there than into a Land Registration Bill.

Professor William M Gordon
11 January 2012
SUBMISSION FROM INTEGRITY4SCOTLAND

As Secretary of Integrity4Scotland, an association which campaigns for the highest ethical standards, transparency and public accountability within Scottish public service bodies, I welcome the opportunity to make a submission on the above Bill to the Economy, Energy and Tourism Committee.

Introduction:
Integrity4Scotland is an association of people drawn from across the social and professional spectrums and we do not profess to have any particular specialist knowledge of the practices and processes of land registration in Scotland.

Our interest in the Bill lies mainly in the effect which its adoption into law could potentially have on the coherence and integrity of our Scottish society.

From the debate so far it has emerged very clearly that the Land Registration (Scotland) Act 1979 has failed to deliver to the Scottish people an acceptable system of land registration. This is both disappointing and alarming as those involved in the purchase of land need to have confidence in the effectiveness and fairness of the system which government decrees they must use if they are to have their title to land registered and kept secure.

Since any sustainable society or nation has to provide its members with an enhanced sense of security through the guarantee of fair treatment (by virtue of their belonging to that community) the Land Registration (Scotland) Act 1979 would appear to be unfit for the purpose society requires it to perform. Any initiative to replace and improve upon that Act is therefore welcome.

In view of the state of land registration in present-day Scotland perhaps a question which also ought to be considered at this time is: Should we now be considering passing an Act which is substantially based on an earlier, poorly regarded – in fact deeply concerning - Act or should we take this opportunity to take a totally fresh approach towards land registration in Scotland?

However, as the Committee presently seeks views on the Bill which has been introduced, the following are my views on the Bill:

1. Section 1(2) of the Bill proposes that: “The register is to continue to be under the management and control of the Keeper of the Registers of Scotland”.

Given a) the present state of land registration in Scotland and b) that the register – and the registration regime - has been under the management and control of successive Keepers for the last thirty years I would question the wisdom of continuing the Keeper’s management and control over the register and registration regime. A question which might usefully be asked is: If the Keeper were the manager and controller of a “plc” or a football club and caused the same level of stakeholder dissatisfaction in their performance would they be allowed to continue in control?
Also perhaps before passing a new land registration Act for Scotland it would be prudent to examine how other countries manage land registration. When the 1979 Act was passed it was clearly not the best possible legislation at that time: an amended version of that Act seems unlikely to be the best possible legislation now. Perhaps we should not be too proud to admit that we do not always get everything right in Scotland and in the service of our people be prepared to look to other countries who may have much to teach us about land registration.

2] Section 2 states that the Keeper must make up and maintain among other things “the cadastral map”.

While I would think that most people are fully supportive of the production of “the cadastral map” it comes as a surprise to me that in 2012 there is no cadastral map covering Scotland. Why there is no cadastral map is perhaps a question to ask of the Keeper.

It is often said (and often believed) in relation to registered title plans of adjoining plots that “one red line cannot cross another red line”. Now that there is an open debate on land registration in Scotland it would appear that that belief is totally naïve and that “red lines” very frequently do cross one another. This practice would seem to undermine the whole purpose of land registration in Scotland and surely requires to be stopped with the utmost urgency.

Part 2 of the Bill (Registration) raises a lot of concerns.

3] Among those concerns and following from point 2] above is that in the Bill no explicit requirement is proposed for the Keeper to check that the plot of land to which registered title is being sought does not encroach upon a plot the title of which is already registered in the name of another person. It would appear to me that such a check is a fundamental requirement of land registration and that it is not explicitly set out in the Bill must compromises its integrity.

4] I likewise have considerable concern over the inclusion in the Bill of section 38 (The order in which applications are to be dealt with when there are more than one application in relation to the same land). I consider that this section should be removed from the Bill as it appears to express an acceptance of incompetence in land registration and to prioritise the interests of administrative convenience over fair and moral transfer of rights over land.

5] In addition to the above I consider that sections 42 – 44 (prescriptive claimants etc.) should be removed from the Bill. “Prescriptive Registration” is too much of a cheats’ charter to have any place within legislation governing a nation – perhaps soon to be state – which looks forward to a unified and harmonious future. It is not beyond man’s ingenuity to conceive other more honourable and socially responsible means of facilitating the acquisition of land which is genuinely neither used nor otherwise possessed.

6] In respect of section 47 (Closure of Register of Sasines etc.) I welcome any moves to transfer all registration of land title presently recorded in the Register of Sasines to the Land Register. Again I find the delay in executing the transfer
surprising given the importance of secure land tenure and this raises further questions over the suitability of “the Keeper” to continue to act as manager and controller of land registration in Scotland.

I am firmly of the view that such is the importance to the people of Scotland of competent land title registration leading to secure land ownership that such measures as “saving” money by not speedily transferring deeds to the Land Register and not thoroughly checking applications for registration of title are totally false economies. I would respectfully submit that the falsehood of those economies are fully manifest in the costs – both human and financial - of settling the conflicts they permit to arise.

7] I also welcome the inclusion in the Bill of section 107 (Duties of certain persons to take reasonable care) and section 108 (Offence relating to applications for registration).

It would appear that in the past it has been all too easy for an applicant for title registration or their agent to fill in the application form certifying that to the best of their knowledge and belief there is nothing which would prejudice the applicant’s right to have their title registered when evidence exists on the ground which shows that is not the case.

It would also appear that the Keeper relies to an unreasonable and irresponsible extent on such “cavalier” declarations when deciding whether or not to accept and application. I would therefore suggest that a future Act should include the explicit requirement for whoever manages the register to seek confirmation of the veracity of the applicant’s application to register title from the proprietors of adjoining plots of land.

8] While I appreciate that many honest solicitors will be extremely unhappy over the inclusion in the Bill of section 108 I fear that the supplying of false information in applications to register title is likely to be so widespread and so harmful an offence as to merit explicit mention in a Bill. However, in order to be totally even-handed I believe that the Keeper should also face a penalty if they fail to take all reasonable steps to acquaint themselves with the full circumstances surrounding an application before they make a decision on registering the title.

9] I consider it a weakness in the Bill that it is not proposed that the Keeper should be required to be more pro-active in seeking solutions to “double registration” title problems. As I state above government decreed that people must use the land registration system if they wish to acquire secure, guaranteed title to land therefore the Keeper - as government’s agent - should not unreasonably be required to take responsibility for its smooth, convenient operation. As part of that responsibility should I believe be a requirement for the Keeper to provide a means of early resolution of title disputes.

At present and presumably also under the Bill if it passes into law true owners of land over which a second title is granted/registered by the Keeper face a struggle
which is likely to be huge and exhausting in terms of finances, time and stress. This is exactly what land registration was intended to prevent.

10] My final point and greatest concern is that the Bill - if it becomes law - will do nothing to tackle the present iniquity that in land disputes between neighbours, advantage is often given by the legislation to the less socially responsible, more forceful and better resourced.

This has to stop and such a system of land registration urgently needs to be put in place as will ensure that land transactions and ownership can be accurately recorded and that land disputes – if they arise – will be resolved quickly and purely in the interests of justice and social cohesion.

I hope the members of the Committee find these thoughts on the Bill reasonable and helpful to their own considerations.

Integrity4Scotland
22 January 2012
INTRODUCTION

I am a director of Know Edge Ltd an Edinburgh based, independent management consulting company that supports organisations to innovate and generate business benefits from their land information. I am recognised as a world expert in Land Information Management and have worked extensively with the United Nations, EU and World Bank on land policy / land reform programmes to strengthen security of tenure and support economic reforms in Eastern and Central Europe, Africa, Middle-East and the Far-East. I am currently supporting the Iraq government in the formulation and implementation of their National Land Policy. I am an advocate of good land governance (1) that delivers transparent, fair and accessible land registration and cadastral systems for all within a comprehensive National Land Policy framework.

LAND REGISTRATION BILL

I welcome the introduction of this bill that formalises many of the procedures incorporated into the Keeper’s Registration of Title Practice Book to remedy the deficiencies of the Land Registration (Scotland) Act 1979. However, I believe that the Land Registration etc. (Scotland) Bill 2011 does not go far enough to deliver transparency, accessibility and information to support good land governance for Scotland in the 21st century. My comments on the new bill focus on these crucial areas.

1. Open access to land registration and cadastral information

Transparency is a fundamental characteristic of good land governance that encourages engagement with citizens over land issues and is proven to reduce corruption. I believe that Registers of Scotland should be totally transparent and expose, free of charge, as much of their land registration and cadastral information to the public as possible.

Currently the Registers of Scotland’s on-line information services are designed as commercial services to the private sector. The poor quality of the on-line citizen information services and the associated service costs currently inhibit citizens accessing this fundamental information. In 2011 I requested information on the title of my property on-line from Registers of Scotland and it required a phonecall to establish what information I required – and I am an expert in this area! A free, citizen centric information service is required.

I would also recommend that the cadastral map and land registration data become an integral part of the wider ‘open data’ initiative being advocated by open government. The opening up of governmental data, free for re-use, is being justified on economic grounds (2) (3) (4) since access to these data will have major benefits for citizens, businesses, and society and for the governments themselves. Some of the benefits include:
• **New businesses can be built on the back of this data**: Data is an essential raw material and can be integrated into a wide range of new information products and services, which build on new possibilities to analyse and visualise data from different sources. Opportunities for re-use have multiplied in recent years as technological developments have spurred advances in data production as well as data analysis, processing and exploitation. Facilitating re-use of this raw data will create jobs and thus stimulate growth.

• **Greater Transparency**: Open data is a powerful instrument to increase transparency in public administration, improving the visibility of previously inaccessible information, informing citizens and business about policies, public spending and outcomes.

• **Evidence-based policy making and administrative efficiency**: the availability of robust public data will lead to better evidence-based policy making at all levels of government, resulting in better public services.

The Registers of Scotland currently digitise the cadastral parcel boundaries relative to the topographic features contained within the OS MasterMap digital mapping product sourced from Ordnance Survey GB. The current ‘derived data’ restrictions imposed by Ordnance Survey GB will stop open access to this cadastral data from happening. Land rights are a fundamental dataset required to support good land governance and this bill should make provision for the cadastral dataset to be free for reuse.

Base mapping does not have to be sourced from Ordnance Survey GB. In many countries, ortho-rectified satellite imagery is used to underpin cadastral parcel boundaries; this is appropriate for many rural areas of Scotland along with open data sources such as OpenStreetMap.

2. **Need for national land policy framework to guide land registration and cadastre**

Land Administration Systems provide the infrastructure for implementing land policies and land management strategies in support of sustainable development. This infrastructure includes the institutional arrangements, a legal framework, processes, standards, land information, management and dissemination systems, and technologies required to support allocation, land markets, valuation, control of uses, and development of interests in land. Land Administration Systems are dynamic and evolve to reflect the people-to-land relationships, to adopt new technologies and to manage a wider and richer set of land information. The Registers of Scotland provide the land tenure element of Scotland’s Land Administration System.
Land management underpins the distribution and management of a key asset of any society namely its land. For western democracies, with their highly geared economies, land management is a key activity of both government and the private sector. Land management, and especially the central land administration component, aim to deliver efficient land markets and effective management of the use of land in support of economic, social, and environmental sustainability. The land management paradigm, as illustrated in Figure 1, allows everyone to understand the role of the land administration functions (land tenure, land value, land use, and land development) and how land administration institutions relate to the historical circumstances of a country and its policy decisions. The LAS is the fundamental infrastructure that underpins and integrates the land tenure, land value, land use and land development functions of land administration to support an efficient land market that fully demonstrates sustainable development.

Land Administration Systems are just a means of implementing land policies. However, Scotland does not have a National Land Policy to provide a holistic framework to guide the land tenure, land value, land use and land development functions of land administration. It is recommended that Scotland creates a National Land Policy to guide the future of institutions such as the Registers of Scotland. Had a Scottish National Land Policy been in place then it would certainly have influenced the content of this new bill and ensured greater openness and integration with other ‘land’ institutions.

3. Citizens role in completing the Land Register

The Land Register currently provides incomplete coverage of land rights across Scotland. Even with greater interventions to trigger registrations, the Land Register will remain incomplete for a long time. This is unacceptable for a fundamental dataset that is required to support the sustainable development of Scotland.
One potential solution to completing the gap in the Land Register is to involve citizens in directly capturing and recording their land rights through what is termed ‘crowdsourcing’ (6). Crowdsourcing uses the Internet and on-line tools to get work done by obtaining input and stimulating action from citizen volunteers. It is currently used to support scientific evidence gathering and record events in disaster management, as witnessed in the recent Haiti and Libya crises, for example. These applications are emerging because society is increasingly spatially enabled and consumer technology products, such as mobile phones, can be used to directly capture land rights information. By establishing a partnership between citizens and land professionals in the Registers of Scotland, citizens would be encouraged to involve themselves in directly capturing and maintaining information about their land rights. Facilities and procedures could be made within the Land Register to manage a provisional registration of property provided by citizens. These provisional registrations could then be upgraded to full registrations through quality assurance procedures. This approach would accelerate the completion of the Land Register and importantly engage citizens in land issues.

It is recommended that the bill makes accommodation for this provisional registration by citizens in the Land Register.

4. **Land register to include marine rights**

Although the bill makes some provision for the inclusion of marine rights through the use of non-Ordnance Survey GB base maps, the bill should be much more explicit about the management of marine rights within the Land Register. It is important that we have the holistic management of our land and marine assets.

5. **Prescription and a non domino titles (Section 42-44 of the Bill)**

Although the bill strengthens the rules around prescription and a non domino titles, I recommend that alternative arrangements should be put in place to deal with land that has no apparent owner. The Registers of Scotland should publically advertise for at least six months any claims, and associated supporting evidence, made for land that is apparently not owned. This approach supports the total transparency of information that should pervade this bill. After six months the Keeper should review the claim or claims and be able to admit an a non domino deed for registration. Any disputes associated with the claims should be settled by the Lands Tribunal.

Robin McLaren
17 January 2012
REFERENCES


Robin McLaren
Director
Know Edge Ltd
17 January 2012
Thank you for your letter of 20 January 2012.

I have not yet had time for scrutiny of the detail of the Bill and am not sure of the specific type of land dispute you have in mind. You may be aware that the Bill team has contacted Mr Tainsh our clerk with a view to discussion of the possibility of the Tribunal accepting references from Keeper in relation to what might be a “manifest inaccuracy”.

However, I can say in general terms that disputes involving legal issues relating to registration are currently within our jurisdiction in terms of the existing 1979 Act. We have had to deal with a number over the years. They have raised a wide variety of issues. The present proposals may cover material of the same nature.

There is, accordingly, no reason from our point of view why the Tribunal should not deal with them.

I think that covers what you had in mind by asking about the remit of the Tribunal. However, in formal terms I should say that nothing is within our remit unless some statutory provision expressly says so. If Parliament decides that the disputes in question should come to us, it will need to say so expressly in the legislation. We refer to the Tribunal as a “creature of statute”. In other words, we do not have any remit to deal with disputes except where it has been expressly conferred by statutory provision.

As far as workload is concerned, that depends on staffing levels. We try to work efficiently and our membership has, therefore, been reduced over recent years to fit our current workload. If any significant additional jurisdiction was to be conferred on the Tribunal we would need some increase in membership.

Our members are either lawyers or surveyors. On the face of it, the issues would require to be dealt with by lawyers. Currently we have “one and a bit” legal members. John Wright QC is full time. I am President of the Tribunal but also Chairman of the Scottish Land Court. The latter is now effectively a full time post but I have assistance of a part-time deputy who is a Sheriff on secondment. This is an efficient system which gives cover only when needed. It allows me to continue with the administrative side of the Lands Tribunal and to deal with a number of hearings.

I do not, myself, have scope for much more Tribunal work. However, in the fairly recent past we worked with the equivalent of two full time legal members. One was a Sheriff on secondment. It would not be difficult to find another suitable part-time lawyer or, perhaps, a Sheriff on part-time secondment, if necessary.

It is perhaps worth adding that the Tribunal functions in effect as a Court. We try to be more informal and we work more closely with parties to try to resolve matters as efficiently as possible. However, our basic approach is adversarial. We are aware, in the past, of room for misunderstanding in relation to a reference to a Court or Tribunal. If we receive a reference from the Keeper we would treat it as the start of a litigation. We would intimate it to the parties with conflicting interests and invite
formal written representations. The Keeper might or might not decide to be a party. Once the parties had a chance to set out their contentions on paper we would normally arrange a hearing to let them lead any evidence and to present their arguments, or submissions. Where a reference related to a matter of law – such as construction of a set of titles – we might be able to deal with submissions on paper and without a hearing.

I hope this will be of assistance but please feel free to raise any further matters of concern.

Lands Tribunal for Scotland
23 January 2012
SUPPLEMENTARY SUBMISSION FROM THE LAW SOCIETY OF SCOTLAND

INTRODUCTION

The Law Society of Scotland (“the Society”) welcomes the opportunity to provide written evidence on the Land Registration etc (Scotland) Bill, (“the Bill”). The Bill has been considered by a Working Group which included members from the Society’s Property Law Committee, Banking Law Sub-Committee and the Criminal Law Committee.

COMMENT

The Society is fully supportive of most of the provisions of the Bill, which largely follows the recommendations set out in the Scottish Law Commission’s Report and the draft Bill on which the Keeper of the Registers consulted in 2010. In particular we support the measures designed to facilitate the completion of the Land Register. We would comment specifically on a number of matters.

Section 33 – Withdrawal and amendment etc of application

The Society is concerned that this section as drafted would give the Keeper unfettered discretion to reject an application in the event of any error or omission, no matter how minor. The Society considers that a reasonableness test should be included and that the Keeper should be obliged to pay compensation in the event of a wrongful rejection.

Section 39 – Notification of acceptance, rejection or withdrawal of application

The Society considers that notice of rejection or withdrawal of an application should be given to any other applicants affected by such a rejection or withdrawal and that this should not be at the Keeper’s discretion. It is not uncommon for a property to be sold on by a purchaser prior to the issue of a Land Certificate based on an application for First Registration or Transfer of Part. In commercial transaction the lenders are often represented by different agents. In such circumstances rejection or withdrawal of an application can have serious consequences for parties other than the original applicant.

Sections 55 to 61 – Advance Notices

The Society very much welcomes the proposal to introduce a system of Advance Notices which will protect the interests of prospective purchasers of a property and remove the need for them to rely on an undertaking from the seller’s solicitor. However the Society considers that the wording of the Bill will require make it clear whether a separate Advance Notice would be required to protect the interest of the purchaser’s lender in relation to the Standard Security to be granted over the property or whether the lender will be able to rely on the Advance Notice submitted in relation to the purchase.

Section 107 – Duties of certain persons

This section imposes a statutory duty of care on the applicant and the applicant’s agent. The Society considers that it would be equitable for the Keeper to be subject to a similar duty of care. This duty would cover such matters as errors in P16 Reports (which compare Sasine title plans and boundary descriptions with the
Ordnance Survey map) and delays in entering applications into the application record.

**Section 108 - Offence relating to applications for registration**

The Society notes that the Bill, as currently drafted, creates a new offence at Section 108:

(1) A person mentioned in subsection (2) commits an offence if the person—

(a) makes a materially false or misleading statement in relation to an application for registration knowing that, or being reckless as to whether, the statement is false or misleading, or

(b) intentionally fails to disclose material information in relation to such an application or is reckless as to whether all material information is disclosed.

The Society if fully supportive of and committed to all measures aimed at preventing and minimising any kind of fraudulent behaviour. In this respect the Society has often worked, and continues to work, very closely with stakeholders, including the Registers of Scotland.

However the Society is of the opinion that the proposed provision is not necessary for two reasons, (1) the current criminal law, both at common law and under statute, is sufficient to prosecute the mischief complained of, and (2) the introduction of this offence is disproportionate to the level of threat presented.

(1) There already exist statutory and common law criminal offences which cover the mischief complained off. The common law provides for the offence of fraud, and attempted fraud which extends to false representation by writings, words or conduct. Further offences are also provided for in the *Proceeds of Crime Act 2002*. Part 7 sets out a number of offences (appendix 1) which relate to money laundering.

In addition, the Society is of the opinion that when a solicitor is completing and submitting registration forms they are effectively making a statutory declaration. If the solicitor provides false or misleading information in that declaration, then the making of false or misleading statements, whether intentionally or recklessly, may be pursued as contempt with the penalties that establishment of that offence carries (see Appendix 2).

As well as criminal sanctions, the Society, as the regulator of the solicitors’ profession in Scotland, has strict rules in place to prevent and address any kind of wrongdoing by a practicing solicitor. In particular, the Law Society of Scotland Practice Rules 2011, Rule 6 provides:

6.23.1 Every independent legal professional who is regulated by the Society shall comply with the provisions of the Money Laundering Regulations.

6.23.2 A regulated person shall demonstrate to the Society on request that the information held by him or by his practice unit is sufficient to evidence compliance with the provisions of Part 7 of the *Proceeds of Crime Act 2002* and Part 3 of the *Terrorism Act 2000*. 
Where a solicitor is found to be in breach of the Society’s Rules, then the Society may take disciplinary action against that individual or firm of solicitors.

The Society, therefore, is of the opinion that there exists sufficient deterrent in the form of existing law and practice rules to deter the mischief complained of.

(2) The Society believes that the introduction of this offence is disproportionate to the level of threat presented. The Society has not been presented with, nor is it aware of, sufficient evidence to demonstrate that the level of mischief to be apprehended is as extensive as suggested. Accordingly the Society suggests that the number of cases where current ‘difficulties’ in prosecuting the mischief under existing criminal law arise, as forwarded to support the introduction of the offence, is very small in number. The Society also believes that the very small number identified could all be prosecuted under existing criminal law. Statutory intervention to address cases which are of rarity would appear to be incongruous to the statutory process where adequate tools exist for prosecutors to pursue criminally reckless conduct by solicitors resulting in loss to a public body.

The Land Registration Act 2002, which applies in England and Wales, provides for a similar offence and mirrors, to an extent, the proposed Section 108 offence. The Crown Prosecution Service has confirmed to the Society that no proceedings or prosecutions have been brought under these provisions.

The Society is of the opinion that the proposed wording of Section 108 (1) is not sufficient to give solicitors or other applicants sufficient notice of the types of behaviour, action or inaction which may result in criminal penalties being levied or indeed deprivations of liberty ensuing. The Society holds this to be a fundamental requirement of the criminal law in our society.

The use of the term ‘Recklessness’

The Society notes, and is concerned, that the provision as drafted states that the mens rea required to satisfy the offence is intention or ‘recklessness’. The Society believes that the term ‘recklessness’ is very problematic and is too vague to meet the requirement of due notice which is a tenet of the rule of law. The term is not settled in Scots law, and may differ dependent on the offence pursued. Case law suggests that this should be an objective approach, with behaviour falling far below that of the competent person in the defendant’s position. Applying this principle to conveyancing transactions, this is likely to demand a very high level of proof of malpractice, and will require expert evidence being lead to show that the solicitor’s actions fell far short of that of a competent practitioner. The Society is of the view that it may be no easier to prosecute recklessness conduct under the proposed new offence as it is with intention, under the existing criminal law offence of fraud.

In addition, the use of the term ‘recklessness’ has the effect of criminalising professional service which, although unsatisfactory, falls short of fraudulent. As drafted, this would cover those solicitors who make a genuine administration error in submitting an application for registration or any other dealings with the Registers of
Scotland. Unsatisfactory professional service, on the part of solicitors, in relation to land registration is already dealt with in a number of ways, and sanctions may be imposed on solicitors by both the Law Society of Scotland and the Scottish Legal Complaints Commission – both striving to eradicate unsatisfactory professional service. Any loss suffered by clients may ultimately be recovered from the Scottish solicitors’ indemnity and guarantee funds and civil action may also be raised in the event of any loss.

By incorporating the term ‘recklessness’ in this way, a solicitor may find him or herself facing criminal prosecution for a genuine error. The offence provision in the Land Registration Act 2002 makes no reference to reckless conduct and the notes in the annotated version of Current Law Statutes indicate that that offence cannot be committed negligently.

**Defences**
The Society believes that the defences require further consideration in order to avoid (1) unfair consequences arising from a lack of clarity in the terminology used and (2) a breakdown in the accepted conveyancing practice which has operated for a considerable number of years.

(1)
The Society notes that subsection (3) provides for a defence to the offence created by Section 108, and states:

3) It is a defense for a person charged with an offence under subsection (1) (the “accused”) that the accused took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

The Society has concerns about the proposed wording ‘all reasonable precautions’. What are all reasonable precautions? This is a subjective test and the Bill fails to provide any definition or guidance to clarify. Again this falls short of what one might expect from an executive’s criminalisation of conduct. The Society has the same concern with the stated wording ‘all due diligence’

(2)
The Society does not believe that the defence, set out in s.108 (4), adequately addresses the issue of the input of any other party to an application. The steps required to make out the defence are cumulative and the last limb of the defence introduces the undefined concept of solicitors taking "all such steps as could reasonably be taken" – this step suggests that there may be accepted procedures and enquiries which should be taken which are not themselves set out in the statute and nor may they necessarily be within the ken of the applicants in any given situation and any that agents may develop will necessarily result in delay and time costs to members of the public.

**Miscellaneous and General**
We consider that the opportunity should be taken to include, in the Miscellaneous and General Section of the Bill, two provisions to address particular problems which have arisen in practice within the past year or so.
Firstly, there should be clarification that s.160 of the Bankruptcy & Diligence etc (Scotland) Act 2007 does not alter the common law position and accordingly that Inhibitions registered against a seller after missives are concluded remain ineffective as the seller is already contractually bound to dispose of the property. This would remove the uncertainty caused by the Keeper’s current policy of excluding indemnity in these circumstances.

Secondly there should be clarification that s.26 of the Conveyancing and Feudal Reform (Scotland) Act 1970 will operate to remove from the Title Sheet any remaining prior ranking or pari passu securities following a sale on repossession, even if the calling up procedure did not comply with the interpretation of the statutory requirements in the Supreme Court decision of RBS v Wilson in November 2010.

Practical difficulties have arisen as a result of the policy of the Keeper, when processing applications for registration of dealings affected by this decision, not to remove from the relevant Title Sheet additional securities over the property which rank pari passu with or postponed to the security which has been called up. Normally such securities would be removed under s.26 of the 1970 Act. However the Keeper’s current policy is to disclose any remaining securities on the Title Sheet unless they have been formally discharged and to expressly exclude indemnity in respect of loss arising from rectification to delete those securities, or from the subjects being found not to have been disburdened of them in terms of s.26. As a result of this policy, Land and Charge Certificates issued to purchasers’ agents in these circumstances will indicate that the title is subject to pari passu or postponed securities granted by the defaulting borrower and that these rank ahead of any new security granted by the purchaser.

The Society has seen academic opinion to the effect that the Keeper’s policy is not well-founded. In terms of s.26 the subjects are automatically disburdened of all securities on the recording of a disposition which bears to be in implementation of a sale. Accordingly any exclusion of indemnity relative to pari passu or postponed securities in these circumstances would result in an inaccuracy in the Land Register.

The Society understands that over one hundred transactions are affected by this policy. It is unlikely that secondary lenders will be prepared to grant Discharges of their securities in these circumstances and affected parties will therefore have to consider an application to rectify the Register (in terms of s.9 of the Land Registration (Scotland) Act 1979) and, if this proves unsuccessful, an application to the Lands Tribunal for Scotland. This will involve purchasers in further delay, uncertainty and expense. An appropriate provision in the Bill could resolve this problem.

The Law Society of Scotland
27 January 2012
APPENDIX 1

Part 7 Proceeds of Crime Act 2002

327 Concealing etc
(1) A person commits an offence if he—
(a) conceals criminal property;
(b) disguises criminal property;
(c) converts criminal property;
(d) transfers criminal property;
(e) removes criminal property from England and Wales or from Scotland or from Northern Ireland.

(2) But a person does not commit such an offence if—
(a) he makes an authorised disclosure under section 338 and (if the disclosure is made before he does the act mentioned in subsection (1)) he has the appropriate consent;
(b) he intended to make such a disclosure but had a reasonable excuse for not doing so;
(c) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.

(3) Concealing or disguising criminal property includes concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.

328 Arrangements
(1) A person commits an offence if he enters into or becomes concerned in an arrangement which he knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person.

(2) But a person does not commit such an offence if—
(a) he makes an authorised disclosure under section 338 and (if the disclosure is made before he does the act mentioned in subsection (1)) he has the appropriate consent;
(b) he intended to make such a disclosure but had a reasonable excuse for not doing so;
(c) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.

329 Acquisition, use and possession
(1) A person commits an offence if he—
(a) acquires criminal property;
(b) uses criminal property;
(c) has possession of criminal property.
But a person does not commit such an offence if—
(a) he makes an authorised disclosure under section 338 and (if the disclosure is made before he does the act mentioned in subsection (1)) he has the appropriate consent;
(b) he intended to make such a disclosure but had a reasonable excuse for not doing so;
(c) he acquired or used or had possession of the property for adequate consideration;
(d) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.

For the purposes of this section—
(a) a person acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property;
(b) a person uses or has possession of property for inadequate consideration if the value of the consideration is significantly less than the value of the use or possession;
(c) the provision by a person of goods or services which he knows or suspects may help another to carry out criminal conduct is not consideration.

### 330 Failure to disclose: regulated sector

A person commits an offence if each of the following three conditions is satisfied.

The first condition is that he—
(a) knows or suspects, or
(b) has reasonable grounds for knowing or suspecting, that another person is engaged in money laundering.

The second condition is that the information or other matter—
(a) on which his knowledge or suspicion is based, or
(b) which gives reasonable grounds for such knowledge or suspicion, came to him in the course of a business in the regulated sector.

The third condition is that he does not make the required disclosure as soon as is practicable after the information or other matter comes to him.

The required disclosure is a disclosure of the information or other matter—
(a) to a nominated officer or a person authorised for the purposes of this Part by the Director General of the National Criminal Intelligence Service;
(b) in the form and manner (if any) prescribed for the purposes of this subsection by order under section 339.

But a person does not commit an offence under this section if—
(a) he has a reasonable excuse for not disclosing the information or other matter;
(b) he is a professional legal adviser and the information or other matter came to him in privileged circumstances;
(c) subsection (7) applies to him.

This subsection applies to a person if—
(a) he does not know or suspect that another person is engaged in money laundering, and
(b) he has not been provided by his employer with such training as is specified by the Secretary of State by order for the purposes of this section.

(8) In deciding whether a person committed an offence under this section the court must consider whether he followed any relevant guidance which was at the time concerned—
(a) issued by a supervisory authority or any other appropriate body,
(b) approved by the Treasury, and
(c) published in a manner it approved as appropriate in its opinion to bring the guidance to the attention of persons likely to be affected by it.

(9) A disclosure to a nominated officer is a disclosure which—
(a) is made to a person nominated by the alleged offender’s employer to receive disclosures under this section, and
(b) is made in the course of the alleged offender’s employment and in accordance with the procedure established by the employer for the purpose.

(10) Information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to him—
(a) by (or by a representative of) a client of his in connection with the giving by the adviser of legal advice to the client,
(b) by (or by a representative of) a person seeking legal advice from the adviser, or
(c) by a person in connection with legal proceedings or contemplated legal proceedings.

(11) But subsection (10) does not apply to information or other matter which is communicated or given with the intention of furthering a criminal purpose.

(12) Schedule 9 has effect for the purpose of determining what is—
(a) a business in the regulated sector;
(b) a supervisory authority.

(13) An appropriate body is any body which regulates or is representative of any trade, profession, business or employment carried on by the alleged offender.

331 Failure to disclose: nominated officers in the regulated sector

(1) A person nominated to receive disclosures under section 330 commits an offence if the conditions in subsections (2) to (4) are satisfied.

(2) The first condition is that he—
(a) knows or suspects, or
(b) has reasonable grounds for knowing or suspecting, that another person is engaged in money laundering.

(3) The second condition is that the information or other matter—
(a) on which his knowledge or suspicion is based, or
(b) which gives reasonable grounds for such knowledge or suspicion,
came to him in consequence of a disclosure made under section 330.

(4) The third condition is that he does not make the required disclosure as soon as is practicable after the information or other matter comes to him.

(5) The required disclosure is a disclosure of the information or other matter—
(a) to a person authorised for the purposes of this Part by the Director General of the National Criminal Intelligence Service;
(b) in the form and manner (if any) prescribed for the purposes of this subsection by order under section 339.

(6) But a person does not commit an offence under this section if he has a reasonable excuse for not disclosing the information or other matter.

(7) In deciding whether a person committed an offence under this section the court must consider whether he followed any relevant guidance which was at the time concerned—
(a) issued by a supervisory authority or any other appropriate body,
(b) approved by the Treasury, and
(c) published in a manner it approved as appropriate in its opinion to bring the guidance to the attention of persons likely to be affected by it.

(8) Schedule 9 has effect for the purpose of determining what is a supervisory authority.

(9) An appropriate body is a body which regulates or is representative of a trade, profession, business or employment.

332 Failure to disclose: other nominated officers
(1) A person nominated to receive disclosures under section 337 or 338 commits an offence if the conditions in subsections (2) to (4) are satisfied.

(2) The first condition is that he knows or suspects that another person is engaged in money laundering.

(3) The second condition is that the information or other matter on which his knowledge or suspicion is based came to him in consequence of a disclosure made under section 337 or 338.

(4) The third condition is that he does not make the required disclosure as soon as is practicable after the information or other matter comes to him.

(5) The required disclosure is a disclosure of the information or other matter—
(a) to a person authorised for the purposes of this Part by the Director General of the National Criminal Intelligence Service;
(b) in the form and manner (if any) prescribed for the purposes of this subsection by order under section 339.
(6) But a person does not commit an offence under this section if he has a reasonable excuse for not disclosing the information or other matter.

333 Tipping off

(1) A person commits an offence if—
(a) he knows or suspects that a disclosure falling within section 337 or 338 has been made, and
(b) he makes a disclosure which is likely to prejudice any investigation which might be conducted following the disclosure referred to in paragraph (a).

(2) But a person does not commit an offence under subsection (1) if—
(a) he did not know or suspect that the disclosure was likely to be prejudicial as mentioned in subsection (1);
(b) the disclosure is made in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct;
(c) he is a professional legal adviser and the disclosure falls within subsection (3).

(3) A disclosure falls within this subsection if it is a disclosure—
(a) to (or to a representative of) a client of the professional legal adviser in connection with the giving by the adviser of legal advice to the client, or
(b) to any person in connection with legal proceedings or contemplated legal proceedings.

(4) But a disclosure does not fall within subsection (3) if it is made with the intention of furthering a criminal purpose.

334 Penalties

(1) A person guilty of an offence under section 327, 328 or 329 is liable—
(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both, or
(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years or to a fine or to both.

(2) A person guilty of an offence under section 330, 331, 332 or 333 is liable—
(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both, or
(b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both.

Disclosures

337 Protected disclosures

(1) A disclosure which satisfies the following three conditions is not to be taken to breach any restriction on the disclosure of information (however imposed).

(2) The first condition is that the information or other matter disclosed came to the person making the disclosure (the discloser) in the course of his trade, profession, business or employment.
(3) The second condition is that the information or other matter—
(a) causes the discloser to know or suspect, or
(b) gives him reasonable grounds for knowing or suspecting, that another person is engaged in money laundering.

(4) The third condition is that the disclosure is made to a constable, a customs officer or a nominated officer as soon as is practicable after the information or other matter comes to the discloser.

(5) A disclosure to a nominated officer is a disclosure which—
(a) is made to a person nominated by the discloser’s employer to receive disclosures under this section, and
(b) is made in the course of the discloser’s employment and in accordance with the procedure established by the employer for the purpose.

338 Authorised disclosures
(1) For the purposes of this Part a disclosure is authorised if—
(a) it is a disclosure to a constable, a customs officer or a nominated officer by the alleged offender that property is criminal property,
(b) it is made in the form and manner (if any) prescribed for the purposes of this subsection by order under section 339, and
(c) the first or second condition set out below is satisfied.

(2) The first condition is that the disclosure is made before the alleged offender does the prohibited act.

(3) The second condition is that—
(a) the disclosure is made after the alleged offender does the prohibited act,
(b) there is a good reason for his failure to make the disclosure before he did the act, and
(c) the disclosure is made on his own initiative and as soon as it is practicable for him to make it.

(4) An authorised disclosure is not to be taken to breach any restriction on the disclosure of information (however imposed).

(5) A disclosure to a nominated officer is a disclosure which—
(a) is made to a person nominated by the alleged offender’s employer to receive authorised disclosures, and
(b) is made in the course of the alleged offender’s employment and in accordance with the procedure established by the employer for the purpose.

(6) References to the prohibited act are to an act mentioned in section 327(1), 328(1) or 329(1) (as the case may be).

339 Form and manner of disclosures
(1) The Secretary of State may by order prescribe the form and manner in which a disclosure under section 330, 331, 332 or 338 must be made.
(2) An order under this section may also provide that the form may include a request to the discloser to provide additional information specified in the form.

(3) The additional information must be information which is necessary to enable the person to whom the disclosure is made to decide whether to start a money laundering investigation.

(4) A disclosure made in pursuance of a request under subsection (2) is not to be taken to breach any restriction on the disclosure of information (however imposed).

(5) The discloser is the person making a disclosure mentioned in subsection (1).

(6) Money laundering investigation must be construed in accordance with section 341(4).

(7) Subsection (2) does not apply to a disclosure made to a nominated officer.

**Interpretation**

**340 Interpretation**

(1) This section applies for the purposes of this Part.

(2) Criminal conduct is conduct which—
   (a) constitutes an offence in any part of the United Kingdom, or
   (b) would constitute an offence in any part of the United Kingdom if it occurred there.

(3) Property is criminal property if—
   (a) it constitutes a person's benefit from criminal conduct or it represents such a benefit (in whole or part and whether directly or indirectly), and
   (b) the alleged offender knows or suspects that it constitutes or represents such a benefit.

(4) It is immaterial—
   (a) who carried out the conduct;
   (b) who benefited from it;
   (c) whether the conduct occurred before or after the passing of this Act.

(5) A person benefits from conduct if he obtains property as a result of or in connection with the conduct.

(6) If a person obtains a pecuniary advantage as a result of or in connection with conduct, he is to be taken to obtain as a result of or in connection with the conduct a sum of money equal to the value of the pecuniary advantage.

(7) References to property or a pecuniary advantage obtained in connection with conduct include references to property or a pecuniary advantage obtained in both that connection and some other.

(8) If a person benefits from conduct his benefit is the property obtained as a result of or in connection with the conduct.
(9) Property is all property wherever situated and includes—
(a) money;
(b) all forms of property, real or personal, heritable or moveable;
(c) things in action and other intangible or incorporeal property.

(10) The following rules apply in relation to property—
(a) property is obtained by a person if he obtains an interest in it;
(b) references to an interest, in relation to land in England and Wales or Northern Ireland, are to any legal estate or equitable interest or power;
(c) references to an interest, in relation to land in Scotland, are to any estate, interest, servitude or other heritable right in or over land, including a heritable security;
(d) references to an interest, in relation to property other than land, include references to a right (including a right to possession).

(11) Money laundering is an act which—
(a) constitutes an offence under section 327, 328 or 329,
(b) constitutes an attempt, conspiracy or incitement to commit an offence specified in paragraph (a),
(c) constitutes aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a), or
(d) would constitute an offence specified in paragraph (a), (b) or (c) if done in the United Kingdom.

(12) For the purposes of a disclosure to a nominated officer—
(a) references to a person’s employer include any body, association or organisation (including a voluntary organisation) in connection with whose activities the person exercises a function (whether or not for gain or reward), and
(b) references to employment must be construed accordingly.

(13) References to a constable include references to a person authorised for the purposes of this Part by the Director General of the National Criminal Intelligence Service.
Appendix 2

**Statutory Declaration**

Solicitors are licensed under an Act of Parliament to make statements and carry out legal acts as part of a public office on behalf of clients. When a solicitor completes a return to the Registers, as with a tax return or a confirmation to an estate on behalf of a client, he effects changes in publicly held registers which deal with the identity of persons and their ownership of property. That is why many in the profession have always believed that when they are completing and submitting forms on behalf of clients they are making declarations under statute - the statute that regulates their public office. In this respect the terms of Criminal Law (Consolidation) (Scotland) Act 1995 c. 39 S 44 should apply:-

"False statements and declarations.

44 (1) Any person who—
(a) is required or authorised by law to make a statement on oath for any purpose; and
(b) being lawfully sworn, willfully makes a statement which is material for that purpose and which he knows to be false or does not believe to be true,
shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding five years or to a fine or to both such fine and imprisonment.

(2) Any person who knowingly and wilfully makes, otherwise than on oath, a statement false in a material particular, and the statement is made—
(a) in a statutory declaration; or
(b) in an abstract, account, balance sheet, book, certificate, declaration, entry, estimate, inventory, notice, report, return or other document which he is authorised or required to make, attest or verify by, under or in pursuance of any public general Act of Parliament for the time being in force; or
(c) in any oral declaration or oral answer which he is authorised or required to make by, under or in pursuance of any public general Act of Parliament for the time being in force; or
(d) in any declaration not falling within paragraph (a), (b), or (c) above which he is required to make by an order under section 2 of the Evidence (Proceedings in Other Jurisdictions) Act 1975,
shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding two years or to a fine or to both such fine and imprisonment.

(3) Any person who—
(a) procures or attempts to procure himself to be registered on any register or roll kept under or in pursuance of any Act of Parliament for the time being in force of persons qualified by law to practice any vocation or calling; or
(b) procures or attempts to procure a certificate of the registration of any person on any such register or roll,
by wilfully making or producing or causing to be made or produced either verbally or in writing, any declaration, certificate or representation which he knows to be false or fraudulent, shall be guilty of an offence and be liable on conviction to imprisonment for a term not exceeding 12 months or to a fine or to both such fine and imprisonment.

(4) Subsection (2) above applies to any oral statement made for the purpose of any entry in a register kept in pursuance of any Act of Parliament as it applies to the statements mentioned in that subsection."
SUPPLEMENTARY SUBMISSION FROM THE LAW SOCIETY OF SCOTLAND (3)

Re: Land Registration (Scotland) Bill - Oral Evidence

We write in relation to the above bill, and the oral evidence of the 25 January 2012, at which the Keeper of the Register, Sheenagh Adams and the head of the bill team, Gavin Henderson, appeared before the Committee as witnesses.

As we understand from the Official Report of that evidence session (page 874) Sheenagh Adams indicated that the judicial Factor of the Law Society of Scotland (Morna Grandison) was of the view that section 108 (the offence provision) was necessary, in particular the Keeper stated:

’Obviously, section 108 has been included in the bill on the advice of the police force, those who are responsible for dealing with serious crime and the Lord Advocate. Indeed, the judicial factor in the Law Society of Scotland has taken the view that the section is a necessary and helpful addition to the tools that are available to combat fraud’

This statement is incorrect in so far as the Judicial Factor of the Society has given no such view that the section is either necessary or helpful.

We also note that the Keeper, in relation to rejection fees, indicated that the Society ‘strongly supports the rejection fee’ (page 876). Again, this is not the case. To clarify, the Society has been working closely with the RoS over recent years to reduce the number of rejected applications, and although the Society did not object to the introduction of a rejection fee, we did not offer support of this.

We would ask that you bring the above points to the Committee’s attention.

If you have any questions in relation to this, please contact Brian Simpson or John Scott direct.

The Keeper has been provided with a copy of this correspondence.

The Law Society of Scotland
1 February 2012
SUBMISSION FROM CLIFFORD McDONALD

I am a member of the public. I wish to make the following observations on the Land Register Bill.

(A) The proposals for the completion of the land register and registration issues;

(1) Completion of the Land Register: increased “triggers” for registration

Paragraph 20 of the Policy Memorandum states “Under the Bill all transfers of land (including those not for money) will result in the requirement to register the land in the Land Register.” If all ‘transfers’ includes transfers resulting from the operation of a survivorship destination this could impose on grieving parties additional worries, expense and difficulties in meeting the necessary expenditure of registration?

(2) Completion of the Land Register: closure of GRS to new deeds

It is proposed that the recording of a standard security in the General Register of Sasines will no longer be effective. I would make the following observations for consideration on whether to accept this proposal

(a) The introduction of this trigger is to be delayed to some time in the future. Any substantive delay in introducing this proposal will seriously negate the effectiveness of this proposal, as the number of such securities will decline.

(b) It may affect the remortgaging market in that any savings to the proprietor in repayments could be negated by the additional costs of registering the land.

(c) Second or subsequent loans are usually for substantially smaller amounts. The additional costs of registering the land may mean that the proprietor is discouraged from taking out such loans.

(d) It is not clear how the proposal affects a security over part of the land owned by proprietor. Will it result in only that part of the land included in the security being registered? If it is the whole of the land owned by the Sasine proprietor then that might impose a substantial additional cost to that proprietor in registration dues and solicitor costs.

(3) Completion of the Land Register: voluntary registration

The acceptance/rejection of an application for voluntary registration should not be based on a date set or otherwise. The conclusive decision whether to accept/refuse an application should be based on the grounds of reasonableness. This will depend on and resources available to the Keeper at the time. The Keeper should not be forced to accept too many applications at the one time, as this could be detrimental and prejudice the proprietor’s compulsory registrable transactions.
(4) Completion of the Land Register: Keeper induced registration

What is being proposed is that the Keeper adopts the solicitor’s role acting for the proprietor of the subjects with or without the proprietor knowing that the Keeper is acting in that way and without the proprietor of the property being able to consent to such registration. This seems contrary to ECHR legislation. The following issues have serious concerns for accuracy of the Register are not addressed:

(i) Where title is held subject to a survivorship destination. Without an enquiry by the Keeper to ascertain whether any of the parties have died. Not to make such an enquiry could result in an inaccurate register by creating an interest in the title in favour of a person who is deceased.

(ii) A variation on (i) above would include titles held equally where one of the equal owners title is held subject to a survivorship destination.

(iii) The methodology in preparing a title sheet being proposed contains flaws and raises many important issues. It is imperative that strict criteria are in place to ensure that the Keeper carries out a thorough examination of title. There should be an undertaking that the Keeper meets all the costs incurred by the titleholder. Legislation that is deliberately targeting an individual’s freedom of choice requires a cautious and thoroughly considerative approach especially as Ministers will require to justify the approval of such legislation to their voting constituents. The rules under which such legislation is applied should not solely be for the benefit of unelected civil servants. The Keeper is not legally acting for the proprietors and appears to be proposing an inadequate of examination of such titles. The Keeper’s staff are not in the main solicitors their interest is acting on behalf of the Keeper. This creates the possibility of a conflict of interest e.g. where boundary overlaps/disputes are not addressed because of the desire to complete the registration. A duty of care must be owed to the proprietor of the property. The search sheet is not a statutory document nor does it always represent the current state of ownership of the title [e.g. (i) and (ii) above]. Further difficulties will arise, as the Keeper will be examining copy deeds rather than the original documentation in order to process the title. The Keeper will only have copy deed plans that are black and white photocopies. How will the Keeper deal with copy deeds that refer to colouring on the deed plan to identify the parts of the title? In addition measurements based on a photocopy of a plan are not accurate. In light of the foregoing the Keeper before she/he undertakes Keeper induced registrations should seek the permission and approval of the titleholder whose land he is forcibly registering. If the Keeper is empowered to forcibly register plots then the Keeper must also assume all the costs relating thereto including all the costs incurred by the proprietor in instructing a solicitor to check that the Keeper has not erred in the registration of their title, this latter cost is not included in the current proposals. This would place the examination of a forcibly registered title on the same footing as any other registration the proprietor should expect no less, for the Keeper not do so she/he would be failing in her/his duty of care.

(iv) The rights of security holders seem to be being ignored or will they be given the chance to formally register their recorded security in the land register and gain the benefits that flow therefrom?
The understanding of the extent of the unregistered residue of land seems restrictive e.g. no account appears to be being taken of the tens if not hundreds of thousand of slithers, small areas of ground which were retained (not conveyed) by developers, estate owners. The developers, estate owners may no longer exist or may have abandoned the land. The Lands Tribunal case [PMP Plus Ltd v The Keeper & others] infers rights in common in developments to residue of land in the development not identified until the development is completed are in fact not validly conveyed and as a result are not registered. The inference from the said Lands Tribunal case is that there will be inaccuracies in the register in that land thought to be included in the registered titles is not in fact include in those registered title i.e. they will be added to the pool of unregistered titles.

QLTR are unlikely to be interested in taking title to the unregistered slithers of ground [nor will have the resource to do so]. Where there is no readily discernible owner to unregistered land it has been proposed that title sheets should be created for titles with non-discernable owners I would suggest that this is palpably absurd. It goes in the face of the fundamental concept that the register can be relied upon. This very basis of the register has been given judicial approval at all levels. The creation of a title with no owner appears to be a complete contradiction. The devil is in the detail in the work involved in transferring the residue of the unregistered interests in land to the Land Register completion of that process is likely to take substantially longer than anticipated.

The explanatory notes to the Bill at paragraph 419 states that it is not immediately clear whether the Keeper will implement this proposal for Keeper induce registrations at the time the bill comes into force and paragraph 420 takes a restrictive view of the costs to that may fall to be met by the Keeper. Why this delay in taking forward the prime aim of completion of the Land Register? With the likelihood that the property market will continue to be at a low ebb with insufficient intakes of registration applications to keep all the Keeper’s staff employed. In such a situation would it not be sensible to accelerate this proposal Keeper induced registrations provided the concerns addressed above are dealt with rather than have staff unemployed. The Keeper is after all paying the staff for doing nothing, surely supplying the staff with work is more beneficial to all concerned.

(B) The proposals for electronic documents, conveyancing and registrations;

I have no difficulty with the proposals for electronic documents. I am concerned about the viability of the Register of Scotland’s Automated Registration of Title to Land (ARTL) system. The Report by the Auditor General for Scotland under Section 22(3) of the Public Finance and Accountability (Scotland) Act 2000 the 2010-2011 Audit of Registers of Scotland at paragraph 8 states:

In line with the Auditor General’s concerns the indications are that the ARTL system is not a viable project. For example, there have in the last 4 years or so only just over 50,000 applications. The Keeper’s projected estimates envisage around 700,000 such applications, a shortfall of some 650,000 applications. If the average fee for these applications was in the range of £100 to £200 there is an income shortfall of between £65 and £130 Million. The proposals in the Bill will impose further restrictions or have an effect on the number of transactions that will be ARTL compatible e.g. Advance Notices. The current state of the property market is likely to continue for some time and will have a
major effect on the financial viability of ARTL. The registration processes impose restrictions on the number of transactions that are ARTL compatible. The current ARTL system requires a buoyant re-mortgaging market to recompense the cost of its introduction and continued usage. Despite the Keeper setting the fees for ARTL applications at a lesser amount than paper transactions the costs taking account of the cost of development greatly exceed those for paper transactions. In light of these facts it seems possible that electronic registration could be abandoned as such level of losses is unsustainable.

(C) Any other aspects of the Bill

(1) Re-alignment of registration law with property law (bullet point 4 of paragraph 12 of the Policy Memorandum)

The Bill seeks to re-align registration law with property law by e.g. by adjusting the circumstances in which a person can recover their property rather than only receive compensation under the state guarantee of title from the Keeper of the Registers. It is suggested that the new scheme strikes a fairer balance between the interests of the registered proprietor and the true owner. All that is being achieved is an alteration in the aggrieved party from the true owner to the party who is losing the property in dispute. What is being proposed is that after completing registration of 55% of properties the law is being turned on its head for the completion of the residue of 45% of properties this can only lead to confusion and conflict. Emphasis may have been better served by re-aligning property law with registration law rather than reverting to a Sasine system albeit with a plan. In formulating the revised registration process the effect on the underlying policy of reliance on the register may not have been fully thought through or may not accurately foretold all its effect.

It seems generally accepted that there is no perfect system. Whilst true owners deserve protection the rectification, where permitted, of all inaccuracies many injustices will arise. The reversal of the policy to protect “true owners” will create situations worse than those which the proposals in the Bill seek to remedy e.g. protecting the innocent in possession of their home rather than putting them out on the street and possibly creating financial and social hardship is surely a preferable aim. Monetary recompense of the true owner whilst often unsatisfactory is fairer than removal from the property of the vulnerable innocent owner e.g. a pensioner or a family who may have rearranged their lives, the schooling of children, adapting the house to the need of the family (disabled needs, aged parental needs etc). This vulnerability could last for up to 10 years and certainly detracts from the current certainty of reliance on the register. In these circumstances is this proposal contrary to human rights legislation.

There may however be merit in allowing rectification of inaccuracies in the Register to return to the true owners small/insignificant slithers of ground. Some sort of “equity” as to whether it should be “mud or money” should be the target.

(2) Shared Plots (Sections 17 and 18 of the Bill)

The practical application of this proposal does not appear to have been thought out. The difficulties that arise following the Lands Tribunal decision (PMP Plus Ltd v The Keeper
and others) in relation to unspecified rights in common to property are not dealt with. What forms a shared plot in existing title sheets is in a state of flux. Based on the Lands Tribunals view there are several thousand inaccurate title sheets.

Another problem that is that 55% of all properties are already registered. The 45% of properties remaining to be registered will have title sheets formulated on a different basis to existing registrations. Where some of the proprietors who own part of a shared plot do not have a registered title does that mean that part of the property which they own a pro indiviso share is registered despite no application to do so has been submitted? As registration of the unregistered 45% progresses is it the intention is it the intention to rectify those parts of the 55% registered properties to provide a consistent register? The Bill appears vague on this point.

Section 17 (2) of the Bill gives discretion to the Keeper whether a shared plot title sheet is to be made up or not. I do not see how this sits with the correlation between one title sheet and one cadastral unit and the necessity to realise a true map based system of land registration (paragraphs 65 and 66 of the Policy Memorandum).

If title sheets identify all proprietors, including those with unregistered titles, who own the shared plot what would be the increased costs for proprietors? I see limited benefit in the Keeper discontinuing the current arrangement of narrating all the common proprietors in the title sheet.

The costs to the Keeper of processing shared plot titles, as set out in 373 to 375 of the Explanatory Notes is a narrow view that needs expanding. No account is taken of ongoing developments pre the new proposals taking effect nor of the many titles from old developments that have yet to go through the process of First Registration. Further should rectification of the present inaccuracies in the register be undertaken the level of work could reach gargantuan levels.

(3) Advanced Notices

Advanced notices clearly have benefits. These Advanced notices are effective for a protected period (35 days). Applications that affect a registered plot of land will appear in the application record and for unregistered land the notice will be recorded in the Register of Sasines At this point there is no real difficulty in complying with the Bills proposals. The Bills proposals however appear incomplete or incapable of be complied with in relation to the removal or discharge of the advanced notices.

Section 59 and 60 of the Bill deals with the removal/discharge of the Notices: For the Register of Sasines, it is stated that if a discharge is recorded the advanced notice ceases to have effect. Is it envisaged that in the absence of a discharge the Notice will continue to have some meaning?

For the Land Register, (1) the Bill acknowledges that applications must be processed in the order they are submitted otherwise inaccuracies in the Register will occur. Therefore in many instances it will be impossible to comply with the compulsive “must” remove/discharge once the protected period has elapsed due to intervening applications that are unable to be processed in the Bill.
(4) The “one shot principle” (Section 33)

I have no difficulty with this proposal provided safeguards are in place. The Keeper has an extremely poor record in timeous processing some applications, particularly Transfers of Part Applications. Years may pass before it is identified that the application is not complete.

Subsequent events with a bearing on the title sometimes occur after the application has been received and this may result in the need to requisition additional documentation, a one shot rule in such cases would be extremely unfair. Common deeds and documentation that form part of an application may already been examined by the Keeper and in such cases the Keeper does not expect submission of the same. This can cause confusion as to what documentation the Keeper holds and what he does not. Rejection of an application resulting from this confusion would be harsh. Equally a link in title appropriate to several titles may be submitted in one of the titles and not the others. Where these titles are examined in a block it would seem ridiculous to reject the applications that do not have the link in title.

It is not unknown for the Keeper to requisition documentation that is not required e.g. the Keeper had to pay the expenses in a Court Action where the Keeper incorrectly rejected an application for registration. Perhaps a fairer rule would be that there should be a set period during which the Keeper would be able to reject an application on the grounds that the application is incomplete. After the set period the Keeper should not be able to reject the application without the Keeper requisitioning the required documentation. Only if that documentation is not submitted within a reasonable period of time can the application be rejected. The Keeper has a duty of care not to unnecessarily reject applications and if that happens the Keeper is subject to the liability of meeting all the costs relating to the incorrect rejection.

(5) Duty of care (Section 107 of the Bill)

The placing on a statutory footing the duty owed by a person who grants a deed, the grantee of and both their solicitors is a welcome clarification.

The duty of care owed by the Keeper should also be placed on a statutory footing. The Keeper also owes a statutory duty of care for his actions. The temporary judge in the action of Braes v The Keeper said “Where a loss occurred which would not have been covered by the scheme, and where the person suffering that loss is able to demonstrate that it was caused by negligence on the part of the Keeper, I can see no reason in principle why a common law duty of care should not exist.

(6) Consultancy and other powers (section 104)

This section of the Bill seems to be too wide in its terms. The Agency exists to serve the public in the area of their expertise i.e. registration. The Agency is not a commercial enterprise; it is a monopoly and as such is isolated from the real world in that it lacks the element of having the competition that businesses have. Business means risk and that is not the purpose of a Government Body. The Keeper should not be allowed to unfairly
compete in markets particularly when they lack the skills to do so. One of the main aims of the Bill is the completion of the Land Register. The Keeper should not lose focus by providing services not related to its primary function and should only be authorised to deal with matters that do not fall outwith the law and practice of registration. The Keeper should be restricted to the areas that form the core business and not be able to form separate Companies.

(7) Archive Record (section 14)

This provision of the Bill again raises the question of the wisdom of introducing rules that will be directly applicable to the 45% of the Land Register. This may create a conflict with the historical records relating to the 55% of the Land Register already registered. The archive relating to the said 55% have parts missing and may not held in a format easily searchable. A two-tier system (pre and post the provision) will be created.

(8) Souvenir Plots (Section 22(2)(a))

The definition of a souvenir plot in the Bill lacks any real definition e.g. (i) “size” of a plot is not definitive as to whether it is registrable e.g. several plots are or will need to be registered which are smaller than some of the souvenir plots, and (ii) “no practical utility” is lacking in any definitive meaning. It may be that the English definition whilst still not without difficulties provides a clearer view, namely:

“being of inconsiderable size and of little or no practical utility, is unlikely to be wanted in isolation except for the sake of pure ownership or for sentimental reasons or commemorative purposes.”

Clifford McDonald
19 January 2012
SUBMISSION FROM MCGRIGORS LLP

1 Introduction

We support the introduction of the Land Registration (Scotland) Bill and particularly:

- the introduction of advance notices
- changes to the rules on inaccuracies and rectification.

2 Section 108

We are concerned at the introduction of a new offence under section 108 of the draft bill. We support any legislation to reduce fraud in connection with property transactions but section 108 would appear to have the effect of making professional negligence a criminal offence in certain circumstances. We have read the written submission made by the Law Society of Scotland in advance of them giving oral evidence to the Committee and endorse the views expressed in that submission.

3 Prescriptive acquisition

We share the Registers' concerns to prevent fraud and protect owners of land from title raiders by ensuring that there are rigorous steps in place before someone other than the owner can acquire title to land. However this needs to be balanced against the importance from a commercial developer's perspective of being able to bring back into economic use an area of land for which no owner can be identified despite rigorous title examination.

We might use an *a non domino* disposition when we discover a gap in historic titles when we are piecing together a site for redevelopment. In such title examinations we may encounter a gap in the title caused by, for example:

- an error in previous conveyancing many years ago (for example, that area having been wrongly excluded, or a map having been inaccurately drawn so as not exactly to coincide with the boundary of property which it is intended to adjoin) or
- the gap site being the solum of a stopped up road, close or pend.

We carry out extensive investigations to find the owner but if no owner can be found the development has sometimes been able to proceed by using an *a non domino* disposition of the area of ground together with a title indemnity policy for the 10 year prescriptive period. This unlocks the potential development and enables property to be brought back into use which may have lain unused for years.

The proposals in sections 42-44 of the Bill will be extremely difficult to comply with. It is not clear what evidence would be required to show that the owner has been out of occupation for 7 years (and we would echo the concern of others that it is very difficult if not impossible to demonstrate conclusively that something has
not happened) or that the applicant has been in occupation for 1 year. Where no owner can be identified it appears that the only option will be to negotiate with the Crown. We are concerned that these proposals will stand in the way of property development, in particular where brownfield sites are proposed to be brought back into economic use.

We would submit that the requirement to notify the owner, which was not contained in the SLC’s proposals, should (if suitably rigorous) suffice to ensure that land which is clearly in existing ownership is not acquired by others by prescriptive acquisition. The notification requirement could perhaps be extended to ensure maximum publicity for the benefit of absent owners, eg newspaper advertisement or affixing notices to/at the property – such procedures are already a feature of other aspects of Scots property law such the provisions for termination of older real burdens in ss.20-21 of the Title Conditions (Scotland) Act 2003.

It could be a requirement that the notification requires to be made a period (say, 8 weeks) before the application for registration of the a non domino disposition can be submitted, and the notice could even encourage interested parties to contact the Keeper direct if they are concerned about the proposals. In those cases where there is some actual mischief at work and which have been a source of concern to the Keeper, we would imagine that there will generally be an identifiable owner of the property, and the need to notify them should be sufficient to flush out any mischief without the need to establish both 7 years’ prior non-occupation by the owner and one year’s occupation by the applicant, which requirements could well stand in the way of genuine non-abusive property development.

McGrigors LLP
19 January 2012
SUPPLEMENTARY SUBMISSION FROM REGISTERS OF SCOTLAND

Meeting of the Economy, Energy and Tourism Committee on 25 January 2012

Thank you for your letter of 26 January requesting certain information following my appearance at the committee on 25 January. Annexes A to E contain the information requested and correspond to the five bullet points in your letter.

In relation to Annex E, I am aware of discussions you have had with the Bill team about the content of the paper for submission to the Registers of Scotland Board in March. That paper does not, and was never intended to, cover the proposed fees that will be charged under subordinate legislation to be made under the Bill. I have reviewed the official report of the meeting of the committee on 25 January and am satisfied that I did not undertake to provide this. Furthermore, Registers of Scotland are not in a position to provide such information in advance of the passage of the Bill through Parliament. However, as I said in my evidence to the committee, any fee order made under the Bill will be subject to affirmative procedure and so the committee’s approval for any new fee arrangements will be needed before a fee order can come into force.

If you need anything further to assist the work of the committee please do not hesitate to get in touch.

Yours sincerely

SHEENAGH ADAMS
Keeper of the Registers of Scotland
Annex A: Errors of a clerical nature: correction of Land Register Title Sheets

1. Land Register title sheets do, from time to time, contain errors of a clerical nature. Such errors do not impact on the legal accuracy of the Land Register. The most common example is that of a simple typographical error. Our published guidance on errors of a clerical nature is set out in the Registration of Title Practice Book (paragraph 7.2). It invites solicitors to return the certificate of title for amendment. It advises that the certificate of title can be returned upon finding the error or the certificate can be retained and the error can be brought to the Keeper’s attention when the title is next transacted against. In practice, roughly half of corrections are returned following issue of the certificate of title and half when the title is next transacted with.

2. We are presently rolling out an updated quality management system that follows the principles set out in ISO9001. One objective of that quality management system is to reduce the number of clerical errors. Our target for correction cases is for 98.5% accuracy; that is to say that the target is to achieve a correction return rate of no more than 1.5% of applications despatched. The table below provides data on the number of correction cases compared with Land Registration output:

<table>
<thead>
<tr>
<th>Year</th>
<th>Land Register Output</th>
<th>Correction cases</th>
<th>% of applications despatched</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011-12  (YTD)</td>
<td>197,911</td>
<td>3,307</td>
<td>1.7%</td>
</tr>
<tr>
<td>2010-11</td>
<td>277,858</td>
<td>4,550</td>
<td>1.6%</td>
</tr>
<tr>
<td>2009-10</td>
<td>249,720</td>
<td>4,286</td>
<td>1.7%</td>
</tr>
<tr>
<td>2008-09</td>
<td>359,137</td>
<td>5,847</td>
<td>1.6%</td>
</tr>
</tbody>
</table>
Annex B: Report on usage of Automated Registration of Title to Land (ARTL)

Background

1. ARTL is the automated registration of title to land IT system run by the Registers of Scotland. It enables electronic registration of deeds that effect land and property that is registered in the Land Register. Part of the system (digital Standard Securities and Discharges) went live in August 2007. The remaining part of the system (digital Dispositions and other deeds) went live in February/March 2008. The system had its official launch in December 2009.

Transactions available under ARTL

2. Where a property is registered on the Land Register, the following deed types are capable of registration using ARTL:

- Discharge of Standard Security;
- Disposition;
- Standard Security;
- Simple Assignations of Lease;
- Assignment of single Standard Security;
- Notices of Payment of Improvement Grant;
- Notice of Payment of Repairs Grant;
- Notice of cessor of Improvement Grant;
- Notice of cessor of Repairs grant;
- Charging Order;
- Discharge of Charging Order;
- HASSASSA Charging order; and
- Discharge of HASSASSA Charging order.

3. However, not all dealing with whole transactions can be processed using ARTL. In particular, transactions that require evidence of links in title are unsuitable.

4. ARTL was not designed to process applications that require a First Registration in the Land Register or a Transfer of Part of a title already registered in the Land Register cannot be processed using ARTL. These types of application are more complex and involve work (including mapping of the titles).

5. One of the positive applications of ARTL is the inclusion of the Stamp Duty Land Tax form in the application for registration. The form is populated as the application is progressed and so the final version requires minimal input from the solicitor, thus facilitating the process. Registers of Scotland acts as an intermediary between the purchaser and the tax office, with funds drawn for stamp duty at the time as the application and then passed on to HM Revenue and Customs by the Keeper.

1 Health and Social Services and Social Security Adjudications Act 1983
Applications processed through ARTL

6. The total number of applications that have been processed by ARTL since its introduction is around 52,400. The table below shows the number of each application type submitted for registration via ARTL in that year.

<table>
<thead>
<tr>
<th>Deed type</th>
<th>deed</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Charge</td>
<td>Charging Order</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>6</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>HASSASSA Charging order</td>
<td>0</td>
<td>2</td>
<td>18</td>
<td>61</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td>Notice of Payment of Improvement Grant</td>
<td>0</td>
<td>12</td>
<td>189</td>
<td>920</td>
<td>518</td>
</tr>
<tr>
<td></td>
<td>Notice of Payment of Repairs Grant</td>
<td>0</td>
<td>5</td>
<td>183</td>
<td>4,010</td>
<td>2,094</td>
</tr>
<tr>
<td></td>
<td>Standard Security</td>
<td>531</td>
<td>6,903</td>
<td>4,381</td>
<td>3,413</td>
<td>8,382</td>
</tr>
<tr>
<td>Discharge</td>
<td>Discharge of Charging order</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Discharge of HASSASSA Charging order</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>4</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>Discharge of Standard Security</td>
<td>482</td>
<td>4,990</td>
<td>4,899</td>
<td>5,278</td>
<td>4,028</td>
</tr>
<tr>
<td></td>
<td>Notice of cessor of Improvement Grant</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Title</td>
<td>Transfers</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Assignment of Lease</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>Disposition</td>
<td>0</td>
<td>12</td>
<td>48</td>
<td>203</td>
<td>821</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>1,013</td>
<td>11,924</td>
<td>9,719</td>
<td>13,896</td>
<td>15,860</td>
</tr>
</tbody>
</table>

Monthly figures

7. The table below gives a breakdown of ARTL submissions for each month in 2011. In addition, the table includes the percentage of the ARTL applications in comparison with the total number of dealing with whole applications received by RoS. The table also lists the number of organisations using ARTL each month.

<table>
<thead>
<tr>
<th>Month (2011)</th>
<th>Submissions</th>
<th>Transfers</th>
<th>Charges²</th>
<th>Discharges³</th>
<th>No. of non ARTL</th>
<th>AR TL as % of Dealings</th>
<th>Number of organisations</th>
</tr>
</thead>
</table>

² Charges include, Charging Order, HASSASSA Charging Order, Notice of Payment of Improvement Grant, Notice of Payment of Repairs Grant and Standard Security
³ Discharges include; Discharge of Charging Order, Discharge of HASSASSA Charging Order, Discharge of Standard Security and Notice of cessor on Improvement Grant.
<table>
<thead>
<tr>
<th>Month</th>
<th>Number of ARTL dealings</th>
<th>Number of total dealings</th>
<th>Number of ARTL compatible</th>
<th>Number of dealing using ARTL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jan</td>
<td>1,289</td>
<td>39</td>
<td>807</td>
<td>463</td>
</tr>
<tr>
<td>Feb</td>
<td>1,521</td>
<td>46</td>
<td>1,241</td>
<td>263</td>
</tr>
<tr>
<td>Mar</td>
<td>1,296</td>
<td>57</td>
<td>938</td>
<td>360</td>
</tr>
<tr>
<td>Apr</td>
<td>1,252</td>
<td>84</td>
<td>927</td>
<td>295</td>
</tr>
<tr>
<td>May</td>
<td>1,393</td>
<td>92</td>
<td>1,109</td>
<td>245</td>
</tr>
<tr>
<td>Jun</td>
<td>1,210</td>
<td>65</td>
<td>829</td>
<td>381</td>
</tr>
<tr>
<td>Jul</td>
<td>1,210</td>
<td>65</td>
<td>869</td>
<td>260</td>
</tr>
<tr>
<td>Aug</td>
<td>1,666</td>
<td>103</td>
<td>1,245</td>
<td>427</td>
</tr>
<tr>
<td>Sep</td>
<td>1,185</td>
<td>103</td>
<td>832</td>
<td>372</td>
</tr>
<tr>
<td>Oct</td>
<td>975</td>
<td>63</td>
<td>695</td>
<td>279</td>
</tr>
<tr>
<td>Nov</td>
<td>1,245</td>
<td>68</td>
<td>831</td>
<td>410</td>
</tr>
<tr>
<td>Dec</td>
<td>980</td>
<td>61</td>
<td>683</td>
<td>276</td>
</tr>
</tbody>
</table>

**Number of ARTL dealings**

8. Of the total dealing with whole applications sent in for registration on the Land Register in 2011, 40-50% are ARTL compatible.

**Use of ARTL**

9. There are 686 law firms (of 896 known firms practicing property law), 29 lenders and 13 local authorities currently signed up to use the ARTL system.
Annex C: briefing on advance notices

1. The purpose of this briefing to provide clarification on the effect of advance notices for dispositions, standard securities and servitudes. The provisions for advance notices are contained in Part 4 of the Bill. The effect of advance notices is governed by section 58 of the Land Registration etc. (Scotland) Bill.

Background

2. Advance notices were devised by the Scottish Law Commission to provide protection for deeds before they are registered. They are primarily designed to protect deeds from a competing deed or the insolvency of the granter.

Effect of Advance Notice on dispositions

3. The purpose of an advance notice protecting a disposition is to ensure that the purchaser of the property becomes the registered proprietor and therefore obtains their legal right in the property; this is referred to legally as a "real right" in property. Having the real right provides security of ownership. With the real right comes the ability to convey the subjects to another party or obtain lending over the subjects. Third parties can inspect the register and confirm the person with the real right in relation to any registered property.

4. It is anticipated that an advance notice will be placed on the register prior to the granting of the deed. Once the advance notice has been placed on the register, the purchaser of the property will have a 35-day protected period to register their disposition. Section 58(2) is the crucial section to determine the effect of an advance notice for a disposition. During the 35-day period, the protected deed is protected from the effect of any later deed submitted for registration against the property specified in the advance notice. To illustrate: Mr Smith has agreed to buy a house registered under MID12345 from Mr Jones:

- on day 1, an advance notice is placed on the application record of the Land Register. The notice shows that a protected 35-day period is now running for the disposition from Mr Jones to Mr Smith over the property MID12345;
- on day 3 the disposition is delivered from Mr Jones to Mr Smith;
- on day 5 Mr Jones delivers a competing disposition to Mr Macdonald (this deed is not protected);
- on day 7 Mr Macdonald submits his application for registration;
- on day 8 the register is updated to show that Mr Macdonald is now the registered proprietor of MID12345;
- on day 14 the disposition from Mr Jones to Mr Smith is submitted for Registration;
• on day 15, the register is updated to show that Mr Smith is now the registered proprietor of MID12345, Mr Macdonald is no longer the registered proprietor.

5. In this scenario the advance notice has the effect of assuring that Mr Smith became the registered proprietor. Mr Macdonald's disposition was registered first. Without the advance notice, when Mr Smith’s disposition was received by the Keeper the application would have been rejected as Mr Jones, the granter of the disposition was no longer the registered proprietor.

Effect of advance notices on Standard Securities

6. The effect of advance notices protecting standard securities is slightly different than for dispositions. They also have a different effect depending on the circumstances in which they are used. The examples below give an illustration of how advance notices will work in differing circumstances:

Example 1: effect of advance notice for standard security, on a standard security

• X, who is the owner of Greymains, grants an advance notice in favour of Y in respect of a prospective standard security over the property;
• the advance notice is entered in the application record of the Land Register on 1st May;
• X delivers a standard security over the property to Y but also a standard security over it to Z;
• on 8th May, Z’s standard security is registered in the Land Register;
• on 15th May, Y’s standard security is registered in the Land Register;
• from 15th May, Y’s standard security ranks ahead of Z’s standard security.

7. The effect of the advance notice in this example is to reverse the ranking of the standard securities. It is the normal practice for standard securities to appear on the register in date order. In this example, as the standard security in favour of Z was registered first, this would normally appear on the register first, with the standard security in favour of Y appearing second. The advance notice changes this order. This effect is a result of the operation of the rule in s.58(3)(b) which states that “the Keeper must amend the register so that it gives effect (if any) to deed Z as if it were registered after deed Y”. As X is the owner of the property both standard securities have effect and can remain on the register.

Example 2: effect of advance notice for standard security, on a disposition

• X, who is the owner of Purplemains, grants an advance notice in favour of Y in respect of a prospective standard security over the property;

---

4 Ranking of standard securities is the order they appear on the register. This is usually date order, with the first register taking priority. The creditor who has first priority has first claim on any funds if a house is repossessed.
8. In this example, the effect is to enable the standard security that was granted by X to Y to be registered despite the fact that Z is now the registered title holder. If there had not been an advance notice the application to register the standard security in favour of Y would have been rejected as Z rather than X is the registered proprietor.

Example 3: effect of advance notice for disposition on a standard security

- X, who is the registered proprietor of Yellowmains, grants an advance notice in favour of Y in respect of a prospective disposition of the property.
- The advance notice is entered in the application record of the Land Register on 1st May.
- X delivers the disposition to Y but also a standard security over the property to Z.
- On 8th May, the standard security is registered in the Land Register.
- On 15th May, the disposition is registered in the Land Register.
- Consequences: The Keeper removes the standard security from the Land Register.

9. In this example the disposition is protected and the standard security is unprotected. When the disposition in favour of Y is registered the Land Register is updated to reflect that Y is now the registered proprietor. The effect of section 58(3) is to remove the standard security from the register (since as X is no longer the registered proprietor of the property the standard security is of no effect and therefore it has to be removed from the register).

Effect of advance notices on servitudes

10. In the case of advance notices for servitudes, they will work in a similar way as they do for dispositions. The examples below illustrate how they will work:

Example 1: effect of advance notice for servitude on a disposition
X, who is the owner of Greenmains, grants an advance notice in favour of Y in respect of a prospective servitude over the property;

the advance notice is entered in the application record of the Land Register on 1st May;

X delivers a deed of servitude over the property to Y, but also a disposition in respect of it to Z;

on 8th May, the disposition is registered in the Land Register;

on 15th May, Y applies for registration of the deed of servitude in the Land Register;

the Keeper accepts Y’s application and Z’s land is encumbered with the servitude as from 15th May.

11. In this example, the servitude has been protected and the disposition has not. The application to register that disposition is received by the Keeper first. The Land Register is updated to show that Z is the proprietor. The servitude is registered second. If the servitude had not been protected, the application would have been rejected, as X is not the registered proprietor. As the servitude is protected, it is registered by virtue of section 58(3)(a). The registration of the servitude does not affect the validity of Z’s title and therefore Z remains the registered proprietor of the subjects.

Example 2: effect of advance notice for a disposition on a servitude

X, who is the owner of Bluemains, grants an advance notice in favour of Y in respect of a prospective disposition over the property;

the advance notice is entered in the application record of the Land Register on 1st May;

X delivers a disposition over the property to Y but also a servitude over the property to Z;

on 8th May, the servitude is registered in the Land Register;

on 15th May, Y applies for registration of the disposition in the Land Register;

the Keeper accepts Y’s application and removes the servitude from the register.

12. This example is the reverse of the example 1: the disposition is protected and the servitude is not. In this case, the servitude is registered first, and the Land Register is updated to reflect that the property is burdened with the servitude. When the protected disposition is submitted, the Land Register is updated to reflect that Y is now the proprietor of the property. The servitude is removed from the register as X is no longer the proprietor of the property and therefore the servitude does not have effect.
Annex D: View on Know Edge Limited proposals

Know Edge proposal

1. In their written submission to the Economy, Enterprise and Tourism Committee, Know Edge Ltd propose that citizens should be more involved in the completion of the Land Register by enabling them to capture, record and submit their land rights through the use of mobile telephones able to access the internet.

2. It suggests that RoS should use this information to form the basis of a provisional registration, which could be upgraded to a competent registration if the data was verified. In its view, this would allow for the Land Register to be completed more rapidly than the increased triggers for registration in the Bill.

Review of proposal

3. The completion of the Land Register is desirable for the agreed aim of a transparent, affordable, and easy to use record of rights in land. However, the proposal lacks detail and does not take into account:

   - the long history of public registration of rights in land in Scotland; and
   - how rights in property are classified and constituted in Scots law.

4. The laudable aims advocated by Know Edge Ltd. may be more relevant for countries without robust systems of land administration. Since 1617, the General Register of Sasines and the Land Register have developed into an effective public record which, combined with the high standards in professional conveyancing and principled property law, has given Scotland an effective balance between certainty of ownership and ease of transacting with land.

5. Property law is concerned with rights in things, known as real rights, which contrast with rights against persons, known as personal rights and which properly fall under the law of obligations. A personal right is created from a written deed granting the right being delivered to the grantee. The real right is created only when the deed granting the right is publicly registered in the Land Register or the Sasine Register.

6. Data gathered and submitted to the Keeper by a citizen (about, for example, the extent of the property they own or the benefit of a servitude they enjoy) may represent a one-sided view of such rights. If this data is not included in a deed that meets robust legal requirements, it could not be used to populate the register without substantial rewriting of property law. To rewrite property law to enable this would, in our view, be outwith the scope of the Land Registration Bill. However, that is not to say that citizen-sourced data could not be useful. It is easy to envisage a use for a large set of data of this nature in the completion of the Land Register by voluntary and Keeper-induced registrations. But that data would be supplementary to the data usually required. Part 10 of the Bill contains powers for the Scottish Ministers by subordinate legislation to make electronic documents valid and allow their registration in the Keeper's registers. This part
does not preclude the submission of a valid electronic deed for registration from a mobile device.
SUBMISSION FROM ROBERT RENNIE

I was a member of the advisory committee at the Law Commission when the various discussion papers and reports were produced. I am currently a member of the group advising the bill managers.

I support the main aims of the bill. In particular:-

1. I support the introduction of Advance Notices to protect against intervening competing deeds and diligences.

2. I support the radical change in relation to rectification and realignment; the previous law preferring the registered proprietor in possession did not work fairly and was impossible to explain to innocent people who lost land and then had to argue for compensation. In my own experience neither the Keeper’s staff nor myself as an expert giving opinions was ever able to convince such a person that they had not been “robbed ” of their land.

3. I have given serious thought to question of provisional title sheets for common rights as a means of ameliorating the effects of the PMP decision and reluctantly come to the conclusion that they are too complicated to work. I am not convinced that builders would grant a deed of ascertainment at the end of the day. I agree that these provisions be dropped. There is no point in passing legislation which causes more problems than were there in the first place.

4. The new statutory right given to the Keeper to sue solicitors where an inaccuracy in the Register is caused by the carelessness of a solicitor is controversial but some years ago I gave an opinion for the Keeper to the effect that there was a common law duty of care owed by solicitors to the Keeper in any case.

5. I am pleased that there is a new provision which allows the Keeper to confirm acceptance of an application and that there will be a time limit set out in a statutory instrument.

Robert Rennie
Partner
Harper Macleod LLP
Minister for Energy, Enterprise and Tourism
Fergus Ewing MSP

T: 0345 774 1741
E: scottish.ministers@scotland.gov.uk

Murdo Fraser MSP
Convener of the Economy, Energy and Tourism Committee
The Scottish Parliament
Edinburgh
EH99 SP

20 February 2012

Dear Murdo,

Land Registration etc. (Scotland) Bill

Thank you for your letter of 9 February 2012.

I can confirm that it is the intention of the Scottish Government to bring forward a stage 2 amendment to remove the requirement in section 42(3)(a) from the Bill.

With regard to section 108, I am happy to undertake to give the terms of the offence provision further consideration before stage 2.

I understand from the Keeper that initial discussions have taken place between her staff and the Lands Tribunal for Scotland about whether it might be feasible to extend the powers of the tribunal in relation to land registration cases. These discussions are ongoing in advance of stage 2.

I have asked the Keeper's staff to provide me with a full briefing on the ARTL system and the related issues that the committee highlighted to me.

In relation to your request for my views on Patrick Harvie's proposals, I would welcome more detail before providing a view.

Turning to the Committee's request on stage 2, the Scottish Government is not at present planning substantial policy changes to the Bill, other than dropping section 42(3)(a) and possibly introducing material on dispute resolution. There should also not be a significant number of material amendments.
However, we are considering some technical amendments to the sections that deal with Advance Notices in relation to the effect that Advance Notices have on deeds recorded in the General Register of Sasines during the protected period. There will also possibly be some amendments to the sections that govern the registration of land owned in common.

You requested that I consider whether affirmative procedure is appropriate for the power contained in section 93(2) of the Bill which inserts a new section 9E(1)(b) into the Requirements of Writing (Scotland) Act 1995. I can confirm that I am content to amend the procedure for regulations made under inserted section 9E(1)(b) to the affirmative procedure.

I am copying this letter to the Convenor of the Subordinate Legislation Committee.

I trust that this will aid the committee's stage 1 consideration. If there are any further matters on which you need clarification please do not hesitate to contact me.

Yours sincerely,

FERGUS EWING
SUBMISSION FROM SCOTTISH LAND AND ESTATES

Scottish Land & Estates (formerly The Scottish Rural Property and Business Association) is a membership organisation, uniquely representing the interests of landowners and land managers in Scotland. Our membership includes those who own farms, landed estates and rural businesses throughout Scotland, as well as professional firms who advise rural land owners. Accordingly, Scottish Land & Estates and its membership are key stakeholders and therefore are pleased to take this opportunity to submit written evidence on the content of The Land Registration (Scotland) Bill.

General Comments:

Scottish Land & Estates is fully supportive both of the principle of completion of the Land Register and of the accurate mapping of land for that register.

However, Scottish Land & Estates wishes to ensure, in so far as possible, that any new system is fit for purpose and does not result in unintended consequences. It is in the interests of all concerned to ensure that the system of land registration in Scotland allows land to move from the General Register of Sasines to Land Register as easily and as cost effectively as possible. However, a new Statute which seeks to improve the system of land registration in Scotland must not place an unreasonable burden on those owners of land who have complied fully with the requirements of recording under the present Sasine based system. Scottish Land & Estates has serious concerns that the costs of complying with the proposed legislation will be considerable in the case of owners of land with complex title arrangements and that these costs have been seriously underestimated by the Scottish Government in its preparation for this Bill. The financial implications as stated in the Financial Memorandum within the Explanatory Notes accompanying the Bill are misleading as they do not deal in any way with the professional and other costs which will inevitably be incurred by owners of rural land with complex titles who will now be required to register land in the Land Register, either on a conveyance for no consideration, or on voluntary first registration, or on keeper induced first registration, or in other situations such as registerable leases. It appears that the financial implications have been considered only in relation to small or relatively straight-forward plots of land.

Scottish Land & Estates has not carried out a detailed examination of the provisions of the Bill and will restrict its evidence to points of principle which are likely to affect our members and their advisers.

It is accepted that many of the complex cases of first registration in Land Register relate to rural properties. These may, for example, be large landed estates with no accurate plans attached to Sasine titles, properties where there have been numerous break off writs (possibly numbering hundreds or more), or areas of land where the legal boundary has been altered on the ground because of geographical features, perhaps where fencing has been impossible on the actual legal boundary and has been erected along a more convenient line, or, in numerous cases, where
fencing has been erected to take account of modern farming and land management requirements.

The current system of land registration does not achieve the goals of ease and cost effectiveness. In order to overcome difficulties, expense and lengthy registration procedures, a practice has developed whereby two titles may be granted on a sale or transfer for consideration which would induce first registration under the current system. The first title might be granted for the full consideration over the area which is easily identified, thus triggering first registration, while a second title might be granted for no consideration over the "rump" by way of a "mopping up" conveyance, thus allowing a more straightforward recording in the Sasine Register. While this is not ideal, it has proved to be a workable solution in certain cases and avoids the considerable expense of detailed site investigations and title examination for the purpose of the production of suitable plans.

These difficult cases will continue and a solution is required for them. The apparent absence of a mechanism for dealing with them in the Bill combined with the "one shot principle" introduced by section 33 of the Bill will not give confidence to owners of complex estates, particularly as it is a stated aspiration that there should be more voluntary first registrations of land.

Specific Comments:

1. **Extension of first registration to conveyances without consideration being paid.** This will inevitably lead to greater expense on the transfer of land following the death of the owner of any area of land to a member or members of the deceased's family. The family farm or estate, of whatever size, where the title is in name of an individual (as opposed to a company or trust) will have to undergo the detailed procedure of first registration (including the preparation of appropriate plans), thus increasing both the cost of winding up an estate and also the length of time required to complete the winding up.

2. **Extension of first registration to registrable leases.** The following important points will affect our members:

   - Registrable leases are likely to include leases of land for renewable energy projects. It is the understanding of Scottish Land & Estates that the tenant will be required to register such leases and that the underlying plot of ground over which the lease is granted will also require to be registered. This will likely increase the cost of such transactions. In addition, where option agreements have already been granted for possible future leases, such additional expense and work will not have been considered. It is arguable that there should be an exemption from compulsory registration for leases which are granted in terms of an Option Agreement already in place.

   - Registrable leases are likely to include Limited Duration Tenancies ("LDT") under the Agricultural Holdings (Scotland) Act 2003 (as amended) ("the 2003 Act"), which are leases of land for agricultural purposes for more than 10 years. In terms of the 2003 Act, the default period for changing from "a
secure 1991 Act tenancy” to a LDT is 25 years. Scottish Land & Estates is also aware of a number of recent LDTs of more than 20 years.

The requirement to register such leases, with the consequential additional work and expense thereby entailed both for landlord and prospective tenant, may be a disincentive to enter into leases for in excess of 20 years where it might be the wish of both parties to enter into a long agricultural lease, possibly to give the prospective tenant security until retirement.

Given that Scottish Land & Estates is working, and will continue to work with others in the agricultural sector and with its members to stimulate new agricultural leases in terms of the 2003 Act, any such disincentive will not assist with this stated policy objective of the Scottish Government. Consideration should be given to excluding LDTs from the new compulsory registration requirements.

3. **Registration of anything “otherwise affecting the terms of the lease” (s 51(2)).** This requires clarification in relation to the requirements of the Agricultural Holdings legislation relating to registered leases. Is the intention that the Keeper will require registration of rent review memoranda, correspondence between tenant and agent, Land Court and other court decisions, arbitration and mediation decisions, notices of improvements, etc.? Once again, this will lead to increased costs on both landlord and tenant. This requires further detailed consideration.

4. **Timeshared salmon fishings and property (sections 17-20).** There are numerous examples of salmon fishings and other property which have been timeshared and which contribute considerable sums to the economies of rural communities. At present, it is the understanding of Scottish Land & Estates that the Keeper refuses to register pro indiviso shares in property (whether land based or salmon fishings) where there are burdens restricting the times during which the proprietor of the pro indiviso shares may exercise their property rights. There is a view that such burdens are unenforceable and are purely a matter of contract. As the Keeper gives no indemnity in relation to burdens, there appears to be no difficulty, in principle, of registration.

As timeshare interests change hands, dispositions are unrecorded with the result that the ownership per the Sasine Register is outdated, which is not sensible, may lead to confusion and does not assist with the transfer of land registration to Land Register. It is recommended that suitable amendments are made to the Bill to make it clear that any title which includes a burden or restriction to the effect of restricting the period during which occupancy of the property can be exercised is not guaranteed by the Keeper and that the title sheet is evidence only of the fact that the party entered into the proprietorship section owns the pro indiviso share entered in the title sheet. Restrictions on entitlement to occupy could be omitted from the burdens section and it could be made clear that, subject to this, such pro indiviso shares should be registered in the Land Register.
5. **Voluntary Registration (sections 27 and 28) and Keeper induced Registration (section 29).** Sections 27 and 28 deal with voluntary registration. While we have no difficulty with this in principle, it has been noted that the application fees in England and Wales are comparatively low, presumably to encourage such applications. We would urge the Scottish Government to ensure that the application fees are sufficiently low to encourage voluntary registration.

**Section 29** gives the Keeper the ability to register land without application and without the consent of the owner of the land. While it appears that such registration would not attract an application fee, although this is not entirely clear from the drafting of this section, and that the Keeper will be relying on information readily available from Land Register and Sasine Register, Scottish Land & Estates remains concerned with regard to the cost which such registrations will inevitably incur for the rural landowner. Any land certificate issued to a landowner following a registration under section 29 will require to be checked against title deeds as well as break off deeds where there have been sales of plots. This will incur legal and, very possibly, land agent fees as well as time and expense for the landowner and relevant office employees. In complex cases, advice will be given to the landowner to have the land certificate checked as errors can and do occur and, if not picked up timeously, can lead to complications in the future with dealings with registered land.

Furthermore, although the Keeper has to notify a landowner that their title has been registered, there is no statutory time limit for such notification. Accordingly, it is recommended that a time limit is written into the Bill in order that the Keeper is under an obligation to inform the landowner timeously. Indeed, it is arguable that advance notice that the Keeper intends to induce registration should be given to the landowner in order to avoid any difficulties with sales or leases of land during the period when the Keeper is making up the Land Certificate. In complex cases, the Keeper’s investigations may take months, if not years.

In addition, there is no clear provision for the Keeper as to how, if at all, the Keeper should deal with relevant queries or comments made by the landowner following receipt of the land certificate. It is recommended that the Bill should make appropriate provision.

All this will lead to considerable additional expense for landowners where the Keeper decides, unilaterally, to induce registration. It is our view that, as no mention is made in the Financial Memorandum, these costs have been omitted from consideration, or, at the very least, grossly underestimated by the Scottish Government. There will, inevitably, be significant costs to be incurred by individuals and small businesses in connection with Keeper induced Registration and provision should be made for the Keeper to meet these costs which the relevant landowner will be forced to incur as a result of an unilateral action by a Non Ministerial Department of the Scottish Administration.

6. **Sections 42(8), 42(9), 44(7) and 44(8).** If the Scottish Ministers are to make an Order changing the number of days within which a Notice of Objection can be
received, it is recommended that landowners (perhaps through stakeholder bodies) should be consulted as well as the Keeper.

7. **Sections 87, 88 and 89.** These provisions appear to state that, if an encumbrance is omitted from a title sheet, then, on transfer of that land, the encumbrance will be extinguished, subject to compensation being paid. This may lead to certain problems:

- The rights of a security holder may be affected.
- The holder of an omitted right of pre-emption may be affected.
- Properties are often sold before a land certificate is issued and there would be no method of checking whether an encumbrance has been omitted before the sale.
- It may be in the landowner’s interest not to draw the Keeper’s attention to the omission of an encumbrance (in that the omission may be in his interest and contrary to the interests of a third party).
- If a right of pre-emption is lost due to the section 87 procedures, compensation can be difficult to ascertain. There should be more detailed provisions for the calculation of loss.

8. **Financial impact on individuals and businesses.** As stated above, Scottish Land & Estates considers that the Scottish Government has not given due consideration to the financial implications on owners of rural land with complex titles of complying with this legislation, either in connection with compulsory first registration of land on transfers without consideration (for example on a transfer by gift or following death) or following Keeper induced Registration. In certain complex cases, such expenses are likely to be considerable and it is recommended that consideration be given to requiring the Keeper to reimburse costs necessarily incurred in the case of Keeper induced registrations where the Keeper unilaterally registers a property without prior discussions with the landowner or his representatives, particularly in such cases where there are errors in the subsequent Land Certificate through no fault of the landowner or his representative.

**CONCLUSION**

Scottish Land & Estates supports the principle of completion of the Land Register but remains concerned that there will be consequential unintended implications for its members, both in terms of increased costs for members and in the interaction with, for example, Agricultural Holdings legislation where Scottish Land & Estates is committed to ensuring that there is a vibrant tenanted sector.

Scottish Land & Estates hopes that it can continue to work with the Keeper and her staff to ensure that, in the lead up to the enactment and subsequent coming into force of the Land Registration (Scotland) Bill, the interests and concerns of its
members and their advisors are fully understood with a view to promoting best practice and a workable system.

Scottish Land & Estates
19 January 2012
Murdo Fraser MSP
Convener
Economy, Energy and Tourism Committee
The Scottish Parliament
Edinburgh
EH99 1SP

Thank you for the opportunity to give evidence at the committee on the proposed section 108 offence in the Land Registration etc (Scotland) Bill. During the evidence I advised that I would be happy to speak to the Law Society of Scotland to discuss their concerns on the proposed offence and also offered to consider any alternative proposals to the wording of the offence.

In addition to the regular meetings that already take place with the Law Society of Scotland I have asked my officials within the Serious and Organised Crime Division of the Crown Office and Procurator Fiscal Service (COPFS) to offer to meet with Law Society of Scotland officials to discuss COPFS' understanding of the offence and offer reassurance that COPFS considers that the offence would not capture administrative or genuine mistakes. My officials are also happy to comment upon any proposed guidance the Law Society of Scotland would wish to publish should the proposed offence be enacted. I will provide an update to the committee on the progress of these discussions.

I also advised the committee in my evidence that although content with the current drafting of the offence I would discuss this issue with the Minister for Energy, Enterprise and Tourism. I have now done so and advised Mr Ewing that my officials and I are willing to discuss any future drafts with Scottish Government which would help address any particular concerns.

I hope that this information is of assistance.
Introduction:

Turcan Connell are a firm of Solicitors and Asset Managers based in Edinburgh and with offices in London and Guernsey. We act for private individuals, charities and owners and managers of land. The Land & Property Department in Turcan Connell act in all aspects of rural property transactions including purchases, sales and leasing arrangements for all types of property. The practitioners at Turcan Connell have significant experience in conveyancing and property law including dealing with recording deeds in the General Register of Sasines and registering land in the Land Register of Scotland.

Turcan Connell welcome the opportunity presented by the introduction of the Land Registration etc (Scotland) Bill (“the Bill”) to modernise and update the law with regard to land registration and address issues which practitioners have encountered since the introduction of the Land Register in terms of the Land Registration (Scotland) Act 1979 (“the 1979 Act”). We firmly believe that legal practitioners have an important part to play in reviewing and commenting on the Bill to assist the Scottish Government in achieving the best result for the land registration process. Conveyancers are and will be the users of the land registration process and, accordingly, their views (formed on their experience of using and working with the system) are, surely, essential in making an effective and workable land registration process. We are disappointed, therefore, at the timescale given for making written submissions. The Bill was introduced to the Scottish Parliament on 1st December 2011 and, given the Christmas and New Year break, the deadline for written submissions is very short.

Given the timescale, our submissions relate to what we see as some of the main issues arising in terms of the Bill. Our submissions are made in relation to the relevant sections noted in the heading of each paragraph.

Section 1 – The Land Register of Scotland

Notwithstanding that the Keeper's discretion is stated to be subject to the provisions of the Bill, (which includes, in particular, Section 5 upon which we comment below) the Keeper still has a wide discretion with regard to the form of Land Certificates.

It is anticipated that the Register will be in electronic form. With the advent and acceptance by the legal profession of Registers Direct and Land Certificates produced therefrom, it is, possibly, too late to give consideration to the possible disadvantages of an electronic register. When Land Registration was first introduced, having a paper Land Certificate was important. One had to explain why one did not have the same in order to obtain a copy from Registers. This must have been an aid to combating fraud and this additional check will now disappear with the Electronic Register of Land being the ultimate Register of Ownership. We appreciate there is an obligation on the Keeper to take such steps “as appear reasonable” to protect the Register. The Keeper should be required to take all necessary steps to protect the Register.
Section 3 – Title Sheets and the Title Sheet Record

Under sub-section 1 the Keeper has an obligation to make up and maintain a Title Sheet for each registered plot of land. In sub-section 2, the Keeper has discretion as to whether a Title Sheet for a registered Lease should be made up. We submit that a tenant should be entitled to a separate Title Sheet for a Lease in excess of 21 years. A lender to a tenant under a registered Lease may well wish the registered tenant to have a separate Land Certificate on which their security appears.

Section 5 – Structure of Title Sheets

We strongly recommend that the structure of Title Sheets is addressed. A Land Certificate should give the entire picture regarding the title of and rights pertaining to and affecting a plot of land. The current structure of Land Certificates makes this difficult to achieve in a clear and concise way and, frequently, it is impossible to fully understand a title and report on it to a client without reference to prior deeds. This completely defeats the purpose of the Land Register. We suggest that Land Certificates should comprise:-

(a) a Property Section;

(b) a Pertinents Section: this would be a new section and would include (i) reference to the servitude rights pertaining to a property and would identify the properties over which these rights are exercisable; and (ii) details of the burdens which the proprietor of a registered property has a right to enforce and would identify the relevant burdened properties.

(c) Proprietorship Section;

(d) Security Section;

(e) Burdens Section: the Burdens Section could be improved to make it clearer and more easily understood. Rather than referring to the relevant burdens writs and setting out their terms verbatim, we recommend that the Burdens Section of a Land Certificate sets out the burdens affecting the registered property and identifies the properties the proprietors of which are entitled to enforce them.

On a first registration, consideration should be given to making provision for the legal transfer of land to be completed by the purchaser’s and seller’s agents completing a Land Certificate template for use and checking by the Keeper. This would avoid duplication of work for the solicitors and ease the workload on the Keeper. The applicant’s solicitor would, essentially, prepare the Land Certificate during the conveyancing process. This would reduce the time spent in checking Land Certificates on issue, often many years later when the detail of the transaction has been forgotten; and as much of the work would have been carried out in preparing a Land Certificate for the Keeper, Registers would merely have to check the various sections of the Land Certificate are correct in terms of the titles produced and
prepare the relevant records to be kept by the Keeper in terms of Section 2 of the Bill.

**Section 6 – The Property Section of the Title Sheet**

With regard to Section (1)(b) we refer to our comments above on Section 5. We recommend these rights are specified in a separate Pertinents Section.

**Section 11 – The Cadastral Map**

Sub-section (3) states that the cadastral map may show the boundaries of plots of land “on the vertical plane”. Is this in relation to showing the profile of a boundary or measuring the plots of land taking into account the topography of the ground? (E.g. if the land is measured as though it was flat, the area measurement will be less than the actual area which may incorporate hills, etc.) This would also link into maps lodged with the Scottish Government Rural Payment and Inspections Directorate in connection with IACS Forms and Single Farm Payment Entitlement claims as actual area measurements may be shown. It is assumed that, currently, area measurements are given on the basis of the horizontal plane (i.e. not taking into account hills, etc.).

**Section 17 – Shared Plots**

It appears the word “and” has been omitted after the word “plots”, before paragraph (b).

**Salmon Fishings.** We would like to see provision in the Bill which would resolve the issue of registering time-shared salmon fishings and property. As you will be aware, the Keeper refuses to register pro indiviso shares in property (whether land based or salmon fishings) where there are burdens restricting the times during which the proprietor of a pro indiviso share may exercise their property rights. We have always taken the view that such burdens are unenforceable and are a matter of contract. As the Keeper does not give any indemnity in relation to burdens, there would be no problem with the Keeper registering such pro indiviso shares. However, the Keeper does not share this view. We are aware that there are (in particular of salmon fishings) “timeshare” interests changing hands. Dispositions are unrecorded so that the ownership per the Sasine Register no longer reflects the true picture. This is not sensible and muddle can only result the longer such a situation continues. It does not assist the ambition of speeding up the transfer of properties to the Land Register. We recommend, therefore, that provisions are entered in the Bill to make it clear that any title which includes a burden or restriction to the effect of restricting the period during which occupancy of the property can be exercised is not guaranteed by the Keeper and that the title sheet is evidence, only, of the fact that the party entered into the proprietorship section owns the pro indiviso share entered in the title sheet. Restrictions on entitlement to occupy could be omitted from the burdens section. It should also be made clear that subject to the above such pro indiviso shares should be registered in the Land Register.

We do not consider that Sections 17 – 20 of the Bill (regarding shared plots) address the issue. These sections refer to plots of land owned in common by proprietors of
other plots of land by virtue of the ownership of such other plot. In our view specific provision would need to be made in the Bill in respect of the issue of “time shared” property. We would be happy to work with the Keeper’s staff/Scottish Government on suitable wording if this would be of assistance.

Section 21 – Application for Registration of Deed

Sub-section 3 states the Keeper must reject an application which does not satisfy the Keeper that the general application conditions are met and the conditions set out in sub-section 2 of Section 21 are met. In complex cases we recommend that the guidance to the Keeper and the Keeper’s staff is that the first step in relation to problems with an application should be to phone the solicitor acting for the applicant. Sometimes there are simple errors which could be corrected with co-operation between the solicitor and the Keeper and sometimes applications are rejected incorrectly. Such an initial dialogue would prevent this and the waste of time from rejecting and having to accept a returned application (both for the profession and the Keeper/Registers). We understand, entirely, that this requires co-operation from solicitors as well, but the Keeper would still be able to reject an application if the solicitor did not timeously co-operate in addressing the issues raised. It is often useful to be able to discuss with an experienced member of the Keeper’s staff issues which arise in complex cases to find the best resolution.

Sections 24 and 25 – Circumstances in which certain deeds are registrable and conditions for their registration

These sections mean that on the granting of a registrable lease or a standard security the land over which it is granted will be registrable in the Land Register. This is likely to lead to a piecemeal registration of larger properties which will incur additional expense for landlord and tenant in a lease transaction and the landowners and lender in a security transaction. Conveyancing on such properties will become more complex as titles made up of various parts are always more time consuming to check and more complicated to explain to an owner or purchaser. In particular with regard to renewable projects the areas leased are often small discrete parts of a farm or estate. Having several small registered areas within an overall larger land area does not make sense. If the answer is a registration of the whole estate we refer to our comments on Section 29 below which would apply also in this situation.

Section 27 – Application for Voluntary Registration

The Keeper is given a wide discretion in Sub-section 3(b) (which, it is noted, the Scottish Ministers may by order repeal). Prior to any repeal, however, the Keeper’s discretion is wide. We would like to see a duty on the Keeper to take into account the owner’s reasons for applying for voluntary registration and to act reasonably including taking into account those reasons, in making his decision.

Section 29 – Keeper Induced Registration

1. We remain concerned with regard to the cost which such registrations will inevitably incur for the landowner. The Bill should make it clear that in such
situations no fee will be charged to the landowner. This does not wholly address the issue of costs however. Any Land Certificate issued to a landowner following on a Keeper induced registration will need to be checked. This will incur legal fees. In complex cases, our advice would always be for the landowner to have the Land Certificate checked once it is returned to his solicitor. Errors do occur in Land Certificates and, if not picked up timeously, may lead to complications in the future with dealings in registered land.

2. Although the Keeper has to notify a landowner that their title has been registered (Section 40) there is no provision for when notice should be given. We recommend that prior notice is given to a landowner.

3. Where a registration is Keeper induced, at least until the point where the landowner does something which would have induced registration, we consider provision should be made for the Keeper to be obliged to accept queries or comments or, alternatively, a special right of appeal should be written in for the benefit of such a landowner following on registration. Such a landowner should not be disadvantaged by any error in the Land Certificate following on a Keeper induced registration.

Section 33 – Withdrawal and Amendments etc of Application

Sub-section 2 states that Land Register rules may specify circumstances in which consent to substitution or amendment of an application must be given by the Keeper. It would be helpful if the guidance/rules/policy was to engage and allow amendment/substitution as discussed and agreed with the relevant solicitors. We refer to our comments in relation to Section 21 above.

Section 38 – Order in which Applications are to be dealt with

We recommend this section also provides that where a solicitor specifies an order for entries being made in the Land Register, this order should be followed unless there is a legal reason not to do so.

Section 42 – Prescriptive Claimants

We have concerns about the whole process. How is an applicant to satisfy the Keeper that the proprietor of land has not occupied it? If the proprietor can be identified, why should a procedure be put in place whereby their land can be transferred to another person? What evidence will the Keeper accept with regard to possession by the applicant? One year does not seem long in this context. On large estates how is a “nibbling away” of areas at the margins to be prevented? Where the estate owner is known to be the proprietor and receives notice, it could be a timely and costly exercise to combat third parties trying to obtain ownership of parts of such an estate in terms of this Section. In situations where no proprietor can be identified (as not infrequently happens) is it the intention that the Crown is to be given a commercial opportunity?
With regard to sub-section 8, we recommend landowners and not just the Keeper be consulted with regard to any amendment of the period of time referred to. Consultation of landowners could be through bodies such as Scottish Land & Estates.

Section 44(7) & (8)

We refer to our comments above regarding the Scottish Ministers making an order for changing the period of time as set out in Section 42. The same applies to changing the number of days within which notice of an objection can be received.

Section 54: Registration of order for rectification of document, etc.

We do not consider the provisions of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (“the 1985 Act”) as amended by the Bill (in so far as relating to land registered property/documents) are at all clear. We suggest that the 1985 Act is disapplied to land registered documents and new clear provisions are made in the Bill. More thought requires to be given to the issue of rectification of errors in Land Certificates (of both inclusion and omission) to ensure that the original intentions of the contracting parties is reflected in the Certificate issued/Title Sheet made up by the Keeper.

Section 73 Extension, Limitation or Exclusion of Warranty

We question why the Keeper has discretion in terms of sub-section 4. After ten years’ possession and the removal of the provisional element of an entry, should the Keeper not be required to grant indemnity unless there is a specific reason for his not doing so?

Section 82 : Acquisition from Disponer without valid title

We are concerned that the provisions of this section change the way in which conveyancing is currently carried out. Where a party is on the title sheet as the registered proprietor of land, there is no way (without looking behind the Land Certificate, which defeats the whole purpose of land registration) that a purchaser could know that that party was not, in fact, the owner. Section 82 provides (among other things) that a purchaser or disponee acquires ownership of the land provided that the land has been in the possession, openly, peaceably and without judicial interruption, of the disponer for a continuous period of at least one year (or of the disponer and disponee, together, for one year). It is not currently normal practice to check ownership for a period of one year. However, it seems that on the enactment of this section, conveyancers will have to do so. Is that what Parliament intended? Has thought been given as to how possession is to be proved?

Section 87 (and subsequent): Extinction of Encumbrance when land disponed.

These provisions appear to state that if an encumbrance is missed off a title sheet for any reason, then on the transfer of that land, the encumbrance will be extinguished irrespective of the reason for the omission. We have concerns in this regard.
Although there is provision for compensation being payable, this seems to be inequitable to the party entitled to the encumbrance. In our view it is difficult to compensate for some rights: for example a security holder could lose out. Securities are not used solely in mortgage situations. Compensation could be much more difficult to quantify where a security is for a clawback or an obligation \textit{ad factum praestandum}. Furthermore, a party entitled to enforce a burden, particularly a right of pre-emption, would find it difficult to quantify compensation. Compensation may not fully reflect the “loss”. For instance, if an estate owner does not have the opportunity to purchase back a cottage near to the heart of the estate, how is the compensation to be valued?

“Encumbrance” is stated not to include a servitude created other than in terms of section 75(1) of the Title Conditions (Scotland) Act 2003. Accordingly, a servitude created in terms of that section is an encumbrance and would, therefore, be extinguished if left off the title sheet. Is this the intention? What happens if this right is a right of access?

Properties are often sold before Land Certificates are issued and there would be no way to check that the Land Certificate is correct. Furthermore, it may not be in the owner’s interest to check that certain encumbrances are shown on the title sheet. Indeed, it would be in their interest not to draw the omission of such an encumbrance to the attention of the Keeper. Will the party entitled to enforce burdens or to the benefit of servitudes be sent copies of the Land Certificate to check? If their rights are omitted from the Land Certificate, presumably the error will be compounded by failure to send the Land Certificate to them for checking – there will be no reason on the face of the land certificate to do so.

Section 100

We would press for guidance/rules requiring the Keeper to issue complete maps when asked for copies: rather than large maps being printed off as A4 size pages with borders. Such maps are very difficult to use.

Section 7(1)(a) and Section 109.

Section 7(1)(a) of the Bill provides that the Keeper must enter in the proprietorship section of the title sheet the name and designation of the proprietor. Section 109 – interpretation – stipulates with regard to “designation” that it includes (where the person designated is not a natural person) the legal system under which the person is incorporated and if a number is allocated, that number. It would appear, therefore, that the Keeper will now reject applications where the disponee’s company number is not included. While many solicitors include the company number in their conveyances, it is not necessary to do so to properly design a company and many conveyances do not include it. While we understand the reasons for wanting to include company numbers on the title sheet and that it may be good practice to do so, we are not in favour of including provisions in the Bill which make it easier for applicants and solicitors to make an error (we consider a change to procedure such as this would fall into this category) resulting in their application being rejected.
Company numbers of UK companies are easily ascertained and could, therefore, be the subject of a requisition or added to the relevant form.

Miscellaneous Points

1. **Prescriptive Servitude Rights.** Would it not be useful for the Keeper to be able to enter on a title sheet that there is an unchallenged prescriptive right of access, even if this is in note form only?

2. It is noted that the Bill is predicated upon registration of plots of land rather than interests in land. We question whether this is, indeed, the best method for land registration. For instance, with regard to salmon fishings, where there can be a great number of *pro indiviso* proprietors, one title sheet for the plot of land would quickly become unwieldy and difficult to follow. In such an instance, a *pro indiviso* proprietor should be entitled to an individual Land Certificate for his *pro indiviso* share.

Turcan Connell
19 January 2012
SUPPLEMENTARY SUBMISSION FROM ANDY WIGHTMAN

I attach a table showing my calculations. There were carried out for a report I wrote on land value taxation (Table 6 on page 11) available at

http://www.andywightman.com/docs/LVTREPORT.pdf

The assumptions underlying these figures will not stand scrutiny since they assume a rate of first registration equalling the average to date. In practice the rate will begin to tail off at some stage. They also relate to the % of titles. It is theoretically possible to have recorded 99% of titles but only 1% of the land mass if 99% of the land mass is represented by 1% of the titles. Thus they represent an estimate which is unlikely to be realised but they may be useful to the Committee nevertheless.

I also draw your attention to a map (link below) supplied to me by the Keeper (and reproduced on page 92 of my book, The Poor Had No Lawyers) which shows the extent of land with a Land Register title. Not all of this will be ownership - some is mineral leases etc.

http://www.andywightman.com/poor/docs/LMC_May09.jpg [Link no longer operates]
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<th>Introduction</th>
<th>Currency</th>
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<th>% titles</th>
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</tr>
<tr>
<td>Inverness</td>
<td>1 Apr 2002</td>
<td>30 Apr 2009</td>
<td>369 weeks</td>
<td>38.67%</td>
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</tr>
<tr>
<td>Kinross</td>
<td>1 Apr 1996</td>
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<td>51.65%</td>
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<tr>
<td>Kirkcudbright</td>
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<td>630 weeks</td>
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<td>4 Jul 2022</td>
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<td>369 weeks</td>
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</tr>
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<td>Orkney &amp; Shetland</td>
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<td>57.41%</td>
<td>622 weeks</td>
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<tr>
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<td>21 Jul 2024</td>
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<tr>
<td>West Lothian</td>
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<td>61.64%</td>
<td>506 weeks</td>
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<td>Wigtown</td>
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<td>30 Apr 2009</td>
<td>630 weeks</td>
<td>46.51%</td>
<td>725 weeks</td>
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Land Registration showing progress in terms of % of titles recorded and estimated completion date based on the rate of progress to date.
Stage 1 Debate: Land Registration etc. (Scotland) Bill: The Minister for Energy, Enterprise and Tourism (Fergus Ewing) moved S4M-02304—That the Parliament agrees to the general principles of the Land Registration etc. (Scotland) Bill.

After debate, the motion was agreed to.
Land Registration etc (Scotland) Bill: Stage 1

The Presiding Officer (Tricia Marwick): The next item of business is a debate on motion S4M-02304, in the name of Fergus Ewing, on the Land Registration etc (Scotland) Bill.

13:34

The Minister for Energy, Enterprise and Tourism (Fergus Ewing): I thank the Economy, Energy and Tourism Committee for its thorough and collaborative scrutiny of the Land Registration etc (Scotland) Bill. I also thank the Scottish Law Commission for its excellent work in developing most of the policies that appear in the bill, and I thank those who have given oral and written evidence to the committee at stage 1.

The Land Registration (Scotland) Act 1979 introduced a modern map-based land register that provides clear information about land ownership, backed by a state guarantee to title. However, since rights on land began being registered in the land register, only 55 per cent of properties have been so registered. The bill will replace most of the 1979 act with a piece of 21st century legislation that will provide for completion of the land register and will place on a statutory footing the practices of the keeper of the registers of Scotland.

The bill also addresses legal tensions that have caused confusion and uncertainty for property owners since the introduction of the land register, by realigning registration law with general property law in Scotland.

In addition to those primary purposes, the bill has two significant secondary purposes. The first is to introduce a system of advance notices for use in conveyancing transactions, and the second is to amend the Requirements of Writing (Scotland) Act 1995 to allow electronic documents to be legally valid and to enable electronic registration of those documents.

I have followed the committee’s stage 1 deliberations on the bill and commend committee members on their diligent and thorough report. The report requests clarification of a number of matters. The committee asks for clarification of what was meant when I said in my evidence to the committee:

“there will be no keeper-induced registration of large and complex land titles in this parliamentary session”.—[Official Report, Economy, Energy and Tourism Committee, 8 February 2012; c 949.]

I confirm that, if resources allow it, Registers of Scotland may use the power to register titles within research areas, which are predominately urban areas, such as flats and houses.

The committee also asks whether a fee will be payable for keeper-induced registrations. I confirm that no fees will be charged for such registrations during this parliamentary session, although the bill will allow fees to be payable for keeper-induced registration.

The use of time-and-line fees has been raised. At present, fees are charged mainly on an ad valorem basis. I confirm that we are not considering moving to time-and-line charging for the majority of registrations. However, time-and-line charging may be considered for complex registrations of high-value properties. It is under consideration in relation to services such as the keeper’s pre-registration title investigation service. I assure the Parliament and the committee that the Scottish Government will consult stakeholders before introducing a fees order, which would be subject to affirmative procedure.

The committee’s report recommends including in the bill aspirational targets for completion of the land register. I understand the importance of the aim, but do not favour that approach. On top of the extra triggers for registration that are in the bill, completion could be accelerated by keeper-induced registration and by promoting voluntary registration. The keeper and I are doing all that we can to encourage voluntary registrations. On keeper-induced registration, the keeper has shared with the committee her initial thinking on how to take the issue forward, and work to develop that is proceeding.

I will pass the committee’s comments about mapping to the keeper’s mapping working group, and I will ensure that the keeper writes to the committee with an update from that group.

I would like to reaffirm my commitment to lodge at stage 2 an amendment that will remove the requirement to prove that there has been seven years of abandonment of land before a person can become a prescriptive claimant under the bill. The committee recommends that the Scottish Government consider introducing a public process of advertising abandoned land. We feel that there are pros and cons to that suggestion. I will, therefore, consider the proposal further, in advance of stage 2.

I welcome the committee’s view that it is content for the new statutory offence in section 108 to remain in the bill. The committee has heard much evidence in relation to the offence provision. In particular, I note the Law Society of Scotland’s opposition. As part of my on-going consideration of the provision, I have written to the president of the Law Society to request further information on fraud involving solicitors. The aim of the offence
provision is to disrupt serious organised crime and to criminalise individuals who knowingly use the land register to facilitate criminal behaviour. It is not the Government’s intention to criminalise honest solicitors who make genuine errors in applications for registration. The keeper and the Solicitor General have told me that they will work with the Law Society of Scotland to help to provide guidance to the legal profession.

In view of the concerns that the committee has expressed in its report, the Government will carefully consider in advance of stage 2 whether amendment to section 108 is appropriate. There has been some debate about whether one or two advance notices are required when a disposition and standard security are being granted. In those circumstances, two advance notices will be required if the lender wishes fully to protect the standard security. That is the scheme that was devised by the Scottish Law Commission and the Government is satisfied that it is simple and that it will work.

On the provisions on shared plot title sheets, it appears that there are differing views in the evidence that the committee received on the policy. The aim of the policy is to clarify who owns land and to assist conveyancing practice so that a deed has to refer to only one title number. This is a complex subject, so I will provide an in-depth answer in my written response to the committee’s report.

The committee specifically asked in its stage 1 report for clarification of certain miscellaneous matters that were raised by stakeholders. I do not propose to address those fully in my opening speech, due to the technical nature of many of those matters, but I am happy to speak about them later, if members wish it.

I move,

That the Parliament agrees to the general principles of the Land Registration etc. (Scotland) Bill.

13:41

Murdo Fraser (Mid Scotland and Fife) (Con): I declare my interest as a member of the Law Society of Scotland.

As convener of the Economy, Energy and Tourism Committee, I mention that the committee recommended to Parliament that it should agree the general principles of the bill.

As the minister did, I acknowledge the work that has been done by the Scottish Law Commission—initially by my old friend Professor George Gretton—in its comprehensive consultation on the first draft of the bill. I thank all those who gave oral evidence or submitted written evidence to aid the committee’s consideration, and I thank the committee’s clerking team for all their assistance on what is a very technical subject. I also thank the committee’s adviser, Professor Kenneth Reid, who was able to put in layman’s terms, for the benefit of committee members, some of the issues that are addressed in the bill.

Last, and by no means least, I thank all the committee members for their hard work and engagement on the bill. It is fair to say that for the non-lawyers on the committee—which means everybody apart from myself—the prospect of dealing with the bill was probably not greeted with the greatest of enthusiasm at the outset, but as we got into the subject, some of the issues stimulated some debate and, I hope, interest.

As the minister said, the bill represents a much-needed update to, and extension of, existing legislation. Although it is comprehensive and very technical in parts, there are some areas that are of real interest to people in Scotland. There is much to be commended in the bill; for example, the move to the use of e-documents, the closure of the register of sasines so that we have one land register rather than two, and the introduction of advance notices.

However, the committee considered that a number of areas of the bill could be improved upon. I will comment on those in the time that is available to me. My first point relates to the key policy aim of the bill, which is completion of the land register. The key powers that are aimed at increasing land registrations are, first, increased triggers for first registration of land and, secondly, voluntary and keeper-induced registrations. We know that only about 21 per cent of the land is currently on the land register and that there has been slow progress since the Land Registration (Scotland) Act 1979, so the committee welcomes the powers to increase land registration, but we have some concerns about how the powers might work in practice.

A key method of increasing land registration is voluntary land registration. The committee heard a lot of support for voluntary registration and heard that a similar method of registration has been used successfully in England and Wales, where a reduced fee has been used as an incentive. Given that the approach would be key in achieving the objective of a complete land register, and given that we learned that Registers of Scotland has reserves of about £75 million, the committee asks the minister to consider introducing incentives to encourage voluntary registration, particularly in complex cases.

Keeper-induced registration will give the keeper the power to register land without an application from, or notification to, a landowner. The committee had concerns about how that might work in practice. Which land would be subject to
keeper-induced registration? When would registrations begin? What fees would be payable? I am grateful to the minister for the clarity that he has provided on some of those issues.

Another issue is that even if there is no fee, expense will be occasioned to landowners in checking the land register and the work that has been done by the keeper. It must be borne in mind that even with a zero fee the exercise is not without cost to landowners.

Fergus Ewing: I will consider further and respond in due course on reduced fees for voluntary registration. Does Mr Fraser agree that there is an incentive for voluntary registration of, for example, large landed estates, because the current ad valorem fee does not reflect the actual cost to the keeper of carrying out the work for those complex cases? Therefore, there is an incentive to landed estates and even to large estates that are held in the public sector, such as Forestry Commission estates, to take advantage of what might be regarded as bargain-basement fees, according to the existing table.

Murdo Fraser: The minister has made a fair point. In his opening speech he mentioned the proposal to introduce time-and-line fees. Higher costs would potentially act as a disincentive, so he is right to say that the current arrangements are more beneficial and might encourage voluntary registration.

It is worth bearing it in mind that the biggest landowner in Scotland is probably the Scottish Government, through its various agencies. Many public agencies and charities also hold large tracts of land. When we talk about landowners, we are not necessarily talking about people who have large resources at their disposal.

The committee considered the high cost to the public of trying to resolve disputes, given that the keeper cannot adjudicate where there are competing claims. The committee heard a lot of evidence about the high costs to the public of having to resolve land registration disputes through the court system. I was interested to read in The Scotsman this morning that our erstwhile First Minister, Lord McConnell, has been embroiled in a court action with his elderly neighbour over ownership of a coal shed in the boundary of his garden, which perhaps demonstrates how issues can get blown out of proportion and the cost of resolving them through the court system can be disproportionate to the value of the land involved. The committee suggested that a lower-cost option would be to use the Lands Tribunal for Scotland to consider boundary disputes.

Fergus Ewing: I do not want to interrupt the flow of Mr Fraser’s speech too frequently, but I ask him—as one solicitor to another—whether it is fair to say that the high cost of disputes has more to do with solicitors’ fees than with the keeper’s fees.

Murdo Fraser: That is a fair point, although I am sure that when Mr Ewing was in practice he was very reasonable in the fees that he charged—as, indeed, was I.

The offence in section 108 probably caused the most heat in the evidence that the committee heard. The committee heard that it is a significant additional measure to tackle serious and organised crime, specifically in relation to mortgage fraud, but we also heard a lot of evidence that the scope of the offence is too wide and could cover genuine mistakes by solicitors. Section 108 does not mention fraud, even though it is intended to deal with fraudulent behaviour, and it provides no detail on what solicitors need to do to ensure that they are not prosecuted for recklessness.

The committee welcomed the minister’s commitment to consider the wording of section 108, with a view to providing much-needed clarity, and I welcome his comments about consultation of the Law Society of Scotland on the provision.

The committee raised other issues, which I do not have time to cover in detail. I will briefly mention prescriptive claims. The majority of the committee took the view that the Government needs to consider a more public process for advertising land where there is an application for prescriptive acquisition. I and one other member of the committee dissented from that view, but I acknowledge that the issue generated much public interest.

My time is almost up, so I say in closing that the committee said unanimously in its report that completion of the land register of Scotland is a worthwhile objective. However, we believe that the register should not be completed at the expense of quality; that is an important point to bear in mind. We hope that the bill and our report’s recommendations will go a long way towards increasing the number of land registrations. We therefore commend the bill to Parliament.

13:50

Rhoda Grant (Highlands and Islands) (Lab): I associate myself with the thanks that Murdo Fraser and the minister offered to those who provided evidence to and assisted the committee. The bill is largely technical, so that assistance was very much required and appreciated.

Much of the bill has been well received and is widely recognised as being required to improve the land registration process. The bill is largely technical, but it raises some policy issues, and it is
disappointing that those issues have not been properly thought through.

There was an opportunity to continue the land reform process that the Labour Party started. In coalition with the Liberal Democrats we made a lot of progress, but there is much left to do. In opposition, the Scottish National Party signed up to many such reforms, so it is disappointing that it has not taken up the baton and continued to push forward.

One omission from the bill is on the need to register the beneficial owner of property or land. Much of the land reform legislation was based on the need to know who owns estates in Scotland. If land was owned by a company that was registered in Liechtenstein and those who lived and worked on that land could not speak to the owner, they would be unable to develop economically.

Mike MacKenzie (Highlands and Islands) (SNP): Is it the Labour Party’s position that only companies or individuals who are resident and domiciled in Scotland should be able to buy land in Scotland?

Rhoda Grant: No. If Mr MacKenzie listens to the points that I will make, he might understand where I am coming from.

The land reform legislation was based on the need to know who owns land. The right to buy was introduced to allow communities to take economic drivers into their own hands. If a community cannot speak to a landowner, it can at least take back the drivers for itself. However, not every community is able or wishes to do that, so it is important to know who owns the land on which people live and work.

Registration of the beneficial owner would cut the opportunity for people to use land ownership to cover illegal or fraudulent dealings, such as money laundering and tax evasion. Andy Wightman suggested that, in order to own land in Scotland, a company should need to be registered in the European Union and therefore subject to EU legislation. Large global organisations normally register a local subsidiary when starting a business, so that would be no barrier to them. However, the committee heard that the owner of an EU-registered company could easily be a company that was registered somewhere else in the world. The proposed approach would give a signal, but it would not in itself close the loophole.

On the other side of the argument, beneficial ownership needs to be registered in a way that does not unreasonably delay registration or, indeed, restrict registration and ownership to those who are in Scotland. The minister had and still has the opportunity to examine that further before stage 2, so I urge him to consider how we can register beneficial ownership to make land ownership in Scotland much more transparent, so that people who live and work on the land know who owns it.

Probably one of the most contentious areas of the bill is the amendment of legislation on prescriptive claims. Currently, when land has no clear owner and has been abandoned, it can be prescriptively acquired—basically, people can take ownership and register the land to themselves after a period. A process for bringing apparently unowned land back into economic use without the owner’s permission is required. If that cannot be done, development will stall.

However, the system that is currently in place allows unscrupulous people to land grab. If such people see that land is unused, they can go through the process to acquire it for themselves and sell it on when they have a clear title. The bill will tighten the process and make it longer—the land will need to have been registered for 10 years before ownership is conferred—which is an improvement. As the minister said, the bill provides that such land must have been vacant for seven years prior to registration. I welcome his intention to amend that provision, because clarifying the position for that length of time is seen as being extremely difficult.

We need a mechanism to deal with land that has no owner, but the current system is open to abuse. We need to go back to first principles to develop a way forward. The current system is used when there are mistakes in the register; when, for example, a strip of land has not been registered properly and when land is ownerless. We should have different systems to deal with those issues. When there are mistakes, the keeper has the power to amend the land register and to rectify them, but we also need a dispute resolution system. If the owner of land cannot be traced, however, we need another process that will allow the land to be brought back into use but will also ensure that it cannot be abused. That process must also ensure that the land is put to the best use for the public interest. The process must have checks and balances, and every effort must be made to trace the true owners and to ensure that, if an owner does come forward, their property will be reinstated to them or that they will, at least, be compensated.

We also need to consider mechanisms to register common land. No organisation has a duty to do so, which leaves such land open to prescriptive acquisition. The committee has suggested that public bodies, such as local authorities, should have a duty to register common land to protect those areas for their communities.

There are several types of common land, such as communites, land that is bequeathed to the community, and land that has been purchased by
the community. I am sure that there are many other variations on that theme. Land being purchased by the community is a relatively new concept and I am sure that most such land will already be properly registered. Commonties are an ancient form of community land ownership and there are very few left because of acquisition of land, so we need to move to protect those that are left.

Land that has been bequeathed in the past is also difficult to identify, but it needs to be registered for protection, so the Government needs to give that issue more consideration before stage 2.

In order to identify the owners of land, the register needs to be accessible to the general public. We need the register to be available electronically and for that access to be affordable for the general public so that people can scrutinise the register to ensure that they know who owns their land.

The bill is required and it has been widely welcomed, but the Government is missing an opportunity to do something radical that would make a difference to land ownership in Scotland. It is not too late and I hope that the Government will take up the challenge before stage 2.

13:57

Annabel Goldie (West Scotland) (Con): It is a challenge to bring some verve and spice to the issue of land registration. The subject does not brim with pulsating excitement. Things were a lot more colourful when buyer and seller exchanged clods of earth to reflect the sasine of acquired ground. I declare an interest as a former solicitor who practised conveyancing.

All the complex, technical and rather dry environment surrounding registering a title to heritage in Scotland should not blind us to the important function of giving a purchaser or an existing landowner a good title in law, and a secured creditor a good security. Without those components being delivered in an efficient and cost-effective process, much domestic conveyancing could grind to a halt and, on the commercial front, Scotland could become an unattractive destination for doing business. In modernising and improving the function of land registration, an important balance has to be struck.

My party accepts the need for that modernisation and, within the constraints of the time I have available, I will restrict my comments to the particular areas on which I would like the minister’s input. I also pay tribute to the Economy, Energy and Tourism Committee. I found its report to be very informative and helpful.

The objective of completing the land register is essential and the statutory changes that are proposed to achieve that are positive. However, if voluntary registrations are cut off at the pass by excessive registration fees, progress will not be made. That is a fact. I urge the Scottish Government to produce the carrot in the form of voluntary registration fees that act as an inducement. There could be a trial charging regime for a fixed period to assess the response. If the fees in Scotland are significantly greater than those in the comparable process in England and Wales, that is not a good message.

I accept that keeper-induced registrations are consistent with the ends of the bill, and the minister has sought to clarify the fee-charging mechanism, to some extent. I am still unclear about how the proposal will work in practice, so I urge the minister to spell that out in more detail. It is not only the involvement of the landowner that is significant; it is also about intimation to any secured creditor who has an equivalent interest. Without that clarification, the retention of section 29 will be problematic.

Nothing could be more vital than the technical issue of the land register’s accuracy. There are problems with the scale of the Ordnance Survey map, particularly for remoter geographical areas. Interestingly, those problems also existed in the old sasine system, which depended on a combination of plans and a series of written descriptions of physical boundaries such as walls, hedges, burns and rivers. I suggest to the minister not only that such additional information should be a minimum requirement to accompany a land registration application, but that the documents should be retained by the keeper for the purposes of archive information and that they be accorded legal status. A professionally drawn surveyor’s plan that is fully measured to reference points of an area of ground is the most accurate description that the keeper can procure. An Ordnance Survey map cannot match that degree of accuracy. That additional information can only help the keeper and make the land register more robust. That is why, without legal status for such plans, the inherent weakness of title depending on an Ordnance Survey scale that is too small for purpose remains unaddressed.

On electronic conveyancing—a bewildering concept to an old bird like me—I share the committee’s rejection of making it compulsory. The opportunities that will be provided by, and the potential of, proceeding with automated registration of title to land are obvious, and the committee was right to raise the twin issues of cost and safeguards.

The provision that troubles me most is section 108, in which the theory of box-ticking usurping
common sense seems to have manifested itself. I do not know who is responsible for the inclusion of section 108, because it does not seem to have many friends. It was not in the original Scottish Law Commission bill, it was not consulted on, and it did not seem to find support from witnesses or in written evidence to the committee. At present, any party or agent—whether purchaser, landowner, heritable creditor, solicitor, surveyor or other adviser to a land registration application—who is dishonest and who, through dishonest conduct, knowingly induces a registration of land, is committing a serious criminal offence and can and should be prosecuted under existing law. The proposed new law is unnecessary and grossly disproportionate. I urge the minister either to remove section 108 or to amend it heavily.

Genuine error is a separate issue. I am concerned that section 33(1)(b) will give a power to the keeper that could be used excessively, to the detriment and prejudice of purchaser applicants and their heritable creditors. Rejection for a serious error or a material omission is one thing, but rejection on any other grounds seems to be irresponsible and could seriously prejudice a creditor’s interest.

Finally, anything that replaces letters of obligation has to be very good. I still recall the spasm every time I signed a letter of obligation, knowing that I was personally guaranteeing the wellbeing of my partners and my firm—an onerous undertaking for which to be responsible. I welcome advance notices and support the motion.

The Presiding Officer: We now move to the open debate. I remind all speakers that they have a fairly tight 10-minute time limit. [Interuption.] I am sorry. I meant to say four minutes.

14:03

John Wilson (Central Scotland) (SNP): I speak as a member of the Economy, Energy and Tourism Committee, which held a number of evidence-gathering sessions as part of its detailed examination of the Land Registration etc (Scotland) Bill. In addition to taking oral evidence, it also gathered detailed written evidence, which was received on an almost weekly basis from organisations that wanted to get their point across to the committee.

The bill aims to introduce an element of modernity and reform and to restate the law in relation to the registration of rights in the land register. The committee’s stage 1 report on the proposed legislation notes that

"the powers contained within the Bill for increasing land registration will assist in securing the desired objective of a complete Land Register.”

One of the issues of concern for the committee was whether the bill would help to provide a complete land register once enacted. We were concerned that we were not progressing quickly enough towards a complete land register in Scotland.

During the committee’s evidence-gathering sessions, it became clear that progress since the passage of the Land Registration (Scotland) Act 1979 has been painfully slow, hence our suggestion that it would be desirable to set targets—even interim ones—in the bill. The minister addressed that issue when he gave evidence to the committee, but the committee felt that it would be useful to have at least some targets in the bill that we could try to work towards. One overriding objective of the proposed legislation is to have the fastest method of completing land registration efficiently, with sufficient safeguards built in to maintain robustness.

The committee held five evidence sessions, during which the automated registration of title to land system was raised as an issue. I welcome the minister’s commitment to raise with the keeper the matter of an upgrade. Behind such mechanistic processes, there is usually a human cost that needs to be considered. I hope that the proposed legislation will go some way towards tackling that issue.

There are also issues with prescriptive claims. The committee discussed how to deal with such claims and how they should be advertised. One solution that I came up with is to use the same process as is used in planning applications, so that anyone who makes a prescriptive claim would have to notify neighbours on surrounding land, who could then intervene or comment on any acquisition that was sought through a prescriptive claim.

Section 108 concerned the Law Society of Scotland and others. It is a key principle of the bill that giving the keeper a materially false or misleading statement will be made a statutory offence. I recognise that the Solicitor General for Scotland, Lesley Thomson, and the minister believe that the measure should be enshrined in legislation so that they have the legal force to deal with serious and organised crime. I also recognise that there is a significant problem. The bill attempts to address some of the concerns that have been identified with the process, particularly in relation to organised crime, in relation to which redress has been somewhat limited.

In oral evidence to the committee, the Solicitor General highlighted the importance of creating an offence to deal with structured criminality. That evidence was reflected in the committee’s stage 1 report. I welcome the Solicitor General’s desire to
discuss with the Law Society of Scotland what further guidance and advice could be provided to solicitors when the proposed legislation becomes statute.

I welcome the stage 1 debate and the broad principles in the bill. I look forward to the bill coming back to the Economy, Energy and Tourism Committee. I thank all those who provided written and oral evidence. I also thank the clerks and the committee adviser, as well as my fellow committee members, who scrutinised the bill at stage 1.

14:07

John Park (Mid Scotland and Fife) (Lab): I thank the clerks for the support that they gave me as a new member of the Economy, Energy and Tourism Committee when I started in January, just after the Christmas break. On an issue such as the Land Registration etc (Scotland) Bill, with members going from a standing start, the support that we receive from parliamentary staff is important. I thank my fellow committee members for the warm welcome that they gave me. Perhaps that was because they were pleased to have me to share the burden of the bill, although I am sure that it was a wee bit more than that. There has been a steep learning curve for all of us, me included, on land registration, but we were boosted by the understanding and knowledge of those who gave oral and written evidence to the committee. As the committee’s work progressed over the past couple of months, we began to appreciate the expertise in and understanding of the issues that are out there.

One key issue, which John Wilson mentioned and which I think is the most important factor, is about ensuring that we start to complete the land register. I was amazed to find that, although it has been 30 years since the initial legislation was introduced, only 21 per cent of the landmass has been registered. If the bill does anything at all to improve the opportunities to increase the amount of land that is registered in Scotland, whether through voluntary means or some form of enticement, that would be a success in itself. However, in trying to do that, although it is important to have something in the bill, the net result is that we need to ensure that we have sufficient resources to make it happen. We have spoken about the keeper’s reserves, and we need to see where the deliberations on that take us. I hope that resources will be made available to increase the amount of land that is registered in Scotland.

I am keen to highlight a couple of things about electronic documents and the accessibility of the land register. Those are important issues for people outside the Parliament who are trying to engage with the land register and people who are trying to conclude as quickly as possible their deliberations with the legal professionals who are acting on their behalf. For example, a local group in my area wanted to find a bit of land that would be suitable for them to build a sports facility on. Although they were able to bring partners together and find information about a range of things, particularly funding, they found it difficult to engage with the land register. There are a number of websites that tell us how much houses cost. I wonder whether we might be able to get a system in place in which someone could press a button and identify the piece of land that they wanted to use, getting the information quickly online instead of having to go through the rather laborious process that people have to go through now of checking and identifying the land on Google maps. If the bill could set up an electronic system that improved the opportunities for consumers, that would be very welcome.

On section 108 and the offence provision, I was quite confused about the evidence that was provided. Most committee members were concerned about the lack of real evidence that the section would make a difference, so I appreciate the minister’s comments today about guidance being produced by the Law Society and the keeper. I look forward to seeing that.

I thank again those who have given evidence to the committee and hope that we can get a workable bill as we move forward.

14:12

Mike MacKenzie (Highlands and Islands) (SNP): I am pleased to have the opportunity to speak in the debate. Although I am what Murdo Fraser has described as “a non-lawyer”—I wonder whether that is a Latin legal term—in my previous career I had various practical experiences of the difficulties that are sometimes presented by our system of conveyancing and land registration. I compliment my colleagues on the Economy, Energy and Tourism Committee on a good example of working together in a largely consensual but effective manner in our scrutiny of the bill.

An effective land registration system is of fundamental importance in a property-owning democracy. Although I support the general aims of the bill, it is unfortunate that we do not seem to pay sufficient tribute to our original register of sasines. Cumbersome as it now is, it has operated fairly well over a considerable period and we must be careful that our efforts to modernise the system do not have unintended consequences. It is easy to criticise the old system. While it is true to say that there are many old titles that are vague or inaccurate, it is also true to say that some titles approach the level of works of art in their efforts to
describe and define properties accurately. As a body of documentation, they describe much of the history of our country and are a tribute to our legal profession. They remain a valuable resource and, where possible, should be used to clarify current title certificates.

Modernisation presents considerable challenges. The Ordnance Survey map is not always as accurate as it ideally should be, especially in rural areas, which has given rise to historical errors and continues to give rise to errors. With modern global positioning systems and other surveying systems becoming increasingly capable of affordable accuracy, many of those errors are coming to light for the first time. Human error, whether from historical bad drafting of titles or from errors in first registrations, must also be acknowledged. Any modernisation system must provide an efficient and cost-effective mechanism for the resolution of those mistakes.

I am glad that the bill also contains proposals to improve the situation regarding a non domino acquisition, as such acquisitions often present opportunities to correct historical errors or unfairnesses.

We received a lot of evidence from Andy Wightman. I have a great deal of respect for him and the idealism that he advocates, but his suggestion that we should advertise or hold auctions of land of unknown ownership could give rise to profound practical difficulties. Nevertheless, I congratulate him on his recent book, which is a readable and lucid account of what can, in less capable hands, be a dry subject.

Finally, I must support my friends in the legal profession who are rightly concerned about the proposal in section 108 to introduce a criminal offence for what might be innocent errors on their part. That might create onerous obligations on them and on buyers or sellers, who would be required to protect their innocence. I was glad to hear from the minister that he will think carefully about that aspect of the bill.

14:16

Stuart McMillan (West Scotland) (SNP): As one of the non-lawyers on the Economy, Energy and Tourism Committee, it was with a sense of trepidation that I started out on my journey through scrutiny of the bill. At the informal briefing session that we had before our scrutiny began, the bill was described as largely technical, but when we went through it, a number of issues were highlighted, none of which was merely technical.

We have already heard about section 108, and I warmly welcome the minister’s comments on that in his opening speech. He and other members touched on the issues that are highlighted in the committee’s report. I am sure that the constructive approach that we have seen so far in the committee will continue.

The bill is welcome because it will update the land registration process. I agree with Murdo Fraser’s comments on those who have participated in the bill process, and all who have assisted the committee. I particularly thank Ken Reid, the committee’s adviser, who managed to put some technical terms into layman’s terms for the benefit of the non-lawyers on the committee.

One area of the current system in which deficiencies have been highlighted is the automated registration of title to land system. We were told in both written and oral evidence that that system is clunky, is deemed to be inefficient and difficult to use, and is not well used. Given that the purpose of the bill is to ensure that more of Scotland is on the land register, the technical issue with the ARTL system needs to be resolved.

The committee whole-heartedly supports the proposal to allow e-registration as that should make registration easier and more accessible. However, if the ARTL system is not improved, the policy will face technical difficulties. The sector has already bought into the idea of e-registration despite the fact that there has not been much take-up. To ensure that the buy-in is carried through, the keeper needs to carry out widespread consultation and testing.

As someone who worked in the information technology sector for a time some years ago, I understand that technology and software rapidly become out of date when they leave the factory. As a result, futureproofing any IT system is a tough challenge, irrespective of the sector for which it is designed. It is imperative that systems are designed with input from those who will use them, and that is particularly true in the area that we are discussing today. Furthermore, I am sure that the financial benefits of such a system will help both the sector and the end customer—the individual who is buying or selling a property.

I have focused my contribution on the issue of the ARTL system because of my background in the IT sector, which meant that I could understand it easily, and because of the importance of e-technology to the Scottish economy. The bill represents an opportunity to bring Scottish land registration into the 21st century, and e-technology can play a massive and major part in making that happen successfully.

14:19

Hanzala Malik (Glasgow) (Lab): This is an interesting topic. I have witnessed huge amounts of difficulty overseas, in particular for farmers who have smallholdings. When an inheritance has
gone unregistered for many years, the true inheritors, what land they own and where it is all need to be identified. We will face similar, historical difficulties here.

However, I want to talk about another area. There is a moral responsibility for some of the larger landholders, particularly in Scotland, to register in order to kick-start the process. That would be welcome. Some of the larger landholders, such as the Scottish Government itself and the Ministry of Defence, need to lead by example.

I got a few ballpark figures on ownership from the Scottish Parliament information centre today. In Scotland, the MOD owns approximately 23,500 hectares, and has 541 hectares, or thereabouts, of land on lease. It also has training rights over a further 120,000 hectares—land for non-exclusive use in military training. That is a lot of land, and I wonder how much of it is registered. The MOD also owns sites of great value, including grade A, B and C listed buildings, and sites of special scientific interest, protected areas, conservation areas and wetlands of international importance. With the shrinking of the armed forces, what will happen to those sites? Will they be returned to the national parks or to communities? Recently, I watched a programme about how the Victorians left us wonderful parks in our cities, which their descendants enjoy today. Will some of the MOD’s sites be left to future generations of our children and grandchildren to enjoy?

The important thing in all of this is registration. If large corporations and other large landholders are encouraged to register, some of our smaller landholders will be encouraged to do so, too, particularly those in our farming community who are challenged at the best of times, and this is a difficult period for them. To support our smaller landholders, I suggest that we ensure that they at least have free registration in the first instance, especially families who have inherited difficulties and have the complicated task of clearing up previously undone business.

Online registration is very important. I was recently overseas, and saw that India and Pakistan—countries that have been in business for fewer than 70 years—are going down that route. We have a lot to learn from some of the people overseas who have already done this. Registration is absolutely fundamental if we are to have proper, accurate records, and we should all be able to access information about who owns what. Without that accuracy, neighbours who have had good relations for generations can fall out over small differences.

I emphasise that we need to lead by example and ensure that our house is in order before we encourage others. More important, we need to force the issue of registration, so that we have accurate records.

14:24

Jean Urquhart (Highlands and Islands) (SNP): When I offered to speak in today’s debate, I was aware that I would be doing so more from a sense of how important the bill is than from a position of taking an opportunity to show my detailed knowledge of the complexity of land registration and the related legislation. I am neither a lawyer nor a member of the committee, so I am really pushing my luck.

The introduction to the SPICe briefing quotes the Scottish Law Commission as saying:

“Much law is like plumbing: useful but unexciting and seldom thought about except when it goes wrong.”

That relates to this very topic.

On “Good Morning Scotland” this morning, only the debate that will follow this one was deemed worthy of attention. Clearly, our Cabinet Secretary for Health, Wellbeing and Cities Strategy has in the Alcohol (Minimum Pricing) (Scotland) Bill a far more sexy subject than the Minister for Energy, Enterprise and Tourism has with land registration. I regret that. I believe that the bill should be of topical interest and that it would be justifiable to debate it on BBC radio. Land ownership should be promoted as something that everyone in Scotland will be affected by and may have direct active involvement with at some point in their lives. The ambition for accurate and accessible registration of land with a system that is transparent and efficient will give Registers of Scotland a reputation for being trustworthy and reliable and the people of Scotland reassurance and peace of mind.

The history of land registration in Scotland is absolutely fascinating. We hope that it might be given some space in a new curriculum on Scottish studies. The present value of land, the lack of available land in communities for social purposes, the prospect of more community land ownership and the future of crofting and agriculture all mean that we should be interested in the bill.

The impact of the land tenure system goes far beyond land use, because it influences the size and distribution of an area’s population; the labour skills and entrepreneurial experiences of the population; access to employment and thus migration; access to housing and land to build new houses; the social structure of an area; and the distribution of power and influence. Professor Bryan MacGregor said in the first McEwen memorial lecture:

“In many areas of rural Scotland ... landowners play a crucial role in local development: they are the rural planners.”
That was restated in Andy Wightman’s book “The Poor Had No Lawyers”, which has already been referred to.

It has been calculated that in the past 30 years we have managed to register only 21 per cent of Scotland’s landmass. If we were to see no change in the rate of registration, I estimate that we would not have the essential knowledge that we seek on all Scotland’s land until 2132. I therefore welcome the bill, which I hope will radically change the method of registration. However, I think that we will do that only if we can make it a more sexy subject and something that everybody realises is important. Perhaps the voluntary registration aspect should be better highlighted. I hope that the minister might be able to do that.

I hope that the bill becomes a hot topic for the minister as it makes its way and that we might yet hear him being interviewed about it by Gary Robertson on “Good Morning Scotland”.

14:27

James Kelly (Rutherglen) (Lab): I welcome the opportunity to speak in this debate on the Land Registration etc (Scotland) Bill. As someone who is not a member of the Economy, Energy and Tourism Committee, I compliment the committee’s members on the substantive report that they have produced, and I congratulate the clerks on the amount of work that they have clearly put into such an informative report.

It is clear that there is a need for a change in the law and that the 1979 act needs some reform and is no longer fit for purpose. It is silent on some areas, for example, which I know has meant major challenges for those who work in Registers of Scotland. As many people have pointed out, it is quite clear that there has been a lack of registration since 1979, so the issue needs to be taken more seriously. In addition, there are genuine challenges around mapping and how that is dealt with in terms of modern land registration law.

One of the central issues that members have touched on is the completion of the register. As many have said, only 21 per cent of Scotland’s landmass is registered in the system, which means that nearly 80 per cent is not registered. The register is therefore far from complete and we need to look at methods of encouraging more registration.

There has been some discussion of fees. As the committee has said, we should consider reducing some fees, particularly for voluntary registration. Looking forward, the Government has to be serious about the fees that it sets if it wants to encourage more registrations.

Registers of Scotland’s reserves of £75 million underpin all of that, and any future fee-setting regime must be set against those reserves. Surely we can come up with more realistic fees that can encourage people to register. The situation must be monitored, with transition and timescale targets set to ensure that there is a greater uptake of registration. Closer monitoring will ensure that the matter is taken seriously.

Many members have raised the issue of electronic conveyancing and access to the land registration system. It is vital that that access is taken beyond those who are involved in conveyancing. Members of the general public are interested in land issues. People occasionally come to me, as a constituency MSP, with land disputes, but it is hard to get information. It would help greatly if more information were available through IT. It can be of great benefit—Stuart McMillan made a number of relevant points about that—and we need an IT system that is fit for purpose. If the current ARTL system does not do the job, we should look at creating a new system, although that would need to be planned properly. We need to listen to those who want to use the system and implement a new one that can be used in future to service not only conveyancers, but the general public.

There are serious issues that need to be addressed in the bill, such as beneficial ownership, which Rhoda Grant made relevant points about. I hope that we can move the bill towards stage 3 and produce legislation that benefits people and helps to answer the eternal question “Who owns Scotland?”

14:32

Paul Wheelhouse (South Scotland) (SNP): I should declare an interest. I worked for BiGGAR Economics when it did the piece of work for Registers of Scotland on the economic impact of its proposals. I was not involved in the study, but I had initial discussions with Registers of Scotland officers in framing the tender that we submitted. I also have a role in the Finance Committee; we had a low level of scrutiny of the bill, so there was not much evidence to go on.

I note that the estimated annual cost of the proposals is £3.85 million against an annual income to Registers of Scotland of £48.6 million, and that it is expected that efficiencies will arise to Registers of Scotland that will partly offset the annual cost. I also note the £19 million cost over the first five years, which puts in context the figures that James Kelly rightly highlighted when he spoke about Registers of Scotland’s reserves. Registers of Scotland is quite unusual in the public sector in that it needs to be self-sustaining. Its reserves are therefore an important part of its
finances and of ensuring that it maintains its on-going operations.

The benefits from the bill will not just be to property owners, investors and authorities in reducing potential risks from inaccurate information. I will highlight a few benefits that I am aware of, having worked in the property sector, although not as a lawyer like Murdo Fraser and some other members. I have used the data that Registers of Scotland has produced. It is extremely important that the information is accurate, not only to understand who owns the land, but to understand what is happening in property markets.

Registers of Scotland has substantial reserves, which should keep the costs down. As others have stated, they could perhaps provide some scope for keeping the registration costs down and encouraging voluntary registrations. I noted the minister’s comment that, in effect, landed estates have a window of opportunity to increase the amount of land that is registered at an advantageous rate. That is an important point to raise.

I agree with Annabel Goldie on the mapping issues. The suggested tolerances for Ordnance Survey maps of 0.3m to 0.4m might sound accurate to some, but in the context of property they create the opportunity for ransom strips. The strips might be thin but, if there is some doubt about who owns them, they could cause all sorts of problems in securing investment. I agree with James Kelly about the Economy, Energy and Tourism Committee’s excellent degree of thoroughness. Paragraph 78 of the committee’s report suggests that consideration has been taken of the cost of mapping and that the use of Ordnance Survey mapping should continue, with the understanding that, although it is perhaps not the ideal form of mapping for registration, it keeps costs to a reasonable level.

Paragraph 77 notes that Ross MacKay of the Law Society of Scotland told that committee that

"the difficulty at the moment is that many titles are based on old sasines, which have no maps at all."—[Official Report, Economy, Energy and Tourism Committee, 11 January 2012; c 753.]

A map that is not perfect is better than no map at all. That is something to bear in mind.

As a community councillor, I was aware of regular problems in my local area to do with buildings at risk. It is difficult to enable the council to take enforcement action to ensure that a building at risk is maintained or improved if we cannot trace who the real owner is.

On common good land, there is the recent example of a wind farm at Drone hill in the Coldingham area of east Berwickshire. The wind farm had been approved and it was subsequently discovered that Drone moss, a site of special scientific interest, was technically still owned by the local community of Ayton but no one could identify who the legal owners were. My point is that registration has some practical benefits to local community organisations.

14:36

Rob Gibson (Caithness, Sutherland and Ross) (SNP): As the convener of the Rural Affairs, Climate Change and Environment Committee, I have an interest in the Land Registration etc (Scotland) Bill dovetailing with the Agricultural Holdings (Amendment) (Scotland) Bill and the Long Leases (Scotland) Bill, both of which are before my committee. Registration of aspects of leasing are as important as registration of ownership, and there has been much debate on both bills about ensuring that that happens. It is in our interests that the Economy, Energy and Tourism Committee bears that in mind at stage 2 and ensures that the bills dovetail.

I turn to the excellent report from the Economy, Energy and Tourism Committee and highlight the issue of Ordnance Survey maps. The 6in:1 mile map—or the 1:10,000 map as it is now called—was used for the whole of the Highlands and Islands for many years. It is not up to scratch; it never was. It was not fit for purpose when we were having these debates in the mid-1990s, at a time when land registration was 20 years old. Did anyone ask Ordnance Survey to step up to the plate and get mapping properly? It is a union dividend for us that large areas of Scotland are inadequately mapped by Ordnance Survey. One per cent of the titles of Scotland are affected by the 1:10,000 scale, but of those, many are the largest estates that have never been registered except in sasines, and they are not properly mapped at all.

Why is that important? Crofting communities have a right to buy, and such communities have to provide details in mapped form of the area of which they wish to take ownership. We would therefore expect it to be necessary for landowners themselves to have their land mapped in a modern and up-to-date fashion. There is a direct link here between those issues, which is part of this Parliament's wishes. I know that the Labour Party did not wish to see a map-based register for crofting, but as many people who are registering leases for farms and so on have to do that, Labour should recognise now that landowners should be registered and that crofters eventually will be, too. There has been no secondary legislation on that yet, but it is a point.

Annabel Goldie and others have mentioned fees. I suggest that, for a large estate, the price for
registration is like selling off a couple of housing plots. Large estates are not short of capital for registration, so why are we not making the point that they have got the benefit now of voluntary registration at a reduced ad valorem rate? They should get on with it, or we should find means to ensure that we use the research area approach of the bill not just to apply to cities but to apply to areas in which communities may wish to use the right to buy, because they will have to have accurate maps to do that.

The bill is an excellent start, but it is important for Scotland’s future that the timeframe for the completion of the register is speeded up, because 30 or 40 years might not be a long time in land ownership, but it most certainly is when it comes to getting an up-to-date register that people can access electronically. Registers of Scotland’s mapping working group should ask Ordnance Survey when it will step up to the plate. We know that, during the Thatcher era, Ordnance Survey was cut back and was made to be a business, but it is supposed to be a service. Instead of seeking other means, we should demand that that service is there for us to use in future.

14:40

Patrick Harvie (Glasgow) (Green): I strongly commend Rob Gibson for much of what he said. In addition, I thank everyone who contributed to the committee’s work, in whatever capacity.

My fellow members of the committee will not be astonished to learn that, in much of my speech, I will refer to the evidence of one particular witness but, before I come to Mr Wightman, I want to welcome the bill’s overall purpose—the completion of the land register of Scotland.

However, like some other members, such as John Wilson, I wonder how the completion of the register can be compatible with a bill that does not set out a timescale for its completion. We should be asking, and the minister should be able to say, how complete the register can be expected to become and how quickly, and whether it will be possible for it to be completed without greater use of keeper-induced registrations. There is currently a presumption against the use of keeper-induced registrations. For how long can that go on? Do we expect to achieve 50, 60, 80 or 90 per cent completion of the register? Will the final 5 or 10 per cent of the register be completed without the use of induced registrations? There is a role for targets, as the committee recommended in its report.

Andy Wightman’s contribution to the debate began with the observation that the bill has been presented as a largely technical bill, yet it represents the first opportunity that a democratically elected Scottish Parliament has had to consider the legal basis of land registration in Scotland. His position is that opportunities might have been missed to engage with wider issues of public policy and public interest, some of which have been mentioned. How should we deal with abandoned land? Should we simply continue—albeit with slight restrictions—the prescriptive acquisition process, or do we need a more public process to ensure that other parties who may have a legitimate interest can express it and have it considered? It may well be that there is not a one-size-fits-all solution, and that different means of disposing of land that has not had an identified owner will be appropriate in different circumstances. I would like to hear the Government’s view on that.

Several members, including Rhoda Grant, have mentioned common land. I am glad that the committee supported the in-principle objective that Andy Wightman has sought to achieve, and the objective on access, because we are not doing as well as England and Wales at providing easy and affordable access to land register information.

The most significant issue that I want to address is beneficial ownership. Andy Wightman’s view is that registration should be conducted by a European Union-registered body. There are other views. Andy Wightman cited Andrew Edwards’s mentioning of the need for disclosure of the true or beneficial owners of registered properties in cases in which they differ from the nominal owners.

With the bill, we have a real opportunity. I recognise that, at the moment, neither the Scottish Parliament nor the Scottish Government has the power to deal with issues such as tax avoidance, but the land registration scheme can act to close such loopholes. Tax avoidance and the use of tax havens have been fundamental mechanisms for the accumulation of wealth by the few against the interests of the many. We have the opportunity, through the bill and through public leadership from the Scottish Government, to say that that is not acceptable and that action will be taken to close those loopholes. The committee’s report asks the Government to consider the options, and I look forward to hearing some detail on the minister’s consideration.

14:44

Annabel Goldie: It is difficult in an essentially technical debate to introduce ideas and concepts without risking repetition. I prefer to comment briefly on one or two points and leave the minister with more time to respond to the debate. That is not a cop-out on my part, because I was struck during the debate by a number of points that attracted attention from members on all sides of the chamber, not least the issue of voluntary
registration and how we make people register, which is key to the bill’s success.

I am pretty relaxed about targets. The much-vaunted target for tourism, for example, was set with the best of intentions, and now everyone keeps hanging their argument on it. The lesson to be learned is that, if the bill changes things for the better, we should assess the practical consequences of its implementation and consider whether adjustment or change is necessary.

I was struck by some of the contributions on inducing greater voluntary registration. Hanzala Malik made an interesting point about large landowners such as the MOD. The MOD may well be amenable to an approach, and other larger landowners may take the same view. I noted that James Kelly and Paul Wheelhouse share my view that the charging mechanism could be the key, and I would like to hear the minister’s comments on that.

On the accuracy of the land register, members such as Paul Wheelhouse made some good points about the genuine practical problems, particularly for remoter rural areas. Rob Gibson made an interesting point, but I am not quite sure whether I understood him completely. He seemed to be focusing on the OS map as the problem, and arguing that we should make that better. My concern is that, at present, I do not think that we can make an OS-based system better at dealing with issues relating to plots in rural areas on an appropriate scale. One line on an OS map may be a difference of several metres on the ground, which could be critical for the accuracy of title conferment and title interpretation. I go back to the point that we must ensure that the keeper is armed with all the ancillary information that she can get. There is a huge obligation on the registration applicant’s solicitor to provide as much information as possible. That may include professionally drawn surveyor’s plans and—as Mike MacKenzie indicated—information that is held in the old sasines system.

Surely whatever informs the keeper about how to register a title is worth while only if it is given some type of legal status in the archive. Otherwise, where is the keeper to go when there is a subsequent registration application? I would like the minister to comment on that.

It was no surprise to hear that a number of members on all sides of the chamber have profound concerns about section 108. Obviously, members of the minister’s own party were a little more circumspect in their observations, while others, such as myself, were a little blunter, but I would like to hear the minister’s further comments in that regard.

14:48

Ken Macintosh (Eastwood) (Lab): I acknowledge that, although the bill is largely technical, most of its proposals have been welcomed and are required if we are to improve land registration.

There is no doubt that a modern and effective system of land registration is important for any modern economy. Much as the communist in me—I am sure that the minister looked up with a start to see that Red Ken is now standing in the chamber, so I will put it differently. Much as the idealist in me struggles with the concept of us mere humans asserting our rights to mountains and rivers, which will outlive and outlast us all, I appreciate that our banking, business, trade and credit systems rely on securing title to property and land. I understand that the property market in Scotland was worth approximately £24 billion the year before last, so the bill is an important and worthwhile measure.

The background to the bill lies, as many members, including the minister, highlighted, in the gradual replacement of the 17th century register of sasines with the land register of Scotland. Although the changes have been taking place since 1979, so far just over half—55 per cent—of Scotland’s 2.6 million units of property have been switched. The figure for the land area that has been covered is much lower, with only 21 per cent of Scotland’s landmass on the register.

As Paul Wheelhouse, John Wilson, John Park and others said, the completion of the register is a practical and important step that will make a difference for many communities.

The reason why there is a gap in the transfer to the land register is mainly that the principal way in which a property enters the land register for the first time is through its sale. The bill will update the law on registration. It will enable electronic conveyancing and, in due course, it will provide for the closure of the register of sasines. It makes provision for four measures that are designed to ensure the eventual transfer of all property in Scotland to the land register.

As my colleague Rhoda Grant suggested, the only disappointment with the bill is that it misses an opportunity to move the land reform agenda on apace. There is a timely article in today’s Scotsman—not the one about my former colleague Jack McConnell but the one by Brian Wilson—which I encourage ministers and members to read. It highlights some of the issues around land ownership that still bedevil communities around Scotland. Mr Wilson says that, despite the Parliament’s early achievements, such as abolishing feudal tenure, guaranteeing the
right to roam and introducing the community right to buy, Scotland continues to have

"the most inequitable distribution of land ownership in Europe".

As I suggested earlier, I struggle with the concept of owning a mountain or a river, and it is jarring to see absentee millionaires and billionaires buying up Scottish islands and estates while local people on those estates struggle to make a living. Like Andy Wightman, who was quoted favourably by my colleague in the Green Party, Patrick Harvie—sorry, Patrick—I believe that it is offensive that there is such difficulty in finding out who owns land in Scotland.

I was going to quote the case from 10 years ago that involved the MacLeods in Skye claiming ownership of the Cuillins and trying to sell them on. That case was resolved, but other members, such as James Kelly, have reminded me of constituency cases that are far more practical and which involve areas of land in suburban and urban areas whose ownership is unknown and which are therefore not maintained and become litter infested and overgrown. Being able to identify the owner of those pieces of land, which have become nuisances, would improve the environment and therefore provide a great service to many communities.

It is worth highlighting that the issues of land reform and the transparency of land ownership are not just relevant to rural areas. When residents of Neilston, which used to be in my constituency but is now admirably represented by my colleague Hugh Henry, were faced with the closure of the last bank in the village, they used the Scottish Parliament’s land reform legislation to buy the property for the community. The benefits have not simply been about the use of that building, because the Neilston Development Trust has become a driving force for improving the landscape of the village, bringing people together for events and other activities, and the trust is now on course to establish the ownership of a wind farm, the income from which will go directly to the village. That demonstrates that what on the face of it looks like an issue to do with property and land ownership is, in essence, about the rights, needs and wishes of the local community.

Like many members, I am grateful to the Economy, Energy and Tourism Committee for the work that it has done to highlight a number of issues in the bill, particularly the issue of beneficial interests and ownership, with particular regard to the transparency and accessibility of information relating to that issue. The bill does not do quite enough in that area, so I am pleased that the committee has recommended that

"the Scottish Government should reflect further on options for ensuring that the land registration system reduces the scope for tax evasion, tax avoidance and the use of tax havens, and that the Government should explain prior to Stage 2 what additional provisions can be included, whether in the Bill or otherwise, to achieve this objective."

Similarly, on access and transparency, the only electronic system that is in place is predominantly geared towards lawyers and conveyancers. I am pleased that the committee has flagged up that point and I whole-heartedly agree with its recommendations in that regard.

I would like to raise some other points—about prescriptive claimants; common land; and section 108, which I noticed was raised only by the lawyers or former solicitors in the chamber, but is still an important point—but, given that my time is up, I will end by welcoming the work of the committee and saying that I am pleased to support the general principles of the bill.

14:55

Fergus Ewing: I have thoroughly enjoyed the debate. There have been useful contributions from all sides. If I do not reply in my short speech to some of the suggestions and, in particular, questions asked of me, I will ask my officials to ensure that I do so before stage 2 begins.

I was not entirely expecting the revelation from Ken Macintosh that part of him is a communist. As far as I can recollect, we did not hear much about that during his leadership campaign, but it was an engaging revelation.

In the light of that, I begin by addressing the remarks that Rhoda Grant, initially, made about the land reform agenda. The purpose of the bill is not to reform the law of property but to update, modernise and make more efficient, accessible and user friendly the law of registration of property in Scotland. That may be a pedantic, lawyerly point—others will be the judge of that—but this is therefore not the forum for reform of our property law, although I fully recognise the deeply held views that many members, from most of the parties represented in the chamber, have on the matter. In making that point, I do not belittle the arguments that were put, nor do I dismiss out of hand the points that were made; it is simply that it is not the function of the bill to deal with those matters.

Nonetheless, as a minister who always prefers to concentrate on the good news rather than the negative, I am sure that Rhoda Grant will join me in congratulating the Scottish Government on the announcement on 20 February that the Scottish land fund will help more rural communities purchase their own land, with £6 million available over the next three financial years. I am sure that that point is understood.
Beneficial ownership was raised, but that, too, goes beyond the province of the bill, because the position of the keeper is that the keeper must register who owns the land of Scotland. That is the keeper’s duty on receipt of an application for registration of land. It is not the purpose of the keeper to reform the law of trusts, of companies or of taxation. Indeed, the latter matter is largely reserved to Westminster.

Patrick Harvie rose—

Fergus Ewing: I will carry on for a bit, if I may.

Mr Harvie acknowledged that point, as did others. I can tell him that we have had some discussions on the matter and officials are looking to see whether we have the powers to deal with any of the matters referred to in relation to beneficial ownership, which might reduce the scope for tax evasion, tax avoidance and the use of tax havens but—before Mr Harvie gets up—I do not want to raise his hopes, because I think that that would require the transfer of the powers to the Scottish Parliament.

Patrick Harvie: Will the minister allow his officials to have discussions with Opposition members prior to stage 2, so that we understand the limits of what the Government thinks it can do and can lodge the most useful amendments on the issue?

Fergus Ewing: I always do that.

Why are reserves necessary? First, because the keeper cannot have access to consolidated funds; she must balance her budget. She does not have recourse to knock on Mr Swinney’s door and ask for a top-up because things are not going well. The reserves have been far in excess of £75 million in the past 10 or 15 years. In a sense, that is a good thing, because it has allowed the keeper to deal with the losses that have been incurred over the past few years.

I draw members’ attention to the fact that applications have reduced from 438,000 in 2007 to only 245,000 in 2010-11. They have nearly halved, so the income from them has nearly halved. The keeper must have reserves to deal with the loss-making potential because, sadly, such situations arise.

Secondly, the keeper needs to keep reserves because land registration provides a state-backed indemnity. If something goes wrong, we pay out. That is one benefit of land registration. In one case south of the border, in England, our colleagues had to pay out £8 million for one case, so members can see that the keeper needs to be prudent.

The keeper also needs a reserve for investment in, for example, ARTL. In that context, Stuart McMillan sensibly devoted his speech to a practical matter. I take seriously the evidence that we heard from various solicitors about the ARTL system’s efficiency, and we will ensure that we consult on all such matters.

How long do I have, Presiding Officer?

The Deputy Presiding Officer (John Scott): You have another four minutes.

Fergus Ewing: Oh good. I thought that I needed to finish.

Alex Johnstone (North East Scotland) (Con): Oh, no.

Fergus Ewing: Members will be relieved that there was no premature conclusion to my remarks and that I am allowed to say a little more, which is jolly good, of course.

Liam McArthur (Orkney Islands) (LD): Will the minister take an intervention?

Fergus Ewing: Well, why not?

Liam McArthur: I am grateful to the minister for taking an intervention while he gathers his thoughts. I am sure that, like me, he has been having flashbacks this afternoon to his experience of the Crofting Reform (Scotland) Bill. He visibly winced when Paul Wheelhouse referred to ransom strips.

I think that every speaker has talked about the importance of accelerating the process of registration. I would not necessarily subscribe to the view that a target is needed. However, during the passage of the Crofting Reform (Scotland) Bill, ministers were willing to give an indication of the rate at which they expected mapping to take place, through community mapping or whatever. Can the minister give an indication of the timeframe that he expects is likely for progress to be made on registration?

Fergus Ewing: I cannot really, although I discussed the matter with Rob Gibson in John o’Groats on Monday—and indeed in Thurso and Wick. The matter is important, but it is not in itself impeding the ability of people to develop businesses, jobs and opportunities. The primary purpose of the register is to provide a safe, effective and reliable means of transacting property in Scotland, as Mr Malik said. It is a commercial tool, first and foremost. That is its purpose and its function, and that is its benefit, as Ms Goldie said.

Of course we all want to complete the register as quickly as possible, but the only way to do that would be by making registration compulsory, which would require people to pay fees to lawyers and to the keeper. We do not think that that is reasonable, especially in a recession. There are fine judgments to be made about whether public bodies use their scarce resources to spend money
on voluntarily registering large tracts of Scotland. There is a case for an upgrade, as it were, in the number of titles of large properties, whether in the private or public sector, and I have argued that the current fees structure creates an in-built incentive to register. I have discussed the matter with, for example, Scottish Land and Estates, and I think that there was a meeting of minds about encouraging but not requiring registration.

On keeper-induced registrations, I say in response to Annabel Goldie that section 29 is necessary, because there will be properties that the keeper, using her judgment, will feel that it is sensible to include, to complete the register. For example, if Acacia Drive has 29 semi-detached properties, one of which is not registered, it is advantageous to the keeper to bring the final property on to the land register. I think that people can see the sense of that from a practical, operational point of view. In those circumstances, there would of course be no fee to the person who was required to register their title.

Hanzala Malik: Will the minister take an intervention?

Fergus Ewing: I just want to finish my response to Mr McArthur, who quite rightly raised the issue—he did so in a perfectly fair way, which summed up the tone of today’s debate. We all want the register to progress as quickly as possible. We are using the voluntary registration method and the word “voluntary” is key; we want to encourage people to register and not compel them to do so.

I am happy to take another intervention—I see that I do not have time to do so. I have to close, and so soon.

I am grateful to the committee for its work, which helped us a great deal. There is much work to be done at stages 2 and 3. Section 108 is entirely necessary and is supported by the Lord Advocate, the Solicitor General for Scotland and the Scottish Crime and Drug Enforcement Agency. Honest solicitors have nothing to fear, but the tiny minority of dishonest ones will not be happy when the provisions on the new offence become law. It will be a very good thing to stamp out mortgage fraud in this country.
I would again like to thank you and the members of the Economy, Energy and Tourism Committee for its thorough and collaborative stage 1 scrutiny of the Land Registration etc. (Scotland) Bill. I would also like to thank you and the members for their contributions to the Stage 1 Debate.

I will respond to the recommendations made in the committee’s Stage 1 report in my official response but I would like to take this opportunity to address a number of the issues that were raised in the debate that I was unable to address at that time.

I note that in your opening statement you asked some specific questions on the provision in the Bill for Keeper-induced registration. You asked what land would be subject to Keeper-induced registration. In theory, any land that is unregistered could be registered by the Keeper using this power. In practice, the Keeper could only register a title where the information required to map the title and construct the title sheet is readily available, for example from the Sasine Register. This would prevent the power being used in some circumstances; most notably, titles where the description of the property in archived deeds does not meet the requirements for registration, or where the archived deeds do not contain plans.

The Keeper could start to use this power as soon as the main provisions in Bill are commenced, assuming that the Bill becomes an Act. The Keeper and I have agreed that the power will not be used to register any large estates during the course of this parliament. As the Keeper indicated in her evidence, she is investigating the use of the power to register titles within research areas and I would commend this. The Keeper has estimated that using the power in this way has the potential to extend land registration coverage to about 80% of titles.

The final question you asked was whether a fee would be payable for Keeper-induced registration. The fee provision in the Bill would allow for a fee to be charged but it does not prescribe that a fee will be charged. I do not envisage that a fee will be charged in most cases but I think it is prudent for the legislation to allow for a fee to be charged at some point in the future. It should be borne in mind that the use of the fee power is subject to affirmative
procedure and the Keeper will consult stakeholders on behalf of Scottish Ministers before any fee order that includes a fee for Keeper-induced registrations is brought before the Scottish Parliament.

I note the comments made in the debate regarding section 108. I would like re-affirm my commitment to re-examine the wording to ensure that genuine error is not caught by the offence. I will ensure that my officials continue to liaise with the Law Society in advance of Stage 2.

I am aware that in the debate there were some comments regarding the reserves held by RoS. I think it would be useful for me to clarify the position. The RoS reserves currently amount to £73 million; however, they are projected to fall to £53 million by 31 March 2015. This is because RoS is still incurring losses as a result of the downturn in the property market. RoS is forecasting a return to a break-even position in 2014-15. As you are aware RoS is a trading fund and must recover its costs from fees charged for its services. RoS has set its ideal reserves position as having £75 million at the start of the next down-turn in the property market. Reserves are maintained to enable RoS to meet a number of pressures. These include market fluctuations and claims upon the Keeper’s indemnity as well as funding for investment in registration and information systems.

FERGUS EWING

FERGUS EWING
Land Registration etc. (Scotland) Bill

Economy, Energy and Tourism Committee

Stage 1 Report

Scottish Government Response

25 April 2012
The Scottish Government welcomes the Economy, Energy and Tourism Committee’s Stage 1 report on the Land Registration etc. (Scotland) Bill. We have considered the Committee’s recommendations and respond to each point as follows;

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<td><strong>Completion of the Land Register</strong></td>
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| 1. | The Committee appreciates that voluntary land registration is a key part of the policy aim of increasing the amount of registered land and towards the eventual completion of the Land Register. Given that the Registers of Scotland currently has reserves of approximately £75 million, we ask the Scottish Government to consider possible ways of incentivising voluntary land registration, such as the introduction of reduced fees in more complex cases. **Paragraph 28** | The Scottish Government is of the view that the registration fees charged by the Registers of Scotland (RoS) already act as an incentive to landowners when they are considering applying for voluntary registration. Indeed, the Scottish Government notes that fees for voluntary registration are currently well below cost recovery levels. The Scottish Government can confirm that it is considering the following fee arrangements for voluntary registration:  

- *ad valorem* fees (related to the value of the property) for the majority of cases (as is the case at present);  
- the ability to agree an overall fee prior to work beginning with large organisations such as the Forestry Commission; and  
- time and line charging for complex, high-value voluntary registrations. |
| 2. | It is unclear to the Committee, partly as the detail will follow in subordinate legislation, whether there will be a fee for Keeper-induced registration. We therefore ask the Minister to make the Scottish Government’s intentions clear during the Stage 1 debate. **Paragraph 38** | In the Stage 1 debate, the Minister for Energy, Enterprise and Tourism, Fergus Ewing MSP, confirmed that although the fee power in the Bill would allow a fee to be charged for Keeper-induced registrations, there is no intention to charge a fee for such registrations during this parliamentary session. The Government has not yet determined its policy on any fee rate that could subsequently be proposed, but would not rule that out. The Government and the Keeper would consult fully on any such proposal. |
3. The Committee is unclear how the Keeper can achieve the inclusion of research area titles within the Land Register when it would appear that Keeper-induced registrations have been ruled out in this Parliamentary session and how this approach would be consistent with a priority of completing the Land Register. The Committee would appreciate clarity on this and on how prescriptive Ministers intend to be in making decisions on Keeper-induced registrations. We therefore recommend that the Scottish Government clarify when it intends to begin Keeper-induced registrations and also how they will work in practice. **Paragraph 39**

The Scottish Government can confirm that the commitment given by the Minister to Parliament was that there will be no Keeper-induced registrations of *large complex titles* in this session of Parliament. This does not preclude the Keeper from using this power to register titles that fall within research areas. A research area is an area, often a housing development, tenement or group of tenements, where all the properties have a similar route of title. They were set up by the Keeper to facilitate the registration of titles within these areas. As much of the work in setting up a title sheet in these areas has already been undertaken by RoS, properties that fall within these areas lend themselves to Keeper-induced registration. We estimate that using the power to register titles within these areas could increase title coverage by approximately 720,000 titles. If resources permit, the Keeper anticipates that she would start Keeper-induced registrations of research titles shortly after the commencement of the main provisions of the Bill.

Keeper-induced registrations will only be used where the Keeper can clearly meet her obligations under Part 1 of the Bill. In most cases, this will mean that where details of the title cannot be derived from the Land Register, Sasine Register and the National Archives, the Keeper could not meet these obligations.
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<td>4.</td>
<td>The Committee considers that the powers contained within the Bill for increasing land registration will assist in securing the desired objective of a complete Land Register. The Committee appreciates that these powers will have significant resource implications for the Registers of Scotland and therefore asks the Scottish Government to consider how they can be implemented to ensure the correct balance is struck between incentives, fees and costs to the Keeper. <strong>Paragraph 43</strong></td>
<td>As a trading fund, RoS has to ensure that fees that are paid for applications cover the costs of running the registers under the management and control of the Keeper. The Scottish Government is confident that RoS will continue to operate sound financial management to ensure that fees cover costs.</td>
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<td>5.</td>
<td>The Committee notes the level of fees is to be dealt with in future subordinate legislation. It believes that the level of fees set is central to the success of completion of the Land Register. The Committee considered 2 issues: the level of fees in general and the fees incurred due to new triggers and powers in the Bill. <strong>Paragraph 50</strong></td>
<td>The Scottish Government will take the Committee's view into account when developing and making any future fee orders. Additionally, any fee order will be subject to the affirmative procedure, allowing the Parliament to scrutinise fully the level of fees set.</td>
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| 6.  | The Committee believes that the setting of fees will have an impact on land registration and that, if these are set too high, this could act as a disincentive. There is a balance to be struck between the benefit of registration and the cost to the Keeper. The Committee notes the particular proposal to move to “time and line fees” that are not necessarily limited to the value of property and asks the Minister to clarify the Scottish Government’s position during the Stage 1 debate. **Paragraph 51** | The Minister confirmed in the Stage 1 debate that the Scottish Government is not considering moving to time and line charging for the majority of registrations. However, time and line charging may be considered for complex registrations of high value properties. Time and line charging is also under consideration in relation to services such as pre-registration title investigation.

As stated, the Scottish Government are considering introducing time and line charging for complex voluntary registration, where currently the cost of registration is not covered by the fee charged on the *ad valorem* scale. The Scottish Government can assure the Committee that it will consult widely with stakeholders before the introduction of a fee order which will introduce time and line charging for registration. |
| 7.  | The Committee agrees that maintaining one land register is a more efficient system. Given the very slow progress of land registration since the 1979 Act was introduced, the Committee recommends the setting of a target and interim targets, even if aspirational, on the face of the Bill. **Paragraph 58** | The Scottish Government understands the importance of completing the Land Register but does not favour the suggested approach of setting targets on the face of the Bill.

On one issue, one of the main ways of controlling the rate of registration, provided for in the Bill, is the phased closure of the Register of Sasines, first to Standard Securities, and thereafter to all deeds. The Scottish Government intends to consult stakeholders before taking such steps and has, in response to a recommendation of the Subordinate Legislation Committee, indicated an intention to bring forward a Stage 2 amendment including the requirement to consult on the face of the Bill. A copy of the Scottish Government response to the SLC is annexed to this response. The |
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<td>Government's view is that the result of this consultation should not be pre-judged by setting targets on the face of the Bill.</td>
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<td>Aside from the extra triggers for registration in the Bill, there are two ways in which the Government could speed up the pace of registration - by Keeper-induced registration and by promoting voluntary registration.</td>
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<td>The Minister and the Keeper are already doing a great deal to promote voluntary registration and the Government's view on the use of Keeper-induced registration has been set out at No. 3 above.</td>
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**Accuracy of the Land Register**

8. Despite the shortcomings of the Ordnance Map, the Committee accepts that, due to cost implications and the lack of a suitable alternative, it will continue to be used by the Keeper. It is clear that maps are a key part of the information kept and are not being used simply as "reference material". The Committee feel that if there is to be confidence in the content of the Land Register, it is essential that it contain the most accurate and reliable information possible and therefore it asks that the Keeper take all necessary steps to ensure that the information is both accurate and

The cadastral map requires to be based on a single national map to ensure that the rights of neighbouring properties across Scotland are taken into account. The Ordnance Survey map is the only large-scale map that provides coverage for the whole of Scotland.

The Law Society of Scotland and the Royal Institution of Chartered Surveyors have both said that in their view the OS map is fit for purpose. The OS map has been the base map since the introduction of the Land Register in 1981. For the vast majority of titles, there has not proved to be any problem with basing titles on the OS map.

The Bill makes the cadastral Map formally part of the Land Register for the first time. The Bill also requires the Keeper to ensure the Land Register is
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<td>reliable. Although there are continuing issues with the scale of the maps, the Committee is of the view that there are steps that the Keeper should take, such as taking a more involved approach to mapping mountain and moorland areas, making more use of supplementary plans as well as the facility to map rural areas in more detail, to increase confidence in the mapping information in the Register. Paragraph 78</td>
<td>accurate.</td>
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<td>9</td>
<td>The Committee recommends that supplementary plans, where they provide more accurate mapping information, should be used as a matter of course. This should include maps from the Register of Sasines when property switches from it to the Land Register. Plans on Sasine deeds which are to a larger scale than the OS map should be routinely preserved and appear as supplementary plans on the title sheet. Paragraph 79</td>
<td>Supplementary plans are often used already, where appropriate, and are always archived. The Keeper recognises the value of supplementary plans and will continue to use them and, in consultation with stakeholders, will consider where more extensive use of supplementary plans can be made.</td>
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<td>The Committee is concerned that the mapping of rural areas to a larger scale is continuing to cause difficulties and disputes and therefore recommends that the Keeper use supplementary plans and map rural areas to a</td>
<td>See the response to No. 9. The Ordnance Survey has a programme to remove much of the generalisation from 1:10,000 mapping and to upgrade pockets of rural-type landscapes in 1:10,000 areas to rural specifications. Supplementary plans are often used and are always archived. Under the Bill, the Keeper's archive will officially become part of the Land Register for the</td>
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<td>greater degree of detail as much as possible.</td>
<td>first time.</td>
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<td><strong>Paragraph 80</strong></td>
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<td>11.</td>
<td>The Committee also recommends that the Keeper, as a matter of course, include</td>
<td>Ordnance Survey benchmarks indicating height above sea level are currently shown on title plans. Plans officers take these into consideration when making the title plan. The Government considers this is an appropriate and proportionate method that enables these issues to be taken into account.</td>
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<td>the dimensions of the map on the title deed where there is a marked difference</td>
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<td>between the horizontal and the true slope distance. <strong>Paragraph 81</strong></td>
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<td>12.</td>
<td>The Keeper should also take all necessary steps to include the use of the</td>
<td>The Keeper already considers the use of new technologies as a means to improving quality.</td>
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<td>latest technology to ensure accuracy of the Land Register. <strong>Paragraph 82</strong>.</td>
<td>For example, the Registers of Scotland can and do use information based on geo-spatial data (as well as a variety of other sources of information) in the course of registration of titles to land. However, the use of new technology must be balanced by considerations of efficiency and effectiveness. To switch to using information exclusively based on geo-spatial data would mean many titles already in the Land Register would overlap with new titles, creating competition between titles due to the different mapping criteria used in each case.</td>
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<td>13.</td>
<td>Property on the Land Register is to continue to be identified by means of a</td>
<td>The Scottish Government notes the Committee's recommendation in this area and will keep the matter under active consideration. The Bill does not require the Ordnance Survey Map to be the base map precisely to allow the Keeper</td>
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<td>plan. As there is no longer a requirement for that plan to be based on the</td>
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<td>Ordnance Survey Map. <strong>Paragraph 83</strong></td>
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<td>on the Ordnance Map, the Committee recommends that the Keeper should be proactive in continuing to seek better mapping methods and alternatives. <strong>Paragraph 83.</strong></td>
<td>flexibility to utilise better alternatives where they become available.</td>
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<td>14.</td>
<td>The working group on mapping issues is asked to take the Committee’s mapping recommendations into consideration in its deliberations on how to improve the mapping information within the Land Register. The Committee also asks the Scottish Government to provide feedback on the progress of the working group as soon as possible. <strong>Paragraph 84</strong></td>
<td>The Scottish Government thanks the Committee for their interest in this matter and their request for feedback will be passed on to the working group. The working group on mapping issues consists of RICS, Ordnance Survey, Law Society and RoS staff, who are looking into these issues and recommendations. The Committee has a copy of the Keeper’s report of December 2011, which addresses these matters in greater detail. An example of the work of the mapping group is, in advance of the commencement of the Bill, to develop criteria for plans that are submitted with applications for First Registration. The Keeper will keep the Committee informed of developments.</td>
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**Electronic conveyancing and documents**

<p>| 15. | The Committee heard evidence that making the use of ARTL compulsory would exclude lay people from undertaking their own conveyancing, and on this ground rejected this idea. <strong>Paragraph 100</strong> | The Scottish Government has no intention of making ARTL compulsory.                                                                                               |</p>
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<td>16.</td>
<td>The Committee acknowledges the widespread support for the proposal for e-registration and welcomes the opportunity for Registers of Scotland to make registration easier and more accessible. The Committee agrees, however, that the ARTL system in its current form is inadequate for the task and welcomes the Minister's commitment to discuss the ARTL upgrade with the Keeper. <strong>Paragraph 102</strong></td>
<td>The Minister will discuss the ARTL system with the Keeper.</td>
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<td>17.</td>
<td>The Committee is aware that the uptake of the ARTL system has been disappointingly low and believes that to ensure value for money, and the success of any future system, user “buy-in” will be essential. To harness the current enthusiasm for e-registration, the Committee recommends that before the introduction of an upgraded or new system, the Keeper should from the very start of the design process both consult and test widely. <strong>Paragraph 103</strong></td>
<td>RoS will ensure an appropriate level of consultation and testing with stakeholders and end-users is undertaken in the development of new or upgraded electronic registration systems.</td>
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<td>18.</td>
<td>The Committee is concerned about the associated risks and costs of the proposed upgraded IT system to support e-registration</td>
<td>The Committee's concerns are noted and the Scottish Government and the Keeper give the reassurances sought.</td>
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<td>and would seek reassurances from the Keeper that any new IT contract would contain the necessary obligations to protect the public purse from future losses. The Committee agrees with the Auditor General’s view that ARTL be kept under review for value purposes and awaits the outcome of the Public Audit Committee’s inquiry with interest. <strong>Paragraph 104</strong></td>
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<td>19.</td>
<td>The Committee supports the move towards electronic documents as long as the necessary safeguards are in place. <strong>Paragraph 106</strong></td>
<td>The electronic safeguards currently in place with ARTL system are among the strongest in the world. The Government will ensure the safeguards in any successor system and safeguards relating to electronic documents more widely are equally robust.</td>
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<td><strong>Prescriptive Claimants</strong></td>
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<td>20.</td>
<td>Given the strength of the arguments heard against its inclusion, the Committee welcomes the Minister’s commitment to removing section 42(3)(a) from the Bill. <strong>Paragraph 118</strong></td>
<td>The Scottish Government thanks the Committee for its evidence gathering in this area. On reflection, the seven-year period would have been overly onerous on those seeking to take prescriptive title to land.</td>
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<td>21.</td>
<td>The Committee is of the view that, if a non-domino dispositions are to continue to be allowed, then there is a clear need for them to</td>
<td>The Government notes that this is why the power in 42(8) of the Bill has been provided for. The Government intends to keep the period under review and to consider the use of that power if experience shows the one-year period to be</td>
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**Recommendation**

- **Paragrah 104**: The Committee agrees with the Auditor General’s view that ARTL be kept under review for value purposes and awaits the outcome of the Public Audit Committee’s inquiry with interest.

**Response**

- **Paragraph 106**: The electronic safeguards currently in place with ARTL system are among the strongest in the world. The Government will ensure the safeguards in any successor system and safeguards relating to electronic documents more widely are equally robust.

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**Prescriptive Claimants**

- **Paragraph 118**: The Scottish Government thanks the Committee for its evidence gathering in this area. On reflection, the seven-year period would have been overly onerous on those seeking to take prescriptive title to land.

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**Prescriptive Claimants**

- **Paragraph 118**: The Committee notes that this is why the power in 42(8) of the Bill has been provided for. The Government intends to keep the period under review and to consider the use of that power if experience shows the one-year period to be...
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<td>be put on a statutory basis. It is satisfied that 1 year is a sufficient length of time to be in possession of land prior to registration. However, it would recommend that the Registers of Scotland keep this timescale under review and if in practice it was not long enough, we would ask the Scottish Government to consider extending the period by exercising its powers under section 42(8) of the Bill. <strong>Paragraph 120</strong></td>
<td>unsuitable.</td>
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22. The Committee agrees that it is not in the public interest for areas of land to lie unused. Land should not be given to the first claimant through prescriptive acquisition as there may be others who have a legitimate interest. Therefore we recommend that the Scottish Government consider the inclusion of a more public process of advertising land when there is an application for prescriptive acquisition. We consider that where multiple claims to land are regarded as having equal merit the general principle should always be that land should be put to the use which creates the greatest benefit to the community. We recommend that the Scottish Government consult on the options for putting this principle into practice. **Paragraph 132**

The Scottish Government has carefully considered the view of the Committee here and all of the evidence submitted on this topic. However, we remain of the view that the approach in the Bill is correct.

A *non domino* disposion and the concept of prescription regularising irregular titles has long been a part of Scots property law. The Bill introduces a statutory scheme outlining when the Keeper should accept an *a non domino* disposition for registration. It does not seek to restate or re-examine the policy decisions on which successive enactments on the law of prescription have been based.

Prescriptive acquisition can be used in two categories of case:

- it can be used to regularise title where, for example, a property has been owned by a family for generations but the formal legal links in title do not exist or are missing; and
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<td>• it can be used to take title to an area of land that has been abandoned.</td>
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<td>A system of advertising land in the first category of cases is not, in the Government's view, in the public interest. The family should be able to complete title, following the scheme in the Bill, without the threat of a third party bidding for their home.</td>
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<td>Neither is the Government convinced that requiring advertising would be beneficial in the second category of cases. If such a scheme was to be considered it would then require two separate schemes for the different categories of case. This would not be simple to devise, use or administer. There would be difficult cases, for example a large area of garden ground which one party claimed fell into the first category of case and another party claimed fell into the second category. Inevitably these could end up in lengthy and expensive court action while the land in question remained out of use.</td>
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<td>For these reasons the Scottish Government thinks the approach taken in the Bill, and designed by the Scottish Law Commission, including notification where appropriate, is correct.</td>
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**Common Land**

23. The Committee agrees with the objective sought by Mr Wightman, namely the protection of common land. However, the Committee also notes the alternative view that commonties are a

The Scottish Government believes that all forms of land ownership require protection. The Land Register does this by offering a State-backed guarantee of title. Title to land owned in common, including commonties, can be registered currently and will continue to be registrable under the Bill. As such
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<td>form of private land, and that an alternative means of securing Mr Wightman’s objective may be more appropriate. The Committee calls on the Scottish Government to respond to the basic principle that there is a need to achieve legal protection for common land, and examine possible options for achieving this. <strong>Paragraph 136</strong></td>
<td>there is already legal protection in place for common land. The law of prescription is based on the principle that those who, in effect, abandon their land to others cannot reasonably expect that the title to the land in which they show no interest should be protected forever. Accordingly, as well as the role of the Land Register, there is a role to be played by common owners in protecting their own title to land by continuing to occupy or use the land in question as appropriate.</td>
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<td>24.</td>
<td>In particular, the Committee asks the Scottish Government to express a view on:</td>
<td>In response to these particular questions:</td>
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<td>a) whether there is merit in the Bill being taken as an opportunity to repeal the Division of Commonties Act 1695;</td>
<td>a) The Scottish Government does not think there is merit in doing so. The Division of Commonties Act allows an area of commonty to be divided amongst the owners either (1) where holding the land as Commony no longer suits the parties or (2) to allow enclosure and cultivation of the land. In modern common ownership, a similar end may be achieved by an action of division or sale. It is not desirable to remove this right from the owners of Commonty.</td>
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<td>b) whether a duty should be placed on local authorities to identify and register a title to all commonties in the area for which they are responsible; and</td>
<td>b) A local authority cannot register a title to an area of Commonty in the Land Register. The Land Register shows ownership rights. If property is owned exclusively by a local authority then it cannot, by definition, be a Commony. Local authorities can register a title to land which they own and including land held by them as common good land. This is not the same as land held as Commony.</td>
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<td>c) how each commonty could be held for a public use which is consistent with its nature <strong>Paragraph 137</strong></td>
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<td>c)</td>
<td>Commony is private land owned by private individuals, despite the fact it is land owned in common. The Government considers that owners of any remaining areas of Commony have the same right to the benefit of that land as any other owner of property. Similarly, they will be subject to the same restrictions on how their land may be used as any other owner of land.</td>
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**Offence relating to application for registration**

25. The Committee notes the firm view given by both the Minister and the Solicitor General for Scotland that this new offence is required to combat fraud. However, the Committee also notes the strong objections from the legal fraternity to the inclusion of this offence on the grounds that it is disproportionate, it is unclear what steps solicitors would need to take to avoid committing this offence and that it is unnecessary as the offence is already covered by existing legislation. **Paragraph 153**

The Government notes the Committee's comments on the evidence but remains firmly of the view that fraud involving the Land Register is extremely serious and the Government is obliged to do all it can to disrupt such fraud. The Solicitor General and the Registers of Scotland have agreed to work with the legal profession to make it clear the scope of the offence and what conduct the offence is likely to capture. Officials from the Crown Office and Prosecutor Fiscal Service and Scottish Government have met with representatives from the Law Society to discuss the scope of the offence.

26. Whilst the Committee is content that section 108 remains in the Bill, the Committee welcomes the Minister’s commitment to look again at how it is worded and the Committee recommends that the Scottish Government amends the section to

The Government welcomes the Committee’s support for section 108 remaining in the Bill in principle. Officials from the Scottish Government have met again with representatives from the Law Society to discuss further the wording of the offence provision.
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<td>make it clear that it relates to fraud and does not cover genuine mistakes. <strong>Paragraph 154</strong></td>
<td>The Scottish Government is currently considering whether an amendment would be appropriate, and will bring forward amendments at stage 2 if so.</td>
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<td>27.</td>
<td>Furthermore, the Committee recommends that the Scottish Government makes the commencement of the powers in section 108 subject to the affirmative procedure in order to allow Parliament the means for further scrutiny and that, in any case, he provides guidance to solicitors on what is expected of them, consults on the section 108 provisions and reports back to the Committee after the consultation has been completed. <strong>Paragraph 155</strong></td>
<td>The Scottish Government is happy to undertake to develop and provide guidance relating to the offence and applications for registration, together with the Keeper, the Law Society and Crown Office as appropriate, and to do so prior to the offence coming into force. The Government will keep the Committee up to date on the development of that guidance. However, the Government does not consider it appropriate to make the commencement of section 108 subject to the affirmative procedure. To do so is unnecessary in light of these commitments and would be highly unusual. The preference is for insofar as possible bringing the Bill into force as a package.</td>
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<td>28.</td>
<td>Should the Parliament decide that the new offence is to remain in the Bill, the Committee recommends that the Scottish Legal Complaints Commission be asked to provide statistics on land registration offences in its annual report. <strong>Paragraph 156</strong></td>
<td>The Government is looking into the best way to keep statistics on the offence. However, it is considered that the appropriate body to keep track of any prosecutions is the Keeper, together with Crown Office.</td>
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<td><strong>Duty to take reasonable care</strong></td>
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| 29. | Section 107 of the Bill provides the Keeper with the power to claim compensation if the Register was to contain inaccurate information as a result of the content of an application being wrong. Legal practitioners agreed with this in principle, but raised concerns about the 'duty of care' lasting until completion of the registration process, which can sometimes be years. Fiona Letham, Dundas & Wilson suggested that the time period be reduced. She said—  

"I understand that the proposal now is that the duty of care should last until completion of the registration process. Given the length of time that some applications can take to be processed, that could be many years after the solicitor has dealt with the transaction, which would put quite an onerous duty on a solicitor."  

Ms Letham recommends that the time period be reduced to that outlined in the Commission’s original proposal—  

"... the duty of care to end either at the time of..." | It is in the public interest for the Land Register to be accurate and for solicitors and others to be required to provide accurate information throughout the registration process and not just up to the point of submission of an application.  

The Scottish Law Commission’s report states that one of the Commissioners favoured the continuation of the duty to the date the registration decision is made. The Bill takes this approach.  

It is important to note from the applicant’s point of view that the duty is one to take reasonable care. If an application is submitted and an issue with the title becomes apparent to the applicant or submitting solicitor, we would expect them to inform the Keeper. We think that is reasonable and the correct approach to take to maintain the accuracy of the Land Register.  

While it has been known in the past for applications for registration to take a number of years, this is now highly unusual. In addition, the Bill provides that Land Register Rules may prescribe the period within which the Keeper must make registration decisions. Accordingly, solicitors and applicants will know the maximum time period for the registration decision and, as a result, the maximum length of the duty. |
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<td>settlement of the transaction on the part of the grantor of the deed and their solicitor, or when the registration application is submitted, if it is the purchaser and their solicitor who are making the application.&quot;</td>
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<td>159.</td>
<td>The Committee notes the issues raised and asks the Scottish Government to consider these during Stage 2 of the Bill. Paragraph 159</td>
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**Errors in the Land Register**

30. The Committee appreciates that there will be errors in any system of land registration. However, given the importance of accuracy in the Land Register and the potential impact on consumers, it feels that every measure should be taken to ensure that errors are kept to a minimum. It agrees that both practitioners and the Registers of Scotland have a responsibility to ensure registration and land certificate information is accurate and therefore recommends that the Keeper put in place appropriate measures to improve quality control. **Paragraph 170**

The Scottish Government and the Keeper note the Committees recommendation and are committed to reducing errors wherever possible. Some of the ongoing work in this area is detailed at No. 32 below.
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<td>31.</td>
<td>The Committee recommends that to reduce basic errors at first registration related to the description of properties, shared properties and the existence of servitude rights, the Keeper should review current procedures and consider whether introducing a policy of checking adjoining properties for all registrations would be appropriate. <strong>Paragraph 171</strong></td>
<td>The Scottish Government notes the Committee’s concerns and assures the Committee that when there is a discrepancy with the legal title and an adjoining boundary, it is currently the Keeper's policy to check the archives for the plan of the affected adjoining property or properties. Sometimes this plan has to be ordered from the National Archives, which can take one to two days. Checking adjoining properties for all registrations, where there does not appear to be any problem, would make the process much longer and more expensive. We are not of the view that checking all adjoining properties for all registrations would be an efficient way of working.</td>
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<td>32.</td>
<td>The Committee believes that it is essential that the public has confidence in the accuracy of land certificates and would therefore caution not to increase the pace of completion of the Land Register at the expense of its quality. <strong>Paragraph 172</strong></td>
<td>The Scottish Government notes the Committee’s concerns and can assure the Committee that these are being addressed. In March 2010, RoS adopted a new policy to manage quality, based on internationally-recognised best practice standards. In the latter half of last year (2011), RoS started a process of sampling “dealing with whole” applications (that is properties already on the Land Register). This sampling focuses on the B and C section of Land Certificates. The aim is to ensure Land Certificates are correct when they are issued. More fundamentally, it is designed to pick up trends and establish where polices and practices have to be developed to ensure inaccuracies do not enter the Register. It is hoped that by the time the new triggers for First Registrations come into effect, these new polices and practices will be well-embedded and the accuracy and quality issues that practitioners may feel are currently an issue</td>
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<td>The Scottish Government agrees with the Committee about the unique position of the Lands Tribunal for Scotland. The Government is considering the possibility of amendments on this point, in relation to the Tribunal's powers in this area.</td>
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<td>This has the potential to offer a quicker mechanism to resolve property disputes, especially those brought to light as a consequence of Land Registration. That would depend though on the number of cases taken to the Tribunal, and the process would not necessarily be cheaper.</td>
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**Rectification and dispute resolution**

33. The Committee agrees that there is a need for a resolution process short of the courts so that disputes affecting title to registered land can be dealt with more quickly and possibly more cheaply. The Committee believes that the Lands Tribunal for Scotland is uniquely positioned to undertake this role and welcomes the Minister’s commitment to consider how it can be used to adjudicate over such disputes. **Paragraph 179**

**Withdrawal and amendments etc. of application**

34. The Committee believes that it is essential that the information contained within the Land Register is accurate. In light of this, it feels that it is reasonable for the Keeper to reject applications only where there is a serious error

The Committee's view is noted and the Scottish Government confirms the intention is for the Keeper to continue her current approach. Where significant work has been undertaken to register a complex title, it is in no-one’s interests for that to be lost (by virtue of a rejection) as a consequence of a minor error.
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<td>or omission and to continue to apply an informal approach to resolve minor issues. <strong>Paragraph 183</strong></td>
<td>The Scottish Government is happy to commit to publishing further guidance on advance notices before they come into use.</td>
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<td>The Committee ask for clarity on many advance notices will be required. In a purchase and standard security transaction, if both the purchaser and the lender wish to have the full protective effect of an advance notice, then two will be required. One for the disposition and one for the standard security.</td>
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<td>This is because the scheme, devised by the Scottish Law Commission, is based on one advance notice for one deed.</td>
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<td>The scheme has been devised by the SLC to work specifically with Scots property law. In the view of the Scottish Government, it is not appropriate to amend the fundamental basis of the scheme that one notice protects one deed. This risks complicating and undermining the scheme.</td>
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<td>The current letters of obligation system does not normally protect a standard security. As advance notices are optional it will be for lenders to take a view whether they consider registering a separate advance notice would be in their interests.</td>
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**Advance notices**

35. The Committee welcomes the introduction of the advance notice provisions. However, the Committee notes that whilst the explanatory notes provide examples of how these will work in practice, there still seems to be some confusion and therefore we recommend that the Scottish Government provides further guidance to assist understanding. It would also be helpful if the Minister was able to provide the clarity required by some of those who gave evidence on whether one or two advance notices would be required. **Paragraph 195**
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<td>36.</td>
<td>The Committee is aware that the Scottish Law Commission considered using the term “working days” and decided that “days” was a simpler concept. The Committee agrees that it would be helpful to avoid inconsistencies with systems used elsewhere in the UK and asks the Scottish Government to review the period of 35 days. <strong>Paragraph 196</strong></td>
<td>The Scottish Government understand the concern that the differing periods may cause difficulty for individuals or companies who deal with property in both Scotland and England. However, there are already significant differences in this area, not least separate systems of property law and registration of title. The Scottish Government consider the time period of 35 days to be appropriate. Simplicity and certainty are key in the advance notice system and the 35-day period is simple and certain. The issue of determining what is or is not a business day would add unnecessary complexity to the system. Moreover, there are different public holidays in Scotland and England, which would make any attempt to align the systems around working days extremely complicated.</td>
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**Tenements and other flatted buildings**

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<td>37.</td>
<td>The Committee agrees that a standard description of tenement properties would be a simple way to help avoid future conveyancing disputes. It recommends that the Scottish Government provides description guidance for flats and tenements and also considers the inclusion of plans when registering these types of properties. <strong>Paragraph 201</strong></td>
<td>Whilst the Scottish Government recognises the desirability of having a plan for tenement properties, they should not be required. Many old Sasine plans do not have a floor plan; some do not have a plan at all. To require a plan would mean the applicant would need to provide one at their expense. Floor plans can (and are) registered now but are not compulsory. This permissive approach will continue under the Bill. The conventional way for describing a flat within a tenement in a title sheet is to provide a verbal description of the location of the flat and the rights. A</td>
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<td>practice was developed which meant that the overall footprint of the tenement was mapped instead of the individual flats. This practice is known as the “steading method” of mapping. The Bill makes provision for the steading method to continue. In their report, the Scottish Law Commission noted that the steading method was a sensible approach to the realities of urban property in Scotland. In breakaway deeds recorded in the Register of Sasine, it is rare for the deeds for individual flats to include floor plans showing the location of flats within the tenement building and the rights pertaining thereto. For the future, the Bill includes a provision that allows the cadastral map to show the boundaries of cadastral units on a vertical plane. This will allow in the future for the Land Register to incorporate 3D mapping, which would show the true location of tenement flats.</td>
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**Shared plots**

<p>| 38. | The Committee notes the views both for and against the inclusion of this provision and recommends that the Minister respond at the Stage 1 debate to the concerns raised. Paragraph 209 | Shared plot titles are an innovation of the Bill and are a result of the cadastral concept of any area of ground being represented by one, and only one, cadastral unit. At present, the Keeper includes common areas in the titles of all sharing title sheets. Whilst this works for the Land Register as it is, it is not compatible with the cadastral concept. Shared plot title sheets allow the Keeper to reflect the ownership with reference to title numbers of the sharing plots without having instead to create |</p>
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<td>a full title sheet listing all the co-proprietors and any securities they may have over their property.</td>
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One advantage of having a separate shared plot title sheet for land owned by more than one person is that there will be less scope for mapping errors, as the area will only be mapped and referenced once, rather than with the current situation where the same area is reflected on many title sheets, with margins of error with each Title's version of the common area.

Another advantage is that in searching one registered property (a sharing plot) the reference to any shared plot title will be apparent. The shared plot will give details of all the registered titles that share in the ownership of the plot, making it much easier for people to determine who their co-owners are, for example, in a large new-build estate. Miller & Bryce gave evidence to the committee that this would be an improvement, aiding searches for their customers.

With regard to Brodies' concerns over the revocation of shared plot titles: under the Bill, the creation of shared plot titles is at the Keeper's discretion. Revocation of a shared plot whilst sharing plots exist would require the Keeper to show the shared area in all affected titles, as is currently the case.

If the shares in the shared plot all come to be owned by one owner then it ceases to be a shared plot and so the Keeper would convert the title to an ordinary title. All references to the shared plot in former sharing plot titles would be removed. The Bill allows for this. When shared plots have been abandoned they will still be shared plots until ownership is given up to one owner. Abandoned shared plots still have owners and that ownership will be reflected in the Land Register. Whilst shares exist in a shared plot, they can
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<td>continue to be reflected that way in the register. Ultimately, the legal status of owners in common is unaffected by how the Keeper chooses to represent those ownership rights in the register.</td>
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**Rights of person acquiring etc. in good faith**

39. The Committee feels that in the majority of circumstances, 1 year’s possession is sufficient. However, we feel that it may not be long enough in all circumstances, especially where large amounts of land or pieces of land spread out across the country are owned, for example by utility companies, and would therefore ask the Scottish Government to consider increasing the timescale. **Paragraph 213**

The Government has reflected on this matter but remains of the view that the one-year period strikes the right balance between protection of rights and facility of transfer. It should be borne in mind that the one-year period is not the only criterion to be fulfilled in order for the realignment provisions in Part 9 of the Bill to have effect. There must also be a transfer from a registered disponent without valid title to a third party in good faith and at no time can the Keeper become aware of the invalidity in title.

The scheme in the Bill is a significant improvement from the 1979 Act, which deprived true owners instantly of their ownership. It is also important to note that the Bill provides for compensation to those negatively affected by the provisions in Part 9 of the Bill.

**Beneficial interests and ownership**

40. The Committee notes the comments made by some of those who gave evidence that there

The Government has reflected on the Committee's comments. While recognising the concerns in this area, it considers that any proposal
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<td>needs to be greater transparency of ownership and the proposal for companies to be registered in the EU before they can register land in Scotland. We have some sympathy with the principle that it should be possible in most circumstances to find out who has ownership of a particular piece of land. <strong>Paragraph 217</strong></td>
<td>surrounding transparency of ownership of land by companies would be difficult to develop, as there is no clear concept of beneficial ownership in Scots law. There are also issues of company law that would be reserved to the UK Parliament under the terms of the Scotland Act. The Bill provides for completion of the Land Register. A completed Land Register is the best way to ensure that it is possible to find out who owns particular pieces of land.</td>
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<td>41.</td>
<td>However, we are not convinced that companies should need to be registered in the EU to register land in Scotland. <strong>Paragraph 218</strong></td>
<td>The Government shares the Committee's view.</td>
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<td>42.</td>
<td>We consider that the Scottish Government should reflect further on options for ensuring that the land registration system reduces the scope for tax evasion, tax avoidance and the use of tax havens, and that the Government should explain prior to Stage 2 what additional provisions can be included, whether in the Bill or otherwise, to achieve this objective. <strong>Paragraph 219</strong></td>
<td>The issues the Committee raises are important ones. However, the Government's view is that the function of land registration is to facilitate the creation of real rights in property and provide information on land ownership and encumbrances etc. The Bill makes no provision in relation to the tax matters raised, which would appear to relate to reserved matters. Nevertheless, officials from Scottish Government will be contacting officials from HMRC to determine if and how these issues may best be addressed.</td>
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<td>Accessibility of the Land Register</td>
<td>The Committee believes that a policy intention of the Bill should be to make access to information on land ownership easier for members of the public. It recommends that the Scottish Government considers how the information held by the Registers of Scotland can be made more publicly accessible, including the use of an online facility. The Committee suggests that if there is to be a fee for public access that it is kept as low as possible. <strong>Paragraph 223</strong></td>
<td>Currently, members of the public can access all information held by Registers of Scotland through its customer service teams. This can be done either in person by visiting one of the Customer Service Centres in Edinburgh or Glasgow, or by phone, fax or email. Searches can be requested via ros.gov.uk, which also provides a free House Price search facility. All these services are provided on a cost recovery basis as outlined in the fee order. Business users, such as solicitors, private searchers and local authorities, have access to RoS’ information through Registers Direct, which is an online business-to-business facility. Fees for RoS’ information services are set by Scottish Ministers via a Fee Order. While the Sasines Register exists, interpreting information contained within it requires a degree of familiarity that is difficult to deliver digitally to the consumer. This is much easier for land and property information contained in the Land Register, as there is less interpretation required. An aim of the Bill is to speed up the extension of the Land Register, which will ultimately lead to the closure of the Sasines Register. As the Keeper explained in Stage 1 evidence, RoS’s intention is to provide access to information to as wide an audience as possible, including members of the public. RoS is in the process of reviewing its digital strategy with a view to providing cost effective products and services for both business users and consumers through the most appropriate delivery channel. A key objective of that strategy will be making low-cost access to information on land</td>
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<td>ownerships digitally available when appropriate to members of the public.</td>
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**Miscellaneous Issues**

44. Section 1(5) outlines the steps the Keeper should take to protect the Register. The Committee was asked if the list could be extended to include "(d) inaccuracy, and (e) fraud." **Paragraph 225**

The Bill deals with the Keeper's role in relation to dealing with inaccuracy in Parts 5 and 8. The Scottish Government takes the accuracy of the registers extremely seriously. Section 78 specifically requires the Keeper to rectify a manifest inaccuracy where it is beyond doubt what is required to correct the inaccuracy. The Government's view is there is no benefit in confusing the clear statutory tests by changing section 1(5) in relation to inaccuracy as suggested.

Fraud affects the Land Register by registration of a fraudulent deed. Section 1(5) already requires the Keeper to protect the register from interference and damage. These include interference and damage by fraud.

45. Section 39 provides the Keeper with the discretion to decide who to notify when an application is accepted, rejected or withdrawn. In its written submission the Law Society of Scotland recommends that— "... notice of rejection or withdrawal of an application should be given to any other applicants affected by such a rejection or withdrawal and that this should not be at the Notification by the Keeper is desirable in most instances, within reasonable limits. To require notification in all cases without exception would be administratively burdensome and very possibly unworkable.

Where the effect of withdrawal or rejection of one application is to cause other applications to be cancelled, section 39(1)(a) and (b) will apply and the Keeper will notify that applicant of the other applications and notify the granter of the relevant deed (provided the Keeper considers it reasonably practicable to do so). Currently, the Keeper will notify the applicant in the majority of such
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<td>Keeper's discretion.&quot; <strong>Paragraph 226</strong></td>
<td>cases and it is not anticipated the Bill will alter this. An example of where notification is not appropriate is where the effect of withdrawal or rejection of one application on another is short of rejection (for example, where two standard securities are registered and rejection of the first merely means the second has prior ranking). In these cases notification would serve no real purpose. In any event, the rejection of the first security will be clear from the application and archive records.</td>
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<td>46.</td>
<td>In written evidence to the Committee, the Crown Estate requested a number of additions to the Bill which the Committee asks the Scottish Government to consider. <strong>Paragraph 227</strong></td>
<td>The Scottish Government has considered the points raised by the Crown Estate and responds as follows. The Crown Estate sought the addition of a presumption to section 42(3)(a) that, in relation to the 7-year abandonment period for prescriptive claimants, the Crown continued to possess foreshore, seabed or salmon fishings unless it can be expressly shown another party has been in active possession. As the Government is bringing forward a Stage 2 amendment to remove the seven-year period, there is, in the Governments view, no need for the suggested presumption that is related to the period. The Crown estate also requested there is added to section 42(4)(c) the following: &quot;declaring there shall be a presumption that the proprietor of any part of the territorial seabed is the Crown unless the application contains within it details of a Crown grant of the area to which the application relates&quot;. In the view of the Scottish Government, this is unnecessary. The provisions, as drafted, ensure the Crown will always be notified of an application over the seabed unless another proprietor (or person with right to complete title) can</td>
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<td>be identified. Additionally, the purpose of these provisions is to regulate applications to the Land Register, not to make presumptions about property law. The Crown Estate ask that &quot;where notice is to be given to the Crown, it shall be given to the Crown Estate Commissioners in respect of any land forming part of the regalia and it should be given to the Queen’s and Lord's Treasurer's Remembrancer in respect of land falling within either bona vacantia or ultimus heares&quot;. The Scottish Government consider reference to the Crown to be sufficient but, in light of the view expressed, are considering whether the provisions could be clarified. The Crown Estate ask for clarification that &quot;nothing in this Act has the effect of extending or restricting any statutory rights to buy under the Land Reform (Scotland) Act 2003 as applicable immediately before the date of this Act coming into force&quot;. The Scottish Government consider this to be clear without express provision in the Bill. Indeed to do so may result in an adverse inference being drawn in relation to similar enactments not expressly provided for. The Crown Estate suggest the following amendment &quot;section 1(4) of the Prescription and Limitation (Scotland) Act 1973 shall be amended by inserting before the word &quot;foreshore&quot; where it appears in line 1 the words &quot;seabed or&quot;. The Scottish Government are continuing to consider whether this amendment is possible or desirable.</td>
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<td>47.</td>
<td>The Law Society of Scotland requests in its written submission the inclusion of the following 2 provisions within the Miscellaneous and General Section of the Bill to address particular problems which have arisen—</td>
<td>Officials from the Scottish Government recently met with the Law Society regarding these two issues.</td>
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<td>&quot;Firstly, there should be clarification that s.160 of the <em>Bankruptcy &amp; Diligence etc (Scotland) Act 2007</em> does not alter the common law position and accordingly that Inhibitions registered against a seller after missives are concluded remain ineffective as the seller is already contractually bound to dispose of the property. This would remove the uncertainty caused by the Keeper's current policy of excluding indemnity in these circumstances. Secondly there should be clarification that s.26 of the <em>Conveyancing and Feudal Reform (Scotland) Act 1970</em> will operate to remove from the Title Sheet any remaining prior ranking or <em>pari passu</em> securities following a sale on repossession, even if the calling up procedure did not comply with the interpretation of the statutory requirements in the Supreme Court decision of <em>RBS v Wilson</em> in November 2010.&quot;</td>
<td>The Government notes the position of the Law Society on these issues but also notes that these issues are primarily about the laws of inhibition and the law of standard securities respectively rather than the law of land registration.</td>
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<td>Paragraph 228</td>
<td>One of the purposes of the Bill is to realign registration law with property law by, for example, removing the complex structure of bijuralism created by the <em>Land Registration (Scotland) Act 1979</em>. Any amendment that seeks to place a duty on the Keeper to complete a title sheet in a way that may be contrary to the underlying legal position would risk reintroducing the confusing principles of bijuralism that the Bill seeks to eliminate.</td>
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<td>In relation to the first issue, the Government’s view is that the scheme of advance notices provided for in the Bill goes some way towards solving the problem in a practical sense. An advance notice will protect a named deed from, amongst other things, competing entries in the ROI. An advance notice granted on conclusion of missives (or a day or two before) will protect the grantee from an inhibition registered before registration of the disposition for 35 days. As such, the grantee of such a disposition will be protected by the advance notice and will not be subject to the uncertainty that the Law Society highlights.</td>
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<td>In relation to the second issue, the Law Society appears to be asking for retrospective legislation to a problem in property law. The Government’s view is that this is not an appropriate solution because it potentially removes the rights of those who might be adversely affected by the retrospective</td>
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<td>legislation to seek redress. We do not think the case has been made that there could be no adverse impact on any lender. If the Keeper makes a decision that is wrong in law then that may be appealed, under the 1979 Act and the Bill. The Government views this as the appropriate way to deal with instances where there is disagreement with the Keepers interpretation of the law. To make such retrospective provision may be contrary to ECHR.</td>
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<td>48.</td>
<td>In its written submission, Scottish Land &amp; Estates requests the following change—</td>
<td>There are many landowners in Scotland, large and small, and, in the Government's view, imposing an obligation in the Bill for all of them to be consulted would be unduly onerous. Nevertheless, in advance of making an order under the Bill, the Government would seek to consult relevant stakeholders. In advance of making the Land Register Rules under the Bill, all relevant stakeholders, including Scottish Land and Estates, will be consulted.</td>
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<td>&quot;Sections 42(8), 42(9), 44(7) and 44(8). If the Scottish Ministers are to make an Order changing the number of days within which a Notice of Objection can be received, it is recommended that landowners (perhaps through stakeholder bodies) should be consulted as well as the Keeper.&quot; Paragraph 229</td>
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<td>49.</td>
<td>In its written submission, Brodies recommends the following change to section 36 of the Bill. It asked whether the Scottish Government would—</td>
<td>To a large extent, linking registration to a particular time is dependent on technology systems and processes allowing for it. There is provision in the Bill for the Scottish Ministers to amend section 36(2) so as to make different provision as regards time of registration. Any such different provision will be dependent upon factors such as available technology and systems. In the Government's view this is the right approach to take.</td>
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<td>&quot;. . . welcome a similar facility to that used in England whereby the time of registration is noted in a title as well as the date of registration. This would assist with any issues relating to order of presentment.&quot; Paragraph 230</td>
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Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 20  Schedule 1
Sections 21 to 51  Schedule 2
Sections 52 to 94  Schedule 3
Sections 95 to 114 Schedule 4
Section 115  Schedule 5
Sections 116 to 120 Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 7

Rhoda Grant
Supported by: John Park

4  In section 7, page 3, line 12, after <proprietor,> insert—
   <(  ) such additional information in relation to the proprietor as may be required under land register rules,>

Section 10

Fergus Ewing

7  In section 10, page 4, line 23, leave out from <if> to end of line 24 and insert <made under section (References to certain entries in Register of Inhibitions)(2),>

Section 22

Patrick Harvie

48  In section 22, page 9, line 35, at end insert—
   <(  ) the application includes information enabling all those persons who gain economic benefit from proprietorship of the plot to be identified,>

Section 25

Fergus Ewing

8  In section 25, page 12, line 22, after <subordinate> insert <real>
After section 31

Fergus Ewing

After section 31, insert—

<References to certain entries in Register of Inhibitions>

(1) Subsection (2) applies where—
   (a) the Keeper accepts an application for registration under section 21, and
   (b) the validity of the deed to which the application relates might be affected by an
       entry in the Register of Inhibitions.

(2) The Keeper must, as soon as reasonably practicable after accepting the application, enter
    a reference to the entry in the title sheet.

(3) Subsection (2) does not apply where the entry mentioned in subsection (1)(b) is—
   (a) a notice of land attachment (within the meaning of section 83(1) of the
       Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3)), or
   (b) a notice of a signeted summons in an action of reduction of a deed granted in
       breach of inhibition.>

Section 38

Fergus Ewing

In section 38, page 17, line 31, at end insert—

<( ) Subsection (7) also applies where—
   (a) two applications (“application C” and “application D”) are received on the same
       date in relation to the same land,
   (b) one application (application C) is an application under section 27, and
   (c) the other (application D) is an application under section 21.>

Section 42

Patrick Harvie

In section 42, page 19, line 13, leave out <(4)> and insert <(4A)>

Fergus Ewing

In section 42, page 19, leave out lines 18 to 26 and insert <that the land to which the application
relates (or as the case may be the part in question) has been possessed openly, peaceably and
without judicial interruption—
   (a) by the disponer or the applicant for a continuous period of 1 year immediately
       preceding the date of application, or
   (b) first by the disponer and then by the applicant for periods which together
       constitute such a period.>
Patrick Harvie

50 In section 42, page 19, line 33, at end insert—

<( ) every local authority any part of whose area is within the plot to which the application relates,
( ) every community council any part of whose area is within the plot to which the application relates,
( ) each member of—
   (A) a local authority,
   (B) the Scottish Parliament,
   (C) the House of Commons, and
   (D) the European Parliament,
who represents a ward, constituency or region any part of which lies within the plot to which the application relates, and
( ) such other persons as may be prescribed by land register rules, being representative of the interests of those who live, work or carry on business in the area in the vicinity of the plot to which the application relates.>

Patrick Harvie

51 In section 42, page 19, line 33, at end insert—

<(4A) The applicant satisfies the Keeper that notifications required under subsection (4) have been issued at least 60 days before the application.>

Fergus Ewing

12 In section 42, page 20, line 6, leave out <paragraph (a) or (b) of>

Fergus Ewing

13 In section 42, page 20, line 7, leave out <in the sub-paragraph in question> and insert <there>

Section 44

Patrick Harvie

52 In section 44, page 20, line 28, at end insert—

<( ) every local authority any part of whose area is within the plot to which the application relates,
( ) every community council any part of whose area is within the plot to which the application relates,
( ) each member of—
   (A) a local authority,
   (B) the Scottish Parliament,
   (C) the House of Commons, and
(D) the European Parliament,
who represents a ward, constituency or region any part of which lies within
the plot to which the application relates, and

( ) such other persons as may be prescribed by land register rules, being
representative of the interests of those who live, work or carry on business
in the area in the vicinity of the plot to which the application relates.>

Section 47

Fergus Ewing

14 In section 47, page 22, line 3, at end insert <, and

( ) such other persons appearing to have an interest in the closure of the Register of
Sasines to the recording of deeds as the Scottish Ministers consider appropriate.>

After section 47

Patrick Harvie

53 After section 47, insert—

<Completion of the register: target dates

Completion of the register: target dates

(1) The Scottish Ministers must, by order, set—

(a) a date by which 80% of the land in Scotland is to be included on the register, and

(b) a date by which all of the land in Scotland is to be included on the register.

(2) The first order under subsection (1) must be laid before the Scottish Parliament within 6
months after the date the Bill for this Act receives Royal Assent.

(3) The Scottish Ministers and the Keeper must exercise their respective functions under
this Act in the way best calculated to achieve the completion or as the case may be
interim completion of the register by the dates set under subsection (1).

(4) The Scottish Ministers may, by order, modify either or both of the dates set under
subsection (1).>

Patrick Harvie

54 After section 47, insert—

<Report on progress towards completion of the register

(1) The Scottish Ministers must, as soon as practicable after the end of each period of 3
years beginning on the date the Bill for this Act receives Royal Assent, lay before the
Scottish Parliament a report on progress towards completion of the register.

(2) Each report must include—

(a) an assessment of whether there are particular types of land in relation to which
progress towards completion of the register is slower than it is in relation to other
types of land,
(b) an assessment of the extent to which the proprietorship of land held in any form of common ownership has been identified and included in the register,
(c) an assessment of any barriers that have been identified in relation to completion of the register, and
(d) a statement of the actions that the Scottish Ministers and the Keeper intend to take to ensure progress towards completion of the register.

Section 58

Fergus Ewing

In section 58, page 28, line 29, leave out subsections (4) to (7)

After section 58

Fergus Ewing

After section 58, insert—

<Effect of advance notice: recorded deeds>

(1) Subsections (2) and (3) apply in relation to any two deeds (“deed Y” and “deed Z”) relating to the same plot of land where, during a protected period relating to deed Y—
(a) deed Z is recorded in the Register of Sasines, and
(b) on or after the date of recording, an application is made for registration of deed Y.

(2) The decision as to whether or not to accept the application for registration of deed Y is to be taken as if deed Z had not been recorded.

(3) If the decision mentioned in subsection (2) is to accept the application—
(a) deed Y has on registration the same effect as if deed Z had not been recorded, and
(b) in making up the title sheet for the plot, the Keeper must give effect (if any) to deed Z as if it were not recorded but registered after deed Y.

Fergus Ewing

After section 58, insert—

<Effect of advance notice: further provision>

(1) A deed to which an advance notice relates, if registered on a date which falls within the protected period, is not subject to—
(a) an inhibition registered in the Register of Inhibitions against the granter and taking effect before that date but during that period, or
(b) anything registered or recorded in that register and taking effect, before that date but during that period, as if an inhibition registered against the granter.

(2) Sections 58 and (Effect of advance notice: recorded deeds) apply irrespective of whether a deed is voluntary or involuntary.

(3) Sections 58 and (Effect of advance notice: recorded deeds) do not apply in relation to—
(a) a notice registered, or intended or sought to be registered, under—
(i) section 10(2A) of the Title Conditions (Scotland) Act 2003 (asp 9), or
(ii) section 12(3) of the Tenements (Scotland) Act 2004 (asp 11), and
(b) such other deeds as the Scottish Ministers may by order specify.

(4) Before making an order under subsection (3)(b), the Scottish Ministers must consult the Keeper.

Section 60

Fergus Ewing
18 In section 60, page 29, line 22, at end insert <and
( ) if the notice has not already been entered in the archive record, enter it in
that record,>

Section 62

Fergus Ewing
19 In section 62, page 30, leave out line 4

Section 64

Fergus Ewing
20 In section 64, page 30, line 30, after <register> insert <, or
( ) what is needed to rectify an inaccuracy in the register,>

Fergus Ewing
21 Move section 64 to after section 79

Section 71

Fergus Ewing
22 In section 71, page 33, line 36, at end insert—
<( ) in the case of an application under section 27, in so far as it shows the
applicant to be the proprietor or proprietor in common of a plot of land
more extensive than the plot registration of which the application bore to
effect, or>

Section 72

Fergus Ewing
23 In section 72, page 34, line 14, leave out <(other than paragraph (h))>
Fergus Ewing

24 In section 72, page 34, line 16, leave out <References in section 71(2)> and insert <Subsection (2) of section 71 is subject to the following modifications—

(a) for paragraph (h) substitute—

“(h) in the case of registration by virtue of section 25, the title sheet is accurate in so far as it shows the owner to be the proprietor or proprietor in common of a plot of land more extensive than the area of land which forms the subjects of the lease, to which the deed relates or, as the case may be, in respect of which the subordinate real right is constituted,

(ha) in the case of registration under section 29, the title sheet is accurate in so far as it shows the owner to be the proprietor or proprietor in common of a plot of land more extensive than the plot the Keeper sought to register, or”,

(b) references in that subsection>

Section 77

Fergus Ewing

25 In section 77, page 36, line 29, leave out <Land register rules may> and insert <The Scottish Ministers may by regulations>

After section 79

Mike MacKenzie

43 After section 79, insert—

<Referral of questions to Lands Tribunal

Referral to the Lands Tribunal for Scotland

(1) A person with an interest may refer a question relating to—

(a) the accuracy of the register, or

(b) what is needed to rectify an inaccuracy in the register, to the Lands Tribunal for Scotland.

(2) The Lands Tribunal must, on determining the question, give notice to—

(a) the applicant,

(b) any other person appearing to them to have an interest, and

(c) the Keeper.

(3) This section is without prejudice to any other right of recourse, whether under an enactment or under a rule of law.>
Section 80

Fergus Ewing

26 In section 80, page 38, line 15, leave out <Land register rules may> and insert <The Scottish Ministers may by regulations>

Section 91

Fergus Ewing

27 In section 91, page 43, line 37, leave out <Land register rules may> and insert <The Scottish Ministers may by regulations>

Section 93

Fergus Ewing

28 In section 93, page 47, line 20, after <which> insert <—

( ) make provision of the kind mentioned in subsection (1)(b), or

( )>

Schedule 3

Fergus Ewing

29 In schedule 3, page 67, line 10, at end insert—

<( ) after subsection (1)(b) insert—

“(ba) to register a traditional document in the Land Register of Scotland,”,

( ) for subsection (3)(a) substitute—

“(a) a document’s—

(i) being recorded in the Register of Sasines, or

(ii) being registered in the Land Register of Scotland, in the Books of Council and Session or in sheriff court books,

if an enactment requires or expressly permits such recording or registration notwithstanding that the document is not presumed to have been subscribed by the granter or by at least one of the granters,”,

( ) in subsection (3)(b), after “Sasines” insert “or the registering of such a decree in the Land Register of Scotland”.

Fergus Ewing

30 In schedule 3, page 69, line 2, at end insert—

<In section 13 (Crown application), in subsection (1)(c), after “Sasines” insert “, registered in the Land Register of Scotland”.

8
After section 98

Rhoda Grant
Supported by: John Park

After section 98, insert—

The proprietorship section of the title sheet: further provision

(1) The Keeper must, where the proprietor is of a class specified in land register rules, enter in the proprietorship section of the title sheet such additional information in relation to the proprietor as may be specified in the rules, if—

(a) a person applies to the Keeper for such information to be added, and
(b) such fee as is payable for adding it is paid or arrangements satisfactory to the Keeper are made for payment of that fee.

(2) Where, under this section, the Keeper is required to enter additional information in the proprietorship section of a title sheet, the proprietor must provide the Keeper with such information as the Keeper considers is reasonably required, within such reasonable time and in such manner as may be specified by the Keeper.

Section 106

Murdo Fraser

In section 106, page 53, line 21, at end insert—

An order under this section may not provide for fees to be payable in relation to registration under section 29.

Section 107

Murdo Fraser

In section 107, page 54, line 16, at end insert—

The duties under—

(a) subsection (1) subsist until delivery of the deed,
(b) subsection (3) subsist until the application is delivered to the Keeper.

Section 108

Murdo Fraser

In section 108, page 54, line 27, leave out <, or being reckless as to whether,>

Murdo Fraser

In section 108, page 54, line 30, leave out from <or> to end of line
Fergus Ewing  
31 In section 108, page 55, leave out lines 4 and 5

Murdo Fraser  
46 In section 108, page 55, line 5, at end insert—

<(  ) followed, where the accused is a person mentioned in subsection (2)(b), all relevant regulations and guidance—
(a) issued or referred to by the Law Society of Scotland or, as the case may be, an approved regulator under section 7 of the Legal Services (Scotland) Act 2010 (asp 16), and
(b) in force at the time the alleged offence took place.>

Fergus Ewing  
32 In section 108, page 55, leave out lines 14 to 16 and insert—

<(a) in proceedings on indictment, at least 14 clear days before the preliminary hearing (where the case is to be tried in the High Court) or the first diet (where the case is to be tried in the sheriff court),
(b) in summary proceedings—
(i) where an intermediate diet is held, at or before that diet,
(ii) where no such diet is held, at least 10 clear days before the trial diet.>

Fergus Ewing  
33 In section 108, page 55, line 16, at end insert—

<(  ) Subsection (6) does not apply where—
(a) the accused lodges a defence statement—
(i) under section 70A of the Criminal Procedure (Scotland) Act 1995 (c.46), or
(ii) under section 125 of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) in accordance with the time limits mentioned in subsection (7)(b), and
(b) the accused’s defence involves an allegation that the commission of the offence was due to reliance on information supplied by another person.>

Murdo Fraser  
3 Leave out section 108

After section 108

Murdo Fraser  
47 After section 108, insert—
Review of operation of section 108

(1) The Scottish Ministers must appoint a person (“the independent reviewer”) to review the operation of section 108 in each calendar year, beginning with the first complete calendar year after the Bill for this Act receives Royal Assent.

(2) Each review must be completed as soon as practicable after the end of the calendar year to which the review relates.

(3) The independent reviewer must send a report on the outcome of each review to the Scottish Ministers.

(4) A report under subsection (3) must in particular—
   (a) set out the objectives intended to be achieved by section 108,
   (b) assess the extent to which those objectives have been achieved in the calendar year to which the report relates,
   (c) assess whether those objectives remain appropriate and if so to what extent,
   (d) set out the conclusions of the review.

(5) On receiving a report under subsection (3) the Scottish Ministers must lay a copy of the report before the Scottish Parliament.

(6) The Scottish Ministers may pay to the independent reviewer such allowances and expenses as the Scottish Ministers may determine.

Section 111

Rhoda Grant
Supported by: John Park

6 In section 111, page 58, line 9, at end insert—

<(  ) requiring the Keeper, where the proprietor is of a class specified in the rules, to enter in the proprietorship section of the title sheet such additional information in relation to the proprietor as may be specified in the rules,>

Section 112

Fergus Ewing

34 In section 112, page 58, line 23, at end insert—

<(  ) section 47(2) or (3),>

Fergus Ewing

35 In section 112, page 58, line 23, at end insert—

<(  ) section 55(4),>

Fergus Ewing

36 In section 112, page 58, leave out line 24
In section 112, page 58, leave out line 25

In section 112, page 58, leave out line 33

In section 112, page 58, line 33, at end insert—

<(  ) section (Completion of the register: target dates)(1) or (4),>

In section 112, page 58, leave out line 34

In section 112, page 58, line 35, at end insert—

<(  ) section (Effect of advance notice: further provision)(3)(b),>

In section 112, page 58, line 35, at end insert—

<(  ) section 61(1),>

In section 112, page 58, line 36, at end insert—

<(  ) section 77(4),
(  ) section 80(7),
(  ) section 91(4),>
Land Registration etc. (Scotland) Bill

Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted.

Groupings of amendments

Additional information in relation to proprietors
4, 48, 5, 6

References to entries in Register of Inhibitions
7, 9

Conditions of registration: references to the plot
8

Order in which applications for registration are dealt with
10

Prescriptive claimants: notification
49, 50, 51, 52

Prescriptive claimants: conditions on period of possession
11, 12, 13

Closure of Register of Sasines: consultation and procedure
14, 34, 38

Completion of the register: target dates etc.
53, 54, 55

Advance notices
15, 16, 17, 18, 35, 36, 37, 39, 40, 41

Inaccuracy: provisional entries
19

Proceedings involving accuracy of the Register
20, 21
Exclusions from Keeper’s warranty
22, 23, 24

Compensation: rate of interest
25, 26, 27, 42

Referral of questions to the Lands Tribunal
43

Requirements of writing
28, 29, 30

Keeper-induced registration: fees
1

Duties of certain persons
2

Offence relating to applications for registration
44, 45, 31, 46, 32, 33, 3, 47
ECONOMY, ENERGY AND TOURISM COMMITTEE

EXTRACT FROM THE MINUTES

14th Meeting, 2012 (Session 4)

Wednesday 2 May 2012

Present:

Chic Brodie      Murdo Fraser (Convener)
Patrick Harvie     Angus MacDonald
Mike MacKenzie     Stuart McMillan
John Park      John Wilson (Deputy Convener)

Apologies were received from Rhoda Grant.

Also present: Fergus Ewing, Minister for Energy, Enterprise and Tourism

Land Registration etc. (Scotland) Bill: The Committee considered the Bill at Stage 2.

The following amendments were agreed to (without division): 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41 and 42.

The following amendments were disagreed to (by division):

4 (For 2, Against 6, Abstentions 0)
48 (For 2, Against 6, Abstentions 0)
49 (For 2, Against 6, Abstentions 0)
50 (For 2, Against 6, Abstentions 0)
51 (For 2, Against 6, Abstentions 0)
52 (For 2, Against 6, Abstentions 0)
53 (For 2, Against 5, Abstentions 1)
54 (For 2, Against 5, Abstentions 1)
5 (For 2, Against 6, Abstentions 0)
1 (For 1, Against 7, Abstentions 0)
2 (For 1, Against 6, Abstentions 1)
44 (For 1, Against 6, Abstentions 1)
46 (For 1, Against 6, Abstentions 1)
47 (For 1, Against 6, Abstentions 1)
6 (For 2, Against 6, Abstentions 0).

The following amendments were not moved: 45, 3 and 55.

The following provisions were agreed to without amendment: sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20, schedule 1, sections 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 41, 43, 44, 45, 46, 48, 49, 50 and 51, schedule 2, sections 52, 53, 54, 55, 56, 57, 59, 61, 63, 65, 66, 67, 68, 69, 70, 73, 74, 75, 76, 78, 79, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 92, 94, 95, 96, 97,

The following provisions were agreed to as amended: sections 10, 25, 38, 42, 47, 58, 60, 62, 64, 71, 72, 77, 80, 91 and 93, schedule 3, and sections 108 and 112.

The Committee completed Stage 2 consideration of the Bill.
Land Registration etc (Scotland) Bill: Stage 2

The Convener (Murdo Fraser): Welcome to the 14th meeting in 2012 of the Economy, Energy and Tourism Committee. I welcome the Minister for Energy, Enterprise and Tourism and his team. I was going to welcome members of the public but, for some strange reason, those who packed the public gallery last week have not made a return visit. I do not know whether that is something to do with your appeal, minister, or whether there is some other reason.

I remind all members to turn off their mobile phones and other BlackBerry-type devices. We have apologies from Rhoda Grant.

We have one item to deal with this morning: stage 2 of the Land Registration etc (Scotland) Bill. I will make a few remarks about how the meeting will be conducted. All members should have with them a copy of the bill as introduced, the marshalled list of amendments that was published on Monday and the groupings paper, which sets out the amendments in the order in which they will be debated.

The running order is set by the rules of precedence that govern the marshalled list. Members should remember to move between the two papers. I will call all amendments in strict order from the marshalled list; we cannot move backwards on the list.

There will be one debate on each group of amendments. I will call the member who lodged the first amendment in a group to speak to and move that amendment and to speak to all the other amendments in the group. Members who have not lodged amendments in the group but who wish to speak should indicate that by attracting my attention in the usual way. The debate on the group will be concluded by my inviting the member who moved the first amendment in the group to wind up. If the minister has not spoken in the debate on the group of amendments, I will invite him to do so just before I move to the winding-up speech.

Following debate on each group, I will check whether the member who moved the first amendment in the group wishes to press it to a vote or to withdraw it. If they wish to press ahead, I will put the question on that amendment.

If any member wishes to withdraw their amendment after it has been moved, they must seek the committee’s agreement to do so. If any committee member objects, the committee will immediately vote on whether to agree to the amendment, without a division on whether to withdraw it.

If any member does not want to move their amendment when called, they should say, “Not moved.” Please note that any other MSP may move such an amendment under rule 9.10.14 of the standing orders. If no one moves the amendment, I will immediately call the next amendment on the marshalled list.

Only committee members are allowed to vote. Voting in any division is by show of hands. It is important that members keep their hands clearly raised until the clerk has recorded the vote.

By convention, the convener of the committee has a casting vote in the event of a tie. I intend to use it on the basis of the balance of the arguments that were heard in the debate.

I remind members of my interest, in that I am a member of the Law Society of Scotland.

Minister, do you wish to say something by way of introduction?

The Minister for Energy, Enterprise and Tourism (Fergus Ewing): No.

The Convener: In that case, we will proceed.

Sections 1 to 6 agreed to.

Section 7—The proprietorship section of the title sheet

The Convener: The first group of amendments concerns additional information in relation to proprietors. Amendment 4, in the name of Rhoda Grant, is grouped with amendments 48, 5 and 6. In the absence of Rhoda Grant, I assume that John Park will move the amendment.

John Park (Mid Scotland and Fife) (Lab): Amendments 4 to 6 are designed to include provisions in the bill that will enable us to get further information about land ownership, which is an issue that came up regularly during the committee’s deliberations on the bill. I know that the issue has a resonance not only in the Parliament, but across Scotland.

The provisions in section 7 lay down the base rules to get further information about the proprietor. The amendments seek to ensure that a requirement is placed on the keeper of the registers of Scotland.
In recognition of some of the challenges that are involved, one of the amendments seeks to establish an important principle in relation to the type of detailed information about beneficial ownership that we will require in the future. The amendment is designed in recognition of the fact that it would be challenging to get information on a retrospective basis.

I move amendment 4.

Patrick Harvie (Glasgow) (Green): Amendment 48, in my name, is intended to deal with the same issue that Rhoda Grant’s amendment 4 addresses.

During stage 1, the committee heard a number of different options for how to address the general principle that we need to be able to acquire more information about the real ownership of land in Scotland. In our stage 1 report, we expressed sympathy with that principle. We did not agree with any particular model, but we said:

“We consider that the Scottish Government should reflect further on options for ensuring that the land registration system reduces the scope for tax evasion, tax avoidance and the use of tax havens, and that the Government should explain prior to Stage 2 what additional provisions can be included, whether in the Bill or otherwise, to achieve this objective.”

It might be that the minister will feel that neither my suggestion of an amendment to require additional information about ownership at the point of application for registration, nor Rhoda Grant’s suggestion is the way to go, but I hope that he will use this opportunity to tell us the extent to which the Government has reflected on those issues, following our stage 1 report, and whether he considers that any changes to the bill could help to achieve the objectives that we set out in our report. We are in a time when even the Chancellor of the Exchequer describes tax avoidance as morally repugnant. I hope that we can all agree on that.

Fergus Ewing: Amendments 4 to 6, in the name of Rhoda Grant, would allow land register rules to specify additional information in relation to a proprietor. The intention would be that the Scottish ministers would make rules with the effect that that information would be added to the proprietorship section of the land register.

Amendment 48, lodged by Patrick Harvie, would require an application for land registration to include information identifying everyone who gains an economic benefit from land ownership.

It appears to me that the amendments are an attempt to deal with an issue that was identified at stage 1 about the beneficial ownership of land. Indeed, Mr Harvie has confirmed that to be the case. The apparent mischief that Rhoda Grant and Patrick Harvie seem to be seeking to prevent is that people might, arguably, through the use of companies that are registered in offshore tax havens, hide the fact that they own land in Scotland. It is believed that that might be done for tax-avoidance reasons.

I do not believe that the amendments would cure those ills, if that is indeed what they are. In fact, the result is more likely to be a disincentive to people buying and selling land in Scotland and, indeed, an unworkable system of land registration for the keeper of the registers.

In particular, the requirement to disclose the true owner of a foreign company that is seeking to invest in Scotland might well lead to that company deciding that Scotland is not a place where it would wish to do business. That is not something that we wish to see. Also, if shares in such a company are traded on a daily basis, as would be the case in most publicly quoted companies throughout the world, the effect of the amendments would be that the keeper would have to adjust the land register on a daily basis to reflect who owns the land. That is a matter of indisputable legal fact.

That would lead to the creation of a bureaucracy of gargantuan proportions, serving no purpose whatsoever. Having to carry out such work would, in my opinion, require hundreds of extra staff at the land register and would lead to an extraordinary and completely pointless increase in the level of fees paid by ordinary users of the land register of Scotland, who use it for the purpose, by and large, of purchase and sale of properties.

I add that the bill as it stands can already provide for what Rhoda Grant’s amendments seek to achieve. I wish to be helpful by pointing members’ attention to section 111(1)(e) of the bill, which I am sure they will have noticed. Section 111(1) provides that

“The Scottish Ministers may, by regulations, make land register rules—”

and paragraph (e) states:

“requiring the Keeper to enter in the title sheet record such information as may be specified in the rules or authorising or requiring the Keeper to enter in that record such rights or obligations as may be so specified”.

I think that that provision allows the keeper to enter into the register any information as may be specified. Plainly, that allows an opportunity for what Mr Harvie seeks to do or what Mr Park and Ms Grant seek to do to be further considered by means of subordinate legislation. In future, if the Parliament perceived there to be a need for the land register to include additional information, that could therefore be added to the rules if a workable mode of doing so could be found and if it were felt desirable to do so. However, for the reasons that I
have set out, very careful consideration would have to be given before using those powers.

I am particularly concerned about the presumably unintended consequences of Patrick Harvie’s amendment 48. Those are that an applicant for land registration would have to provide information not only about who owns the land, but about anyone who gains an “economic benefit” from it. For example, if a landowner allows someone to operate a business on the land, the amendment appears to require all those people to be identified in the land registration application. An example from Mr Harvie’s own region of Glasgow is that, if someone wished to buy the Barras, the application for land registration of the property would have to identify every market trader.

I urge Mr Harvie and Mr Park to consider withdrawing or not moving their amendments.

The Convener: I ask John Park to wind up and indicate whether he will press or withdraw his amendment.

John Park: I understand that “gargantuan” means quite a lot of regulations. I think that is the message that the minister was trying to convey to us at that point.

Although I acknowledge the minister’s point about the power being available under the bill to make further provisions in future, we are trying to recognise the live concern and aspiration of people outwith the Parliament that has been expressed in evidence to the committee, and to address the issue now. With that in mind, I will press the amendment.

The Convener: The question is, that amendment 4 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Harvie, Patrick (Glasgow) (Green)
Park, John (Mid Scotland and Fife) (Lab)

Against
Brodie, Chic (South Scotland) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
MacDonald, Angus (Falkirk East) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Wilson, John (Central Scotland) (SNP)

The Convener: The result of the division is: For 2, Against 6, Abstentions 0.

Amendment 4 disagreed to.

Section 7 agreed to.
Sections 8 and 9 agreed to.

Section 10—What is entered or incorporated by reference in a title sheet

The Convener: The next group of amendments is on references to entries in the register of inhibitions. Amendment 7, in the name of the minister, is grouped with amendment 9.

10:15

Fergus Ewing: I declare my interest as a member of the Law Society of Scotland, albeit a non-practising one.

Amendments 7 and 9 are minor technical amendments that have been introduced to clarify how entries in the register of inhibitions should be disclosed on the land register and when they should be entered on that register.

The keeper’s policy and practice has been to disclose entries in the register of inhibitions on a land register title sheet when it appears to the keeper that the entry may have an effect on the validity of a deed that has been submitted for registration. In the Scottish Law Commission’s report on land registration, it recommended that that practice should be provided for in the bill.

Section 10(2)(c) of the bill introduced that recommendation, but on further reflection it was not clear what the keeper must do to reflect entries in the register of inhibitions on the land register and when they must be shown. Amendments 7 and 9 clarify what the keeper must do in those situations.

The main amendment in this group is amendment 9. It clarifies that the keeper should reflect an entry in the register of inhibitions on a title sheet only when subsequently registering a deed, the validity of which might be affected by the register of inhibitions entry. That will be achieved by entering a note on a title sheet after the decision has been taken to register a deed. Amendment 7 is consequential to the changes made by amendment 9.

I move amendment 7.

Amendment 7 agreed to.
Section 10, as amended, agreed to.
Sections 11 to 20 agreed to.
Schedule 1 agreed to.
Section 21 agreed to.

Section 22—General application conditions
Amendment 48 moved—[Patrick Harvie].

The Convener: The question is, that amendment 48 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
The Convener: The result of the division is: For 2, Against 6, Abstentions 0.

Amendment 48 disagreed to.

Section 22 agreed to.

Sections 23 and 24 agreed to.

Section 25—Conditions of registration: certain deeds relating to unregistered plots

The Convener: The next group of amendments is on conditions of registration in relation to references to the plot. Amendment 8, in the name of the minister, is the only amendment in the group.

Fergus Ewing: Amendment 8 is a minor technical amendment that inserts the word “real” into section 25, making it consistent with the wording used in section 24, to which section 25 refers.

I move amendment 8.

Amendment 8 agreed to.

Section 25, as amended, agreed to.

Sections 26 to 31 agreed to.

After section 31

Amendment 9 moved—[Fergus Ewing]—and agreed to.

Sections 32 to 37 agreed to.

Section 38—Order in which applications are to be dealt with

The Convener: The next group of amendments is on the order in which applications for registration are to be dealt with. Amendment 10, in the name of the minister, is the only amendment in the group.

Fergus Ewing: The purpose of this technical amendment is to regulate the order in which the keeper must deal with an application for voluntary registration and a triggered application to register a deed over the same land. The effect is to state that the voluntary application must be dealt with first. If this were not the case the triggered application would have to be rejected.

I move amendment 10.

Amendment 10 agreed to.

Section 38, as amended, agreed to.

Sections 39 to 41 agreed to.

Section 42—Prescriptive claimants

The Convener: The next group is on the notification of prescriptive claimants. Amendment 49, in the name of Patrick Harvie, is grouped with amendments 50 to 52.

Patrick Harvie: Again, the amendments in the group relate to a set of issues that members will be well aware of, on which we took significant amounts of evidence.

There are various ways of dealing with prescriptive claims. With these four amendments, my suggestion is, first of all, a process of notification. Notification takes place twice—first by the applicant for registration, and then again by the keeper. Under amendment 50, notification of a desire for a prescriptive claim goes to local elected members at all levels, including members at local authority, Scottish Parliament, Westminster and European level, as well as to community councils and other bodies as might be defined by the land register rules. If members choose to support the amendment, we might refine those levels. For example, perhaps not every member of the European Parliament would want to hear about every prescriptive claim. However, we have heard that such claims are few in number.

Amendment 52 entitles those who are notified, in addition to the Crown, to raise an objection to a prescriptive claim. The intention is that uncontroversial prescriptive claims to which the local community consents would go through. However, if the local community does not consent, the person who wants to make the claim would have to think again and try to convince people that the claim should be supported. If consent is not given to the acquisition of land in that way, I think that that is a reasonable barrier to allowing the claim to go forward.

Amendment 51 adds a 60-day notice period for related notification processes. Amendment 49 is consequential to the other amendments. I hope that the minister, and perhaps other members, will be able to reflect on the intention behind the amendments.

I move amendment 49.

The Convener: Members will recall that the issue attracted a lot of debate during stage 1. No other members wish to speak on the group of amendments, so I invite the minister to do so.

Fergus Ewing: The amendments in the group relate mainly to who should be notified, and when, when someone makes an application to become a
The minister’s comment that stakeholders are happy with the current practice suggests that there is a limited view of who the stakeholders are. It seems to me that the wider community should be regarded as having a stake in the ownership of land in that community. Therefore, I will press amendment 49 and I intend to move the other amendments in the group.

The Convener: The question is, that amendment 49 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Harvie, Patrick (Glasgow) (Green)
Park, John (Mid Scotland and Fife) (Lab)

Against
Brodie, Chic (South Scotland) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
MacDonald, Angus (Falkirk East) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Wilson, John (Central Scotland) (SNP)

The Convener: The result of the division is: For 2, Against 6, Abstentions 0.

Amendment 49 disagreed to.

The Convener: The next group is on prescriptive claimants: conditions on period of possession. Amendment 11, in the name of the minister, is grouped with amendments 12 and 13.

Fergus Ewing: Amendments 11 to 13 form a package of amendments that implement a commitment in relation to prescriptive claimants that I gave to the committee during the stage 1 evidence session. As the committee will recall, concern was raised by stakeholders about the provision that requires seven years abandonment of land to be established before a person can start the 10-year period for prescriptive acquisition of that land. Amendment 11 will remove the seven-year period, but retain the one-year occupation period, under which a person who wishes to take a prescriptive title must prove that they have occupied the land for that year. Other effective safeguards are retained: the 10-year prescriptive period that must run on possession; and the notification procedure. I consider that the approach achieves an appropriate balance between the rights of those who wish to bring abandoned land back into use and those who have an underlying title but who do not use the land.

Amendments 12 and 13 are consequential on amendment 11.

I move amendment 11.

The Convener: I welcome the amendments. The committee considered the issue at stage 1
and took quite a lot of evidence on it from the legal profession, which expressed concern about the seven-year period and the practical difficulties that it would cause. In our stage 1 report, we said that the issue should be looked at again. I welcome the fact that the Government has lodged amendments to reduce the period to one year’s vacancy prior to an application, rather than seven.

Amendment 11 agreed to.

Amendment 50 moved—[Patrick Harvie].

The Convener: The question is, that amendment 50 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Harvie, Patrick (Glasgow) (Green)
Park, John (Mid Scotland and Fife) (Lab)

Against
Brodie, Chic (South Scotland) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
MacDonald, Angus (Falkirk East) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Wilson, John (Central Scotland) (SNP)

The Convener: The result of the division is: For 2, Against 6, Abstentions 0.

Amendment 50 disagreed to.

Amendment 51 moved—[Patrick Harvie].

The Convener: The question is, that amendment 51 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Harvie, Patrick (Glasgow) (Green)
Park, John (Mid Scotland and Fife) (Lab)

Against
Brodie, Chic (South Scotland) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
MacDonald, Angus (Falkirk East) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Wilson, John (Central Scotland) (SNP)

The Convener: The result of the division is: For 2, Against 6, Abstentions 0.

Amendment 51 disagreed to.

Amendments 12 and 13 moved—[Fergus Ewing]—and agreed to.

Section 44, as amended, agreed to.

Section 43 agreed to.

Section 44—Notification of prescriptive applications

Amendment 52 moved—[Patrick Harvie].

The Convener: The question is, that amendment 52 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Harvie, Patrick (Glasgow) (Green)
Park, John (Mid Scotland and Fife) (Lab)

Against
Brodie, Chic (South Scotland) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
MacDonald, Angus (Falkirk East) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Wilson, John (Central Scotland) (SNP)

The Convener: The result of the division is: For 2, Against 6, Abstentions 0.

Amendment 52 disagreed to.

Section 44 agreed to.

Sections 45 and 46 agreed to.

Section 47—Closure of Register of Sasines etc

The Convener: The next group is on closure of register of sasines: consultation and procedure. Amendment 14, in the name of the minister, is grouped with amendments 34 and 38.

Fergus Ewing: In its stage 1 report, the Subordinate Legislation Committee suggested that Scottish ministers should consult stakeholders prior to an order being made to close the register of sasines. If such a duty is added to the bill, the committee recommended that the procedure for the making of such an order could be amended from affirmative to negative. The Scottish Government always intended to consult before making an order to close the register of sasines. In the particular circumstances of this provision, the Government is happy to put that in the bill and agree to the Subordinate Legislation Committee’s suggestion.

Amendment 14 will insert into the bill a requirement for Scottish ministers to consult “persons appearing to have an interest” before making an order to close the register of sasines. Amendments 34 and 38 are intended to change the procedure for the delegated powers from affirmative to negative.

I move amendment 14.

The Convener: Minister, could you give us an example of
“other persons appearing to have an interest in the closure of the Register of Sasines”

whom ministers might approach?

Fergus Ewing: The purpose of the consultation would be to gather the views of those who would be affected most directly by the closure of the register of sasines. In the main, consultees would be solicitors, lenders, local authorities, public bodies, government departments, large landowners, and representatives such as Scottish Land and Estates. The Scottish Government would like to ensure that all those who might be affected would have the opportunity to raise any concerns that they might have prior to an order being made.

The closure of the register of sasines is likely to be carried out in a planned and structured manner, possibly by closing the register in different parts of Scotland at different times, just as the land register was opened in different counties at different times—starting with Renfrewshire, if memory serves. There is also the potential for closing the register to only some deeds as an interim measure rather than closing it in toto. Again, the Government wishes to seek the views of all those who will be affected before any final plan is put in place. I hope that that further information is of use to the committee.

Patrick Harvie: I am fully supportive of the intention to consult widely, but just a little unsure why that implies that the negative procedure should be used. It seems to me that the belt-and-braces approach would be quite reasonable. Asking the current minister, or future ministers, to come to Parliament when the decision is made, to explain the approach and to use the affirmative procedure does not appear to be a huge burden. Perhaps my instinct is that most decisions should be approved by Parliament rather than by ministers. In this case, I do not see that it would be a huge burden to ask ministers to come to Parliament and explain the approach.

The Convener: As no other members wish to comment, I invite the minister to wind up.

Fergus Ewing: I will not take personally Patrick Harvie’s instinctive dislike of my use of ministerial powers. I have made plain that we wish to consult widely and appropriately, in the envisaged event of the closure of the register of sasines. As you know, convener, that is unlikely to happen any time soon. Nonetheless, plainly it makes sense that there should be wide consultation at such time as it is appropriate that those matters be considered.

On Mr Harvie’s specific point regarding the type of procedure to be used, we have followed the advice of the Subordinate Legislation Committee.

Amendment 14 agreed to.

Section 47, as amended, agreed to.

After section 47

The Convener: The next group is on completion of the register: target dates, etc. Amendment 53, in the name of Patrick Harvie, is grouped with amendments 54 and 55.

Patrick Harvie: Third time lucky, convener. As with the previous group, this relates to an issue that we discussed at stage 1 and on which we reached slightly clearer agreement. At paragraph 58 in its stage 1 report, the committee agreed that “maintaining one land register is a more efficient system.

Given the very slow progress of land registration since the 1979 Act” we recommended “the setting of a target and interim targets, even if aspirational, on the face of the Bill.”

The policy memorandum makes it clear that the completion of the land register is the bill’s primary policy objective. The slow progress towards that policy objective seems a reasonable excuse for us to consider setting a date.

My suggested approach gives ministers some discretion. It asks them to set, by order:

“(a) a date by which 80% of the land in Scotland is to be included on the register, and

(b) a date by which all of the land in Scotland is to be included on the register.”

Ministers would be expected to bring forward that order within six months of the bill receiving royal assent.

Amendment 54 asks for a regular report on progress towards those two targets, once they have been set. It suggests a three-yearly reporting cycle, which would not be a huge burden on ministers. It asks for assessments of whether particular types of land are proving to be more problematic and of any barriers to the completion of the register, and for a statement of the actions that ministers and the keeper intend to take towards completion.

Amendment 54 also includes a requirement for “an assessment of the extent to which the proprietorship of land held in any form of common ownership has been identified and included in the register”.

That relates to a slightly separate issue, on which I had thought about lodging a different group of amendments, with regard to local authorities’ duties to identify common land. However, there seemed to be significant complexities with that, and requiring ministers to assess the situation, as part of a range of issues on progress towards the
Agreed to, states that Patrick Harvie referred, paragraph 58, which we achieved.

Getting the register completed as soon as possible is achieved. I am sure that outwith the bill, the minister will work with the keeper to ensure that the committee’s objective of achieving targets and force them rather than try to get a clear register. I am sure that, outwith the bill, the minister will work with the keeper to ensure that the committee’s objective of getting the register completed as soon as possible is achieved.

John Park: I support what Patrick Harvie said about amendment 53. Throughout the discussion on the bill, it has been clear that we should boost its level of transparency and send a clear signal about what we are trying to achieve, given the criticism that we have made of the Land Registration (Scotland) Act 1979 and the lessons that can be learned from that.

I would hate us not to put in place any clear targets to ensure that the bill will be successful. We should support amendment 53, because what it proposes would send out a clear message to all those who engage with the land register in a more general sense. It would allow MSPs to examine regularly the level of resource and support, and the Government direction, that would be required to ensure that the targets are met. That can only be good for the bill and for ensuring that the eventual act is a success.

Mike MacKenzie (Highlands and Islands) (SNP): The bill is aimed at completing the land register sooner rather than later. However, that should be done in a seemly and careful way without undue haste. I would find it deeply worrying if ministers felt that in order to achieve targets they had, in effect, to attempt to coerce landowners into registration. I am therefore not happy with amendment 53.

Chic Brodie (South Scotland) (SNP): I support what Mike MacKenzie said. As someone who is normally obsessed by outcomes and targets, I have some sympathy with what is proposed in amendment 53. However, with regard to the objectives of registration, particularly voluntary registration, what the amendment seeks implies a compulsion to achieve targets and force them rather than try to get a clear register. I am sure that, outwith the bill, the minister will work with the keeper to ensure that the committee’s objective of getting the register completed as soon as possible is achieved.

The Convener: In the stage 1 report to which Patrick Harvie referred, paragraph 58, which we agreed to, states that “the Committee recommends the setting of a target and interim targets, even if aspirational, on the face of the Bill.”

I invite the minister to respond to the debate.

Fergus Ewing: We considered this issue very carefully because the committee in its deliberations and in particular in paragraph 58, to which the convener just referred, raised the idea that targets may be worth considering. We responded to that suggestion in our written response to the committee.

I have listened carefully to what members have said, but we do not agree with the approach of setting statutory targets. I will explain why. First, completion of the land register is dependent to a large extent on the closure of the register of sasines under section 47, which we discussed a moment or two ago. The Subordinate Legislation Committee noted that the closure of sasines was a significant step and recommended that the bill should be amended to ensure that ministers consult stakeholders before closing the sasines register. As I have just explained, we agreed with that suggestion and have just agreed to an amendment to that effect. In my view, it would be wrong to set targets when the outcome of the consultation to which we have just agreed is not known.

Secondly, amendment 53 and others seem to be concerned more with land mass coverage than title coverage. I am not convinced that we should seek to prioritise completion of the land register in that manner. I understand that Mr Harvie wishes to know the answer to the question of who owns Scotland and that increased title coverage is the way to answer that question. I have some sympathy with that view, because that aim is indeed desirable. However, many people are less concerned with who owns Scotland in general and are more concerned that when they buy and sell property, and in particular when they remortgage their home, they have an effective, swift and reliable system that does not involve them in disproportionate expense. That, after all, is the prime function of the land registers of Scotland. It is sensible to point that out because it was not pointed out by the committee in recommendation 58, nor has it been alluded to other than by implication.

I agree with the comments that Mr Brodie and Mr MacKenzie made on compulsion. Logically, the only way in which there could be achievement of the targets would be for Governments to require, compulsorily, registration of title. On policy grounds, we do not feel that that is correct. In the system that we have, entries on the register are determined not by the Government, not by the state, but by individuals—whether individual natural persons or companies—deciding when they wish to do property transactions.
To move to a system in which we had targets in a bill, stating that we must achieve something within a specified time, would be meaningless unless that provision were accompanied by a strategy that allowed the target to be implemented, and that could happen only if compulsory powers were to be used extensively and quickly. The Government does not think that that is appropriate. Ergo, it logically follows from that, as Mr Brodie and Mr MacKenzie’s arguments adumbrated, that unless there is compulsion, there can be no realistic means of Government targets being readily achievable. If that argument is correct, as I think that it must be—although it is not an argument that I am reading from the script in front of me—it follows that the setting of targets would not achieve the purpose, admirable though it may be from some perspectives. For those reasons, the approach that the committee urged that we consider carefully should not be accepted, although I stress that we considered it carefully.

I turn to more technical aspects. In so far as amendment 53 applies to Scottish ministers, it could distort priorities in relation to other matters, if there were to be cost implications. If achieving the targets meant that the taxpayer was to pay for the cost of registration fees, from what other source would those costs come? Would it come from the health service or education? Money does not grow on trees. Public money must be used well and stewarded properly. If we are simply to say that an unlimited amount of cash be disposed to the task of achieving a target of registering all land in Scotland within five or 10 years, it is reasonable to ask who would pay the bill. If landowners do not want to pay the bill—and they have indicated that they do not—the taxpayer would have to pay it. If the taxpayer has to pay the bill, it would be at the expense of operations in the health service or children’s education. That is a simple matter of fact and of making correct choices in government.

On amendment 54, the information that the proposed reports would necessitate would not be easy to obtain. I struggle to see how the keeper would be able to assess the rate of registration of different types of land without expending massive time and resource. Amendment 54 would require those reports to be submitted, which would oblige the keeper to perform a huge amount of work for a purpose that is not immediately apparent.

Moreover, it is not clear exactly what is meant by different types of land. A huge amount of property throughout Scotland is in common ownership, from a home that is owned by a husband and wife to a play park that is owned by 50 homes in a development. Making “an assessment of the extent to which the proprietorship of land that is held in any form of common ownership has been identified and included in the register” would be extremely burdensome. Any administrative burden means additional cost, which in turn would mean the possibility of much higher fees.

For all those reasons, I urge Mr Harvie to consider withdrawing the amendments.

Patrick Harvie: On the previous group of amendments that I spoke to, I said that the minister’s reaction had been a wee bit severe. Clearly I have underestimated his capacity for overreaction. If I had included in the amendments the timescale that he implies—I think that he mentioned five or 10 years—he might have a case for saying that all public spending in Scotland would grind to a halt in the single-minded pursuit of the completion of the land register. It is a wee bit much to suggest that that is the case.

The amendments give ministers—whether the current minister or a subsequent minister—plenty of discretion, in the short term, to introduce an order that sets the target dates and to come back to the Parliament and amend those dates if it seems that they are not achievable in the timescale that was initially thought. That gives ministers sufficient discretion to progress the completion of the land register at a pace that is reasonable in their view, not only in the Parliament’s view.

I will comment briefly on logical consistency. The minister suggests that there is a problem with the logic of the amendments. I suggest that there is a problem with the logic of a bill that sets as its principal policy objective the completion of the land register but does not say how that will be achieved.

The minister suggests that the only way that a target date could be achieved is through compulsion. To be frank, that is the only way that the minister’s own policy might be achieved. If a small number of landowners holds out against registration, eventually, the completion of the land register—the policy objective of the bill—will be achieved only by compulsion. It would be for the Government and the Parliament of the day to decide whether landowners who held out against registration should be required to pay or whether the taxpayer should be willing to stump up on their behalf.

The idea of setting a target date does not change that. Setting a policy objective of the completion of the land register implies that, at some point, compulsion might—I emphasise “might”—be required. In fact, the keeper-induced registration process that is provided for in the bill sets out the mechanism that might, one day, be
used for that. The principle of setting a target date simply crystallises the idea that the policy objective is real rather than phantom.

I am clearly disappointed that the minister disagrees, but I press amendment 53.

**The Convener:** The question is, that amendment 53 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**
Harvie, Patrick (Glasgow) (Green)
Park, John (Mid Scotland and Fife) (Lab)

**Against**
Brodie, Chic (South Scotland) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Wilson, John (Central Scotland) (SNP)

**Abstentions**
Fraser, Murdo (Mid Scotland and Fife) (Con)

**The Convener:** The result of the division is: For 2, Against 5, Abstentions 1.

**Amendment 53 disagreed to.**

**The Convener:** That was a bit closer than last time.

**Amendment 54 moved—[Patrick Harvie].**

**The Convener:** The question is, that amendment 54 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**
Harvie, Patrick (Glasgow) (Green)
Park, John (Mid Scotland and Fife) (Lab)

**Against**
Brodie, Chic (South Scotland) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Wilson, John (Central Scotland) (SNP)

**Abstentions**
Fraser, Murdo (Mid Scotland and Fife) (Con)

**The Convener:** The result of the division is: For 2, Against 5, Abstentions 1.

**Amendment 54 disagreed to.**

**The Convener:** The next group is on advance notices. Amendment 16, in the name of the minister, is grouped with amendments 16 to 18, 35 to 37 and 39 to 41.

**Fergus Ewing:** The scheme for advance notices that the Scottish Law Commission developed was designed to protect deeds over properties that were registered in the land register. It did not apply for first registrations.

In response to the consultation that was carried out prior to the bill being introduced to the Parliament, the decision was taken to expand the scheme to cover applications for first registration. Stakeholders strongly supported the move.

Amendment 16, which is the main amendment in the group, ensures that advance notices in relation to deeds triggering first registration will offer the same protection as advance notices in relation to deeds of registered plots. Amendments 15 and 17 are consequential on amendment 16. Amendment 18 is a minor technical amendment that has been launched to clarify that all discharged advance notices relating to a registered plot will be entered into the archive register.

Amendments 35 to 37 and 39 to 41 relate to delegated powers and are the result of discussions with the Subordinate Legislation Committee. They ensure that when potentially significant powers—such as excluding deeds from the advance notice scheme or altering the effect of an advance notice in relation to certain deeds—are used, they will be subject to the appropriate level of parliamentary scrutiny.

I move amendment 15.

**Amendment 15 agreed to.**

**Section 58, as amended, agreed to.**

**After section 58**

**Amendments 16 and 17 moved—[Fergus Ewing]—and agreed to.**

**Section 59 agreed to.**

**Section 60—Discharge of advance notice**

**Amendment 18 moved—[Fergus Ewing]—and agreed to.**

**Section 60, as amended, agreed to.**

**Section 61 agreed to.**

**Section 62—Meaning of “inaccuracy”**

**The Convener:** The next group is on inaccuracy: provisional entries. Amendment 19, in the name of the minister, is the only amendment in the group.

**Fergus Ewing:** As members know, section 62 is entitled “Meaning of ‘inaccuracy’”. Amendment
19 is a minor technical amendment that relates to the definition of inaccuracy, which is always a helpful definition for parliamentarians and others.

Section 62(1)(d) provides that a provisional marking is an inaccuracy, but that is not quite right—we might say that it is inaccurate. A provisional marking indicates that an inaccuracy might exist, but prescription might be running to cure it. A provisional marking should not be an inaccuracy; rather, it should be a marking that is provided for in special circumstances under the bill.

I move amendment 19.

Amendment 19 agreed to.

Section 62, as amended, agreed to.

Section 63 agreed to.

Section 64—Proceedings involving the accuracy of the register

The Convener: The next group is on proceedings involving the accuracy of the register. Amendment 20, in the name of the minister, is grouped with amendment 21.

Fergus Ewing: Amendments 20 and 21 are minor technical amendments to provide consistency in the bill. The provision that amendment 20 adds will allow the keeper to appear before a court or a tribunal in proceedings in which questions about what is to be done to rectify a manifest inaccuracy in the register are being considered. Amendment 21 moves section 64 to after section 79, to align section 64 with the provisions for rectification in part 8.

I move amendment 20.

Amendment 20 agreed to.

Section 64, as amended, agreed to.

Amendment 21 moved—[Fergus Ewing]—and agreed to.

Sections 65 to 70 agreed to.

Section 71—Keeper’s warranty

The Convener: The next group is on exclusions from the keeper’s warranty. Amendment 22, in the name of the minister, is grouped with amendments 23 and 24.

Fergus Ewing: Amendments 22 to 24 are technical amendments that relate to the keeper’s warranty under the bill. Warranty is one part of the new state guarantee of title that the Scottish Law Commission designed. One of the commission’s recommendations, with which I agree, was that warranty should not apply to overregistration. When the keeper, as the result of an administrative or mapping error, includes in a title more land than the deed being registered conveyed, the keeper’s warranty should not apply to the extra area, because the applicant has never owned the land in question and has suffered no loss.

The amendments will ensure that the SLC’s scheme on overregistration applies consistently to all types of registration, as warranty is possible under the bill for keeper-induced registration and voluntary registration.

I move amendment 22.

Amendment 22 agreed to.

Section 71, as amended, agreed to.

11:00

Section 72—Keeper’s warranty on registration under sections 25 and 29

Amendments 23 and 24 moved—[Fergus Ewing]—and agreed to.

Section 72, as amended, agreed to.

Sections 73 to 76 agreed to.

Section 77—Claims under warranty: quantification of compensation

The Convener: Amendment 25, in the name of the minister, is grouped with amendments 26, 27 and 42.

Fergus Ewing: The purpose of amendments 25 to 27 and 42 is to move the delegated power to set interest rates in relation to compensation payable under the bill, under three different heads of claim, from the negative procedure to the affirmative procedure. The Subordinate Legislation Committee considered that the power to set interest rates under various heads should not be drawn more widely than is appropriate to give effect to the intended policy. The committee also considered that those powers had a significant enough effect that the affirmative procedure would be suitable.

The Government indicated in its response to the Subordinate Legislation Committee’s stage 1 report that it was content, in this instance, for the procedure to be changed. In order to allow that change to be made, amendments 25 to 27 provide that Scottish ministers set the rate of interest to be paid in separate regulations, rather than in the land register rules.

Amendment 42 makes such regulations subject to the affirmative procedure.

I move amendment 25.
The Convener: I am sure that that will be welcomed by the Subordinate Legislation Committee.

Amendment 25 agreed to.

Section 77, as amended, agreed to.

Sections 78 and 79 agreed to.

After section 79

The Convener: The next group of amendments concerns the referral of questions to the Lands Tribunal for Scotland. Amendment 43, in the name of Mike MacKenzie, is the only amendment in the group.

Mike MacKenzie: The committee has heard from various witnesses about errors in the land register. Given that to err is human and that, inevitably, in any system that we devise there will always be errors, and also taking into account the fact that those errors often come to light at the point of a property transaction in which the buyer and seller involved might be the innocent victims of a historical error, I think that it is only reasonable that we attempt to provide a process for dispute and error resolution that is more efficient than the traditional court remedies. It seems to me and other members of the committee that the Lands Tribunal offers a possibility of a less acrimonious, more efficient and possibly even more cost-effective means of dispute resolution.

I move amendment 43.

The Convener: The committee considered this issue carefully at stage 1, and there was a lot of interest among members in the possibility of extending the powers of the Lands Tribunal to deal with disputes, primarily on the basis that it might provide a quicker and more cost-effective option for those concerned than having to go through the sheriff court or the Court of Session, which is currently the case. Of course, as the minister will no doubt confirm from his experience, in most of those cases, the majority of the cost is made up by legal fees, which would not necessarily be much lower if a case were sent to the Lands Tribunal.

Fergus Ewing: I welcome the work that the committee has done. I also thank Mr MacKenzie for lodging amendment 43 and for the work that he has done on it. I broadly support the arguments that he has put forward. The amendment will result in more cases being determined by the Lands Tribunal and fewer being dealt with in the Court of Session. That is a good thing, for the reasons that members have given.

Mr MacKenzie is aware that I have asked officials to review the provision contained in the amendment in advance of stage 3, in case there are any technical changes that need to be made. Subject to that caveat, the Government is happy to support the amendment. Ensuring that the Lands Tribunal will continue to determine underlying property disputes at an earlier stage gives parties fuller access to the valuable expertise of the Lands Tribunal.

Mike MacKenzie: The committee recommended in its stage 1 report that the matter be looked at, and I am delighted that the minister seems to be with me. There is nothing further that I can usefully add.

Amendment 43 agreed to.

Section 80—Rectification: compensation for certain expenses and losses

Amendment 26 moved—[Fergus Ewing]—and agreed to.

Section 80, as amended, agreed to.

Sections 81 to 90 agreed to.

Section 91—Quantification of compensation

Amendment 27 moved—[Fergus Ewing]—and agreed to.

Section 91, as amended, agreed to.

Section 92 agreed to.

Section 93—Electronic documents

The Convener: The next group is on requirements of writing. Amendment 28, in the name of the minister, is grouped with amendments 29 and 30.

Fergus Ewing: Amendments 28 to 30 are technical amendments concerning provisions relating to the Requirements of Writing (Scotland) Act 1995. The effect of amendment 28 is that regulations making provision about the effectiveness of, formal validity of or legal presumptions about the authentication by a granter of an electronic document will be subject to the affirmative rather than the negative procedure. Amendment 28 is the result of concern that was expressed by the Subordinate Legislation Committee and this committee that the power in proposed new section 9E(1)(b) of the 1995 act has significant enough effect to be subject to the affirmative rather than the negative procedure. Amendment 28 is the result of concern that was expressed by the Subordinate Legislation Committee and this committee that the power in proposed new section 9E(1)(b) of the 1995 act has significant enough effect to be subject to the affirmative procedure.

Amendment 29 is a technical amendment to ensure that it is clear that the same basic rules on probativity in relation to registration in the land register apply to paper documents as they do to electronic documents.

Amendment 29 is a technical amendment to ensure that it is clear that the same basic rules on probativity in relation to registration in the land register apply to paper documents as they do to electronic documents.

Amendment 30 is a consequential, technical amendment to section 13 of the 1995 act to clarify that an exclusion in relation to recording in the register of sasines also applies to registration in the land register.
I move amendment 28.

Amendment 28 agreed to.

Section 93, as amended, agreed to.

Section 94 agreed to.

Schedule 3—Amendment of Requirements of Writing (Scotland) Act 1995

Amendments 29 and 30 moved—[Fergus Ewing]—and agreed to.

Schedule 3, as amended, agreed to.

Sections 95 to 98 agreed to.

After section 98

Amendment 5 moved—[John Park].

The Convener: The question is, that amendment 5 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Harvie, Patrick (Glasgow) (Green)
Park, John (Mid Scotland and Fife) (Lab)

Against
Brodie, Chic (South Scotland) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
MacDonald, Angus (Falkirk East) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Wilson, John (Central Scotland) (SNP)

The Convener: The result of the division is: For 2, Against 6, Abstentions 0.

Amendment 5 disagreed to.

Sections 99 to 105 agreed to.

Section 106—Fees

The Convener: The next group is on keeper-induced registration: fees. Amendment 1, in my name, is the only amendment in the group.

Members will recall that, at stage 1, we took quite a lot of evidence on keeper-induced registration. As members will understand, there were good arguments for why it is necessary for the keeper to have the power to induce registration if we are trying to complete the register and, I am not aware that anyone objected to that principle. However, although people who want to register land in conducting a transaction or on a voluntary basis should be expected to pay a fee, a different question arises with keeper-induced registration, because that is an involuntary act by the owner of the property in question.

It seems unfair on someone who is sitting there happily owning property and who has no particular interest in having it registered that the Government or the keeper comes along and says, “We’re going to register your land and sting you with a bill, potentially for several hundred pounds or even more, for the privilege of us doing so.” Indeed, we heard in evidence that, even if the fee was zero, considerable costs might be attached to the property owner. The owner would presumably want to instruct their own lawyers to check the work that the keeper was doing, so they would already be incurring a cost. To impose a fee on top of that would appear to be draconian.

It would be wrong to assume that we are talking simply about large estates, as some people might say, because we will be dealing potentially with any property that is not likely to change hands over a long period of time. That might include large estates, but it might also include properties—as the minister pointed out earlier—such as family farms, which often stay in the hands of one family for a very long time, or a small tenement flat where an elderly widow is living, which has been in the family throughout her life and which she has no intention of selling. For that widow to get stung with a bill for several hundred pounds for something that she does not want not only would be unfair but might well put her in financial difficulty.

We might also deal with other types of properties that are held in trust—for example, church buildings, church halls, village halls, scout huts and the like. Those are never likely to be sold or change hands, and for the Inverness-shire scouts to be stung with a bill from the keeper for keeper-induced registration of their scout hut would seem to be unfair and unreasonable.

It is therefore correct that we establish the principle that there should not be a fee for keeper-induced registration. The minister said in the stage 1 debate that there was no intention of charging a fee for keeper-induced registration in the current session of Parliament. Although that is welcome, it does not go far enough. It is important that the principle is established and put in the bill that, on the ground of equity, no fee should be charged for keeper-induced registration at any point in the future.

I move amendment 1.

Patrick Harvie: It is worth remembering that section 106 allows ministers to make

“different provision for different cases or for different classes of case.”

It should not be beyond the wit of Government to come up with an approach that draws a distinction between the wee old granny, whom Murdo Fraser so touchingly described, living in her tenement flat, and the wealthy landed person who is, as Murdo
Fraser said, sitting quite happily owning some land.

It is important to recognise that, if the process of completing the register is in the public interest, which the Government clearly thinks it is—and the committee agrees—there is a reasonable requirement that people comply with that process. There is a lengthy opportunity for people to register voluntarily, and it is reasonable in the first instance for that to cost less than keeper-induced registration in order to give people an incentive to comply and to bring land on to the register. It would be regrettable if we tied the hands of any future Administration by saying that it cannot impose any kind of fee, even for those who just dig in their heels and stubbornly refuse to co-operate with the idea of land registration. A future Parliament or Government might come to regret not having the flexibility to set fees appropriately given the various situations that land can be in.

11:15

Chic Brodie: I endorse that. The convener used the word “equity”. I endorse what has been said about looking at the scale of applicants. At stage 1, the committee debated the issue of trying to complete the land register as quickly as possible. Particularly if we can discount fees, there is no inhibition on owners of land, particularly large tracts of land, to voluntarily register land that they own.

Fergus Ewing: The debate is interesting. Amendment 1 would prevent a fee from being charged for keeper-induced registration. I appreciate the rationale behind the amendment and I have paid close attention to the evidence from Scottish Land & Estates and others who have expressed the view that it would not be fair to charge a fee for keeper-induced registration. As the convener alluded to, I gave assurances during the stage 1 debate that no fees will be charged for such registrations during the current parliamentary session. However, I also stated that the bill allows fees to be payable for keeper-induced registration.

I find myself in agreement with Mr Harvie on the point that section 106 confers powers to make “different provision for different cases or for different classes of case”, and that therefore the bill has in-built flexibility that can be used to good effect by future Administrations.

The bill seeks to provide an improved framework for registration and sets out powers for future development. Of course, a power to charge a fee does not necessitate a fee being charged. Any fee order will be subject to the affirmative procedure, which will allow Parliament to scrutinise fully the level of fee that is set. If the current Government or a subsequent one eventually considered charging a fee for keeper-induced registrations, I expect that there would be a full consultation on the proposal and that responses would be considered carefully. However, that stands alongside the undertaking that I have given that no such fees will be charged for keeper-induced registrations during this parliamentary session. Amendment 1 would unnecessarily restrict the freedom of ministers to devise a fair fees regime across all the keeper’s functions.

Another strand of argument that members have discussed is about how the fees that the keeper charges, or does not charge, can influence behaviour, particularly of large estates, whose titles are by and large not registered in the land register and are perhaps not likely to be registered in the near future. In our view, the registration fees that Registers of Scotland currently charges already act as an incentive to register voluntarily and most especially to those large estates. The reason for that is simply that the maximum fee that is charged is considerably less than the actual cost of doing the work of transferring the title of a large estate from the register of sasines to the land register. Therefore, at present, it is a simple matter of fact that there is an in-built incentive for large estates to voluntarily register the title.

The keeper and I have written in the Journal of the Law Society of Scotland and other such august publications to encourage those who advise landed estates to take advantage of the current level of fees. Apart from anything else, a future Administration might decide that fees should be on a full cost recovery basis or should be increased in some way. That is a legitimate policy area for future Administrations to consider.

Some members have said that we should have a system of fees that encourages voluntary registration, the implication being that we should reduce the fees for voluntary registration. We are open to further reasoned arguments and consideration of the matter, but I wanted to make the point clearly and at some length to set out that the current system is a form of incentive, albeit that it might be seen as a modest one. In some cases, particularly for the largest estates, the ad valorem fee will be, frankly, a bargain basement figure. I wanted to make that point again, just as I have made it to Scottish Land & Estates and others who might be affected.

By and large, I agree with you, convener, that when it comes to the decision whether to register land voluntarily, the level of the registration fees will be far less of an issue than the legal fees, because the legal work that is involved in the registration of large estates is probably pretty massive. I have encouraged the public sector—for
example, the Forestry Commission—to bring forward more voluntary registrations, and I am heartened by the positive and encouraging response that I have had.

I wanted to set the matter in context. There is one further argument that I invite you to consider, convener, before I ask you to consider withdrawing your amendment. If it were the case that no fee could be charged for a compulsory registration, what would be the advantage of a voluntary registration? Rather than voluntarily registering their property, a landowner might say, “There’s no point in voluntarily registering the property, because if it’s compulsorily registered later, I won’t have to pay anything.” There would be a disincentive against voluntarily registration. If amendment 1 were agreed to, it would achieve the opposite of what I think the committee wishes to achieve, namely that we work by negotiation, persuasion and agreement with landowners throughout the country, rather than by compulsion, to complete the register.

For those reasons—forgive me for amplifying the answer beyond my script—I urge you to consider withdrawing amendment 1.

The Convener: Thank you, minister. I now have the opportunity to wind up on the group.

In the minister’s final point, I think that he argued against himself, because he made the point a moment ago that the level of the registration fees is probably a secondary consideration in the decision whether to go for voluntary registration. Given that the legal fees will outweigh the registration fee substantially, I do not think that the latter will necessarily be a factor. My amendment is about a point of principle—that the Government should not come in and take action in relation to somebody’s property that incurs a cost for them. That is a form of taxation by the back door. If it is what the Government is intending to do, it should set that out explicitly.

I think that there was an element of confusion in the comments of Patrick Harvie and Chic Brodie. I entirely accept that it is in the public interest to complete the register, but I do not think that what I propose would stand in the way of that. It is simply a question of who pays the costs and whether it is appropriate for the state to come in and register somebody’s land without their consent and charge them a fee for it. I do not think that that is a fair and reasonable approach. Therefore, in the interests of the tenement-living grannies of the land, the Inverness-shire scouts and, indeed, all the voluntary groups throughout the land, I will press my amendment.

The question is, that amendment 1 be agreed to. Are we agreed?

Members: No.
I note that the amendment replicates what was proposed in the Scottish Law Commission’s report, but that report stated that there was a strong case for extending the duty of care to the date on which the keeper makes the registration decision, which is the position that the bill takes. Indeed, one of the commissioners favoured the approach that the bill now takes. I agree with that view. I also agree that there is a general public interest in the accuracy of the land register and that, consequently, the duty of care should last until the application has been finally dealt with. It is right that if the grantor of a deed or an applicant for registration or their representative becomes aware of something that is detrimental to the application, they should continue to be under a duty to inform the keeper. Therefore, I respectfully ask Mr Fraser to consider withdrawing amendment 2.

The Convener: I thank the minister for his response, but a point still needs to be addressed, particularly in relation to the timescale that is involved. For that reason, I will press amendment 2.

The question is, that amendment 2 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Fraser, Murdo (Mid Scotland and Fife) (Con)

Against
Brodie, Chic (South Scotland) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Park, John (Mid Scotland and Fife) (Lab)
Wilson, John (Central Scotland) (SNP)

Abstentions
Harvie, Patrick (Glasgow) (Green)

The Convener: The result of the division is: For 1, Against 6, Abstentions 1.
Amendment 2 disagreed to.
Section 107 agreed to.

Section 108—Offence relating to applications for registration

The Convener: The next group of amendments is on offence relating to applications for registration. Amendment 44, in my name, is grouped with amendments 45, 31, 46, 32, 33, 3 and 47.

It is fair to say that, at stage 1, the most contentious piece of the bill and the piece on which we took most evidence was probably section 108 and the new offence that is being created. The committee heard a lot of evidence from the legal profession in particular. There was concern that section 108 was too broad in scope; that it would create a new offence that might be difficult to enforce; that it would, in practice, add little to the existing law; and that the way in which it would be applied to people who were unintentionally involved in criminal activities might well be draconian.

Members will recall that, as a committee, we struggled to get a lot of evidence in support of section 108. We invited the Association of Chief Police Officers in Scotland to come and give evidence, but it indicated that the representative who was going to give evidence did not support section 108, so they did not come to the committee. Although the minister and, to be fair, the Solicitor General came and made the case in support of the section, there was a distinct lack of third-party support for the creation of the new criminal offence.

Members will see that the amendments that I have lodged take a range of different approaches. They provide a menu of options for members to consider in relation to section 108.

In its stage 1 report, the committee asked the Scottish Government to look again at section 108. The minister lodged amendments 31 to 33 in that regard, but having looked at them carefully I am concerned that they do not represent a serious attempt to address the concerns that we expressed in our report. We need to consider the alternative approaches that I am proposing.

11:30

Amendment 3 would simply remove section 108 from the bill. The rationale for that is that there are statutory and common-law offences that cover the mischief complained of. The common law provides for the offence of fraud and attempted fraud, which extends to false representation by writings, words or conduct, and further offences are provided for in the Proceeds of Crime Act 2002, part 7 of which sets out offences that relate to money laundering.

The Law Society of Scotland said:

"the Society is of the opinion that when a solicitor is completing and submitting registration forms they are effectively making a statutory declaration. If the solicitor provides false or misleading information in that declaration, then the making of false or misleading statements, whether intentionally or recklessly, may be pursued as contempt with the penalties that establishment of that offence carries ... As well as criminal sanctions, the Society, as the regulator of the solicitors profession in Scotland, has strict rules in place to prevent and address any kind of wrongdoing by a practising solicitor".

The Law Society went on to say:

"Where a solicitor is found to be in breach of the Society's Rules, then the Society may take disciplinary action against that individual or firm of solicitors. The
Society, therefore, is of the opinion that there exists sufficient deterrent in the form of existing law and practice rules to deter the mischief complained of.”

The Law Society also thinks that the introduction of the offence is disproportionate to the threat that is presented. Little evidence has been presented to the committee to demonstrate that there is a substantial problem that requires to be addressed. Any such problems could be pursued under existing criminal law.

If members think that amendment 3, by removing section 108 altogether, goes too far, I have offered an alternative approach in the other amendments in my name. Amendments 44 and 45 would remove the word “reckless” from section 108. As we heard in evidence, there is concern about the use of the word in Scots law. The Law Society’s view is that “recklessness” is not a settled term in Scots law. The society said:

“Case law suggests that this should be an objective approach, with behaviour falling far below that of the competent person in the defendant’s position. Applying this principle to conveyancing transactions, this is likely to demand a very high level of proof of malpractice, and will require expert evidence being lead to show that the solicitor’s actions fell far short of that of a competent practitioner.”

It would therefore be extremely difficult to prosecute for reckless conduct, so the inclusion of the word “reckless” offers no improvement on the current law of fraud. The Law Society is able to impose sanctions to deal with recklessness, should that be a concern.

Amendment 46 would provide a defence where a solicitor had followed the legal advice and regulations that the Law Society or approved regulator provided. That seems reasonable, given that the Law Society provides guidance to solicitors on money laundering regulations. The approach would ensure that solicitors could properly defend themselves in the context of the new offence that section 108 will create.

Amendment 47 would provide for a yearly review of the operation of section 108, should it be implemented. That would be appropriate and would allow everyone involved, particularly the legal profession, to ascertain whether section 108 had achieved its aims and met the policy objectives.

I move amendment 44.

John Wilson (Central Scotland) (SNP): The convener referred to the evidence from ACPOS and specifically to the individual who was invited to give evidence to the committee but who indicated that he was not prepared to come along and speak to section 108 because he did not support the ACPOS position. I just put on the record that the ACPOS position was quite clear and that ACPOS reaffirmed it in its written submission by indicating in a letter to the committee that it continued to support section 108. Although the individual officer was not prepared to come along and speak to section 108, ACPOS clearly indicated its continued support for the section.

The convener’s comments, if taken out of context, might seem to imply that ACPOS was not in favour of section 108, but ACPOS made it clear that it was in favour of it in its written evidence, and it subsequently confirmed in its letter to the committee its continued support for the section.

The Convener: Thank you for that clarification. My apologies to the minister, because in all the excitement I forgot that I should have invited him to speak to amendments 31 to 33, and all others in the group.

Fergus Ewing: Thank you very much indeed. I will respond to the arguments in relation to the convener’s amendments. I will seek to do so comprehensively because, as the convener said, the amendments refer to the issue that created the most controversy and discussion in the committee. I therefore think it right and proper that I spend some time tackling the various issues involved.

In general terms, mortgage fraud is a very serious matter that is linked to serious organised crime groups. As a society, we may not be able entirely to eliminate fraud, but we can, should and must do everything that we can to disrupt fraudulent activity. It is important that I set out the scale of the problem. The National Fraud Authority estimated in its annual fraud indicator that fraud cost the United Kingdom £38.4 billion in 2011—that is £38,000 million, of which £1,000 million was mortgage fraud. It is therefore, by any judgment, an enormous problem.

Lenders are becoming increasingly concerned about mortgage fraud. That became even more apparent to me when I had a preparatory meeting with Kennedy Foster of the Council of Mortgage Lenders and Kate Marshall of the Lloyds Banking Group before we started to deal with the bill. It is vital that those transacting on the land register continue to have confidence in the register’s accuracy.

The offence that we propose will apply to both fraudsters and their lawyers. Solicitors are of course gatekeepers. The convener and I have been solicitors, who were in the privileged position of being gatekeepers of the land registers of Scotland. Solicitors have responsibility, not simply to their clients but to society, as officers of the court, not to turn a blind eye to fraudulent behaviour.

Unfortunately, the keeper always has a number of live cases in which solicitors are thought to be engaged in, or facilitating, fraud. The Scottish Crime and Drug Enforcement Agency has
identified that there are no fewer than 291 individuals, including hauliers, financiers, security experts, lawyers and accountants, who are professional facilitators and specialists who provide vital advice and support to crime groups.

The bill’s provisions will never apply to lawyers who are simply careless or who do what every lawyer does but are taken in by fraudsters. The provisions will require lawyers who have recklessly turned a blind eye to suspicious behaviour, or who have closed their mind to information that would raise the suspicions of a diligent lawyer, to explain that behaviour.

Having set the scene with those general remarks, I will now turn to each of the amendments in the group. On amendment 3, which seeks to remove the offence provision from the bill, I have already said that mortgage fraud is a serious matter that has links with serious organised crime groups and that we need an offence that goes further than the present alternatives. The convener has argued that the provision in the bill does not do so because it duplicates existing law. We say without fear of contradiction that, despite the existing law, the other offences that are in force and the Law Society’s role as regulator of the legal profession, the problem of organised criminals and their advisers committing mortgage fraud has not been effectively addressed. I regret that, but it is a matter of fact. As a result, I do not support amendment 3.

Amendments 44 and 45 seek to remove the element of recklessness from the offence. This is an important issue, so I want to be quite clear in my comments. The inclusion of the recklessness element is exactly what makes this offence go further than the other statutory and common-law offences that are currently in force and to which the convener has quite fairly alluded. In policy terms, amendments 44 and 45 would have the same effect as removing the offence altogether; in other words, if we take out the element of recklessness, we will simply be restating the law. Obviously, there would no purpose in that.

There has been some debate about how recklessness is understood in Scots law; indeed, that might be one of the reasons why the amendments seek to remove it from the offence. If I may, I will remind the committee of certain examples of the term’s use that were cited by the Solicitor General in her evidence. It is used in section 30 of the Wildlife and Natural Environment (Scotland) Act 2011 in relation to information on deer culling; in section 3 of the Computer Misuse Act 1990 in relation to any unauthorised act that can be carried out recklessly; and throughout the Sexual Offences (Scotland) Act 2009 in relation to a number of offences. Indeed, in her evidence, the Solicitor General specifically read out the offence provision in section 26 of the Charities and Trustee Investment (Scotland) Act 2005, which says

“It is an offence for a person to provide any information or explanation to OSCR or any other person if—

(a) the person providing the information or explanation knows it to be, or is reckless as to whether it is, false or misleading in a material respect”.

That wide range of different statutory provisions, encompassing a range of activity in this country, demonstrates that the term “reckless” is routinely used. I submit, therefore, that the element of recklessness should be in the offence provision because it will help the Lord Advocate and the Solicitor General to prosecute mortgage fraudsters without prejudicing ordinary people, including solicitors, who are the victims of fraud.

I believe that the Law Society of Scotland, with which we have closely engaged in the process—and with which we will continue to engage as long as it wishes—has argued that the term is vague and lacks coherence. That was not Lord Prosser’s view in the case of Her Majesty’s Advocate v Harris (1993 SCCR 559), in which he judged recklessness to be a familiar concept that was readily conveyed to and understood by juries. Such a view must carry considerable weight.

Indeed, recklessness is more than simply carelessness or negligence; it requires us to look at conduct in light of its consequences. In other words, recklessness relates to conduct either in the face of an obvious danger or in circumstances that show complete disregard for danger. It involves a kind of wilful blindness or, at least, indifference to the circumstances. For example, a solicitor who suspects that information provided is materially false or misleading but simply accepts the risk and submits the application is likely to be guilty of committing the offence recklessly.

I wanted to deal with the point at length because it is only right that we respond at length to a matter that the committee has taken the time to ask us to examine. I am comforted by the fact that the committee is content for section 108 to remain in the bill but, for the reasons that I have outlined, I cannot support amendments 44 and 45.

11:45

As for amendment 46, the effect intended might be that, if the Law Society were to issue guidance on what solicitors should do in relation to land registration applications, compliance with such guidance would mean that the offence was not committed. In my view, the job of producing guidance on the application of criminal offences is for Government—not, with all due respect, the Law Society. In this case, the job is for the Crown
Office and the keeper of the registers. In fact, the Solicitor General and the keeper are committed to producing guidance on compliance in time for the provision coming into force. For that reason alone, I am against the amendment. Furthermore, it is unnecessary, because a solicitor who carefully and conscientiously followed their professional guidance and exercised good judgment would not be acting recklessly.

Moreover, amendment 46 might have an unintended consequence. If a solicitor failed to comply with the Law Society’s guidance in a case, they would not be able to establish the defence under section 108(4). In short, the guidance might be a double-edged sword for lawyers and, in many cases, would leave them in a worse position. For that reason, too, I cannot support the amendment.

Amendment 47 seeks to require Scottish ministers to appoint an independent reviewer to review each year the operation of section 108. I have to say that I am not aware of any other offence provision on the statute book that is subject to such a review. That might be because it is simply unworkable.

Let me explain why I think such a provision is absent from other statutory offences, of which there are, of course, no shortage. For a start, how does one determine whether the provision has achieved its objectives? If no prosecutions were made under the offence over a certain period, the reviewer could say that that showed that it was not required. However, it might also show that the creation of the law had deterred fraudulent behaviour; after all, the purpose of creating a criminal offence in the first place is not only to ensure that those who do the crime face justice and, if prosecuted, get the disposal that they merit, but to deter others—particularly those in a privileged position such as solicitors, who are gatekeepers of the land register—from carrying out crime themselves. The existence of this new and potentially effective statutory offence would ensure that they knew that, if they were foolish enough to carry out such behaviour, it would potentially lead them to face justice and the disposals in question. Would a reviewer measure success by an absence or a plethora of convictions? It could be argued that both might mean success—or, indeed, failure—and that is perhaps why such a mechanism has not, as far as we are aware, been incorporated into the law of Scotland.

Finally, amendment 47 seeks to require the reviewer to determine the objectives behind section 108 and assess whether they remain appropriate. I have already given my views on the difficulty of determining whether the objectives behind the creation of the offence have been met. My more fundamental view is that it is the responsibility of Scottish ministers, who are held to account by Parliament and its committee, to determine whether Government measures to tackle fraud and serious organised crime remain appropriate. For all those reasons, I do not support amendment 47.

In relation to Government amendments 31 to 33, I should first state that, especially following the committee’s invitation in paragraph 26 of its report, in which it signalled that it was content for section 108 to remain in the bill but recommended that we look again at its wording—and indeed welcomed my commitment in that respect—we have sought to take the matter extremely seriously.

Amendment 31 seeks to address the concern that section 108(4)(c) left an element of doubt about the steps that people would have to take to ensure that no offence was committed—and therefore to establish the defence—by removing that paragraph.

I have said that my officials consulted the Law Society of Scotland. Let me quote its view of the amendment:

“The Society acknowledge the proposed amendment and is pleased to note that this addresses the concerns which the Society expressed in their written and oral evidence in relation to the last limb of the defence, which the Society suggested introduced the undefined concept of solicitors taking ‘all such steps as could reasonably be taken’. Although the Society acknowledges the proposed amendment the Society’s views on Section 108 in its entirety remains as that stated in both our oral and written evidence, in that Section 108 should be deleted.”

I am grateful to the Law Society for its view and I am glad that it considers that the amendment addresses some of, but not all, its concerns. I stress that the Government remains unpersuaded that the rest of the Law Society’s concerns need to be addressed for the reasons that I have stated. I hope that the change to the stringency of the requirements strikes the right balance, while still relying on solicitors to exercise their professional judgment without recklessness and with due diligence.

Amendments 32 and 33 are technical amendments that relate to reliance on the defence in court. They bring the notification requirements when someone is acting in reliance on information supplied by another into line with the latest criminal procedure legislation.

Amendment 32 adjusts the period of notice that a person must give to prosecutors to 14 days. It was previously seven days for the first appearance and one month thereafter.

Amendment 33 disapplies the rule that notice must be given to the prosecutors when the accused’s defence statement contends that notification. The accused will have already given notice of the defence by lodging a defence
statement under one of the enactments referred to.

I hope that the committee will bear my representations in mind when it considers the amendments. Thank you.

Patrick Harvie: I was going to ask a specific question about amendment 46, but the minister’s comments have clarified the point so I will leave it at that.

Chic Brodie: When the Solicitor General was before the committee, I questioned the use of the word “reckless”. My question was answered fully, but being the cynical individual that I am, I went off to check. Indeed, although it is not widely used, it is an acceptable term and it is used in certain acts such as the Computer Misuse Act 1990.

I have read the Law Society’s evidence and I take the minister’s point. I would hesitate to ask the Law Society where the clinical evidence is because I am not sure what kind of answer I might get. In the Law Society’s evidence, there are lots of comments about how the society is “committed to ... all measures aimed at preventing and minimising any kind of fraudulent behaviour.”

We have a situation—it might not be fraudulent—with regard to land that is being covered in the sport pages of our press. If the Law Society is so good at preventing such activities, I fail to see that.

Last week, I attended a breakfast meeting at the Fettes headquarters of Lothian and Borders Police. The subject matter was international terrorism and how terrorists are moving finance around, including through the buying and selling of land in such a way that money is laundered through the system into terrorist organisations. I am not convinced that the Law Society has any real measures to prevent that. Having gone through a situation recently that tested what a lawyer did in a particular situation that affected me, I find that some of the comments in the Law Society’s evidence are not 100 per cent correct. The Law Society might feel that it is taking action to prevent certain activity that is against civil or criminal law, but it might want to take a look at how wider society perceives the organisation and its action within the union.

I cannot support any of the convener’s amendments. I know that most lawyers are honest and have integrity but it is time for us to raise the bar.

The situation is not cosy. I mentioned a civil action in which I referred a solicitor to the Law Society. I won—if that is the right word—and the solicitor got a slap on the wrist and something written on their record for the next two years. Such behaviour is unacceptable, particularly in situations such as those that we are discussing.

My opinion is bolstered by the breakfast meeting that I had last week. We must ensure that the bar is raised. We must do everything to enshrine the need to ensure that the profession is pristine in recording any action or data in relation to such activity.

The Convener: I am grateful to the minister for his detailed exposition of the law on mortgage fraud. I entirely accept that we have a problem with mortgage fraud and that there are bad people out there who are always trying to do bad things. I also accept that there may be a high number of mortgage fraud cases that go unprosecuted. However, I am not sure that it follows logically that we should introduce ever more draconian laws to try to catch people who we think are doing bad things. Perhaps we need to improve the gathering of evidence against such people as a way forward.

My concern—which I set out earlier; I do not intend to repeat the arguments—is that, if we introduce recklessness into the equation, people who have made a genuine error or mistake in completing an application form will end up facing criminal prosecution. That seems to be a disproportionate approach. I welcome the Government’s amendments to section 108—I acknowledge that they are an improvement and I am happy to support them—but they do not go far enough. It seems to me that the proposed response is both disproportionate and unlikely to achieve its policy objective. For that reason, I intend to press amendment 44.

The question is, that amendment 44 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Fraser, Murdo (Mid Scotland and Fife) (Con)
Against
Brodie, Chic (South Scotland) (SNP)
Harvie, Patrick (Glasgow) (Green)
MacDonald, Angus (Falkirk East) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Wilson, John (Central Scotland) (SNP)
Abstentions
Park, John (Mid Scotland and Fife) (Lab)

The Convener: The result of the division is: For 1, Against 6, Abstentions 1.

Amendment 44 disagreed to.
Amendment 45 not moved.
Amendment 31 moved—[Fergus Ewing]—and agreed to.
Amendment 46 moved—[Murdo Fraser].
The Convener: The question is, that amendment 46 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Fraser, Murdo (Mid Scotland and Fife) (Con)

Against
Brodie, Chic (South Scotland) (SNP)
Harvie, Patrick (Glasgow) (Green)
MacDonald, Angus (Falkirk East) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Wilson, John (Central Scotland) (SNP)

Abstentions
Park, John (Mid Scotland and Fife) (Lab)

The Convener: The result of the division is: For 1, Against 6, Abstentions 1.

Amendment 46 disagreed to.

Amendments 32 and 33 moved—[Fergus Ewing]—and agreed to.

Amendment 3 not moved.

Section 108, as amended, agreed to.

After section 108

Amendment 47 moved—[Murdo Fraser].

The Convener: The question is, that amendment 47 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Fraser, Murdo (Mid Scotland and Fife) (Con)

Against
Brodie, Chic (South Scotland) (SNP)
Harvie, Patrick (Glasgow) (Green)
MacDonald, Angus (Falkirk East) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Wilson, John (Central Scotland) (SNP)

Abstentions
Park, John (Mid Scotland and Fife) (Lab)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 6 disagreed to.

Section 111 agreed to.

Section 112—Subordinate legislation

Amendments 34 to 38 moved—[Fergus Ewing]—and agreed to.

Amendment 55 not moved.

Amendments 39 to 42 moved—[Fergus Ewing]—and agreed to.

Section 112, as amended, agreed to.

Sections 113 and 114 agreed to.

Section 115 agreed to.

Schedule 5 agreed to.

Sections 116 to 120 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill. Thank you. Members should note that the bill will be reprinted, as amended, and will be available from tomorrow morning. Parliament has not yet determined when stage 3 will take place, but members can now lodge stage 3 amendments at any time with the legislation team. Members will, in due course, be informed of the deadline for the lodging of amendments once it has been determined. I thank the minister and his officials for their attendance this morning.

Meeting closed at 12:02.
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Land Registration etc. (Scotland) Bill

[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to reform and restate the law on the registration of rights to land in the land register; to enable electronic conveyancing and registration of electronic documents in the land register; to provide for the closure of the Register of Sasines in due course; to make provision about the functions of the Keeper of the Registers of Scotland; to allow electronic documents to be used for certain contracts, unilateral obligations and trusts that must be constituted by writing; to provide about the formal validity of electronic documents and for their registration; and for connected purposes.

PART 1

THE LAND REGISTER

The Land Register of Scotland

1 The Land Register of Scotland

(1) There is to continue to be a public register of rights in land in Scotland (which is to continue to be known as the “Land Register of Scotland”).

(2) The register is to continue to be under the management and control of the Keeper of the Registers of Scotland.

(3) The register is to continue to have a seal.

(4) Subject to the provisions of this Act, the register is to be in such form (which may be, or be in part, an electronic form) as the Keeper considers appropriate.

(5) The Keeper must take such steps as appear reasonable to the Keeper to protect the register from—

   (a) interference,

   (b) unauthorised access, and

   (c) damage.

Structure and contents of the register

2 The parts of the register

The Keeper must make up and maintain, as parts of the register—

   (a) the title sheet record,
(b) the cadastral map,
(c) the archive record, and
(d) the application record.

**Title sheets and the title sheet record**

3 **Title sheets and the title sheet record**

(1) The Keeper must make up and maintain a title sheet for each registered plot of land.

(2) The Keeper may make up and maintain a title sheet for a registered lease.

(3) The title sheet record is the totality of all such title sheets.

(4) A plot of land is an area or areas of land all of which are owned by one person, or one set of persons.

(5) A separate tenement constitutes a plot of land for the purposes of this Act.

(6) Subject to subsections (2) and (7), there is to be only one title sheet for each plot of land.

(7) The Keeper need not make up and maintain a title sheet for a plot of land which is a pertinent of another plot of land (or of two or more other plots of land) but may instead include it in the title sheet of the other plot or plots of land of which it is a pertinent.

4 **Title and lease title numbers**

(1) The Keeper must assign a title number to—

(a) the title sheet of each registered plot of land, and

(b) where a registered lease has a title sheet, to that title sheet.

(2) A title number is an unique identifier consisting of numerals or of letters and numerals.

5 **Structure of title sheets**

(1) A title sheet is to comprise—

(a) a property section,

(b) a proprietorship section,

(c) a securities section, and

(d) a burdens section.

(2) A section of a title sheet may be sub-divided if and as the Keeper considers appropriate.

6 **The property section of the title sheet**

(1) The Keeper must enter in the property section of the title sheet—

(a) a description—

(i) of the plot of land (being a description by reference to the cadastral map),

(ii) of the nature of the proprietor’s right in the plot of land, and

(iii) if the plot is a separate tenement, of the nature of the tenement,
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(b) the particulars of any incorporeal pertinents (including, if there is a burdened property, the particulars of that property in so far as known),

(c) any agreement registered under section 63(2),

(d) any entry required under section 18(2)(a) or paragraph 7(a) of schedule 1,

(e) if the title sheet is a lease title sheet, the particulars of the lease, and

(f) where there is for the area of land another title sheet (as for example for a plot which is a separate tenement), the title number of that other title sheet.

(2) Paragraph (f) of subsection (1) does not apply where the other title sheet is the title sheet of a flat in a flatted building.

The proprietorship section of the title sheet

(1) The Keeper must enter in the proprietorship section of the title sheet—

   (a) the name and designation of the proprietor, and
   
   (b) in the case of ownership in common, the respective shares of the proprietors.

(2) Paragraph (a) of subsection (1) is subject to section 18(1)(b) and to paragraph 6(b) of schedule 1; and paragraph (b) of that subsection is subject to sections 16(2)(b) and 18(2)(b), to paragraph 7(b) of schedule 1 and to paragraphs 8(b) and 10 of schedule 4.

The securities section of the title sheet

(1) The Keeper must enter in the securities section of the title sheet particulars of any heritable security over the right in land to which the title sheet relates (including the name and designation of the creditor in the security).

(2) This section is subject to section 18(3)(b) and to paragraph 8(b) of schedule 1.

The burdens section of the title sheet

(1) The Keeper must enter in the burdens section of the title sheet—

   (a) where the right in land to which the title sheet relates is encumbered with a title condition—

      (i) the terms of the title condition,

      (ii) a description of any benefited property (in so far as known to the Keeper), and

      (iii) if the title condition is a personal real burden, the name and designation of the person who has title to enforce it,

   (b) where there is a long lease, other than a long sub-lease, which has real effect, that fact,

   (c) in a case where the title sheet is a lease title sheet, where there is a long sub-lease, other than a long sub-sub-lease, which has real effect, that fact,

   (d) in so far as known to the Keeper, any public right of way (by whatever means) over or through the land,
(e) particulars of any path order made under section 22 of the Land Reform (Scotland) Act 2003 (asp 2) (compulsory powers to delineate paths in land in respect of which access rights are exercisable), and

(f) any other encumbrance the inclusion of which in the register is permitted or required, expressly or impliedly, by an enactment and the name and designation of the person who has title to enforce that encumbrance.

(2) In subsection (1)—

“encumbrance” does not include a heritable security,

“long lease” means—

(a) a lease exceeding 20 years, or

(b) a lease which includes provision (however expressed) requiring the landlord to renew the lease at the tenant’s request as a result of which (and without any subsequent agreement express or implied between the landlord and tenant) the total duration could exceed 20 years.

(3) This section is subject to section 18(4) and to paragraph 9 of schedule 1.

10 What is entered or incorporated by reference in a title sheet

(1) The Keeper must, in addition to what is to be entered under sections 6 to 9, enter the matters mentioned in subsection (2) in a title sheet.

(2) The matters are—

(a) any statement made by virtue of any of subsections (3) and (4)(b) of section 73 or subsection (5)(a) of section 74,

(b) particulars of any special destination,

(c) a reference to an entry in the Register of Inhibitions made under section 31A(2),

(d) the terms of any caveat warrant for which is granted under section 65(3), and

(e) such other information (if any) as the Keeper considers appropriate.

(3) The Keeper may incorporate by reference in a title sheet—

(a) a document in the archive record, or

(b) a deed in any other register under the management and control of the Keeper or of the Keeper of the Records of Scotland.

(4) The Keeper must not enter or incorporate by reference in a title sheet any rights or obligations except in so far as their entry is authorised by an enactment.

(5) The entry or incorporation by reference in a title sheet of any right or obligation, in so far as not so authorised—

(a) does not constitute notice of that right or obligation, and

(b) is without any other effect.

(6) Subsection (2)(b) is subject to section 18(3)(c) and to paragraph 8(c) of schedule 1.
The cadastral map

11 The cadastral map

(1) The cadastral map is a map—

(a) showing the totality of registered geospatial data (other than supplementary data in individual title sheets),

(b) showing for each cadastral unit—

(i) the cadastral unit number,

(ii) the boundaries of the unit, and

(iii) the title number of any registered lease relating to the unit, and

(c) otherwise depicting registered rights in such manner as the Keeper considers appropriate.

(2) A cadastral unit which represents a separate tenement must be shown on the map in such a way as will distinguish it as a cadastral unit from other units.

(3) The cadastral map may (but need not) show the boundaries of cadastral units on the vertical plane.

(4) The cadastral map may contain such other information as the Keeper considers appropriate.

(5) The cadastral map must be based upon the base map.

(6) The base map is—

(a) the Ordnance Map,

(b) another system of mapping, being a system which accords with such requirements as the Scottish Ministers may, by order, prescribe, or

(c) a combination of the Ordnance map and such other system.

(7) On the base map being updated, the Keeper must make any changes to the register which are necessary in consequence of the updating.

(8) For the purposes of subsection (1)(a), the Keeper may determine what data is supplementary data.

(9) This section and sections 12 and 13 are without prejudice to section 16.

12 Cadastral units

(1) A cadastral unit is a unit which represents a single registered plot of land.

(2) Subject to subsection (3), the same area of land cannot be represented by more than one cadastral unit.

(3) The Keeper need not represent a plot of land such as is mentioned in section 3(7) as a separate cadastral unit but may instead include it in the cadastral unit representing the plot or plots of land of which it is a pertinent.

(4) The Keeper must assign a cadastral unit number to each cadastral unit.

(5) The cadastral unit number is to be the title number of the plot of land which that unit represents.
13 **The cadastral map: further provision**

(1) Where a plot of land—
   (a) lies wholly outwith the base map, or
   (b) extends partly outwith the base map,
   the Keeper may adopt such means of representing the boundaries on the cadastral map as the Keeper considers appropriate.

(2) The Keeper may—
   (a) combine cadastral units,
   (b) remove a cadastral unit from the map, or
   (c) divide a cadastral unit.

(3) On dividing a cadastral unit under subsection (2)(c), the Keeper may combine any of the resultant parts with a different cadastral unit.

(4) The Keeper must make such changes to the register as are necessary in consequence of anything done under subsections (2) and (3).

14 **The archive record**

(1) The archive record is to consist of—
   (a) copies of all documents submitted to the Keeper,
   (b) copies of all documents which the Keeper is required to include under land register rules, and
   (c) copies of such other documents as the Keeper considers appropriate.

(2) The Keeper must also include in the archive record such information as is required for the purposes of section 100.

(3) But the Keeper need not include in the archive record a copy of—
   (a) any enactment, or
   (b) any document comprised in any other register under the management and control of the Keeper or of the Keeper of the Records of Scotland.

(4) A fact which can be discovered from the archive record is not, by reason only of that circumstance, a fact which a person ought to know.

15 **The application record**

The application record is to consist of all—

(a) applications for registration as are for the time being pending, and
(b) advance notices as are for the time being extant.
Tenements etc.

16 Tenements and other flatted buildings

(1) Where the Keeper considers it appropriate in relation to a flatted building to do so, the Keeper may, instead of representing each registered flat in the building as a separate cadastral unit, represent the building and all the registered flats in it as a single cadastral unit.

(2) Where a flatted building and the registered flats in it are represented as a single cadastral unit—

(a) the cadastral map must show, for that cadastral unit, the title numbers of each registered flat, and

(b) the respective pro indiviso shares in the pertinents of the registered flats need not be entered in the proprietorship section of the title sheet of any of those flats.

(3) But subsections (1) and (2) do not apply in relation to land pertaining to the flatted building which—

(a) extends more than 25 metres from the building in so far as it so extends, or

(b) is further than 25 metres from the building (measuring along a horizontal plane from whatever point of that building is nearest to the land).

(4) In this Act a “flatted building” means—

(a) a tenement, or

(b) any other subdivided building.

(5) A “subdivided building”—

(a) means a building or part of a building, not being a tenement, which comprises two or more related flats, at least two of which—

(i) are, or are designed to be, in separate ownership, and

(ii) are divided from each other vertically, and

(b) includes the solum and any other land pertaining to the building or part of the building.

(6) In determining whether flats comprised in a subdivided building are related, the Keeper must have regard, among other things, to—

(a) the title to the building, and

(b) any real burdens.

(7) In subsection (6), “title to the building” means—

(a) any conveyance, or reservation, of property which affects the subdivided building, any flat in the building or any pertinent of the building or of any such flat, and

(b) the relevant title sheet of the building, any flat in it or any pertinent of the building or of any such flat.

(8) Expressions used in this section and in sections 26 and 29 of the Tenements (Scotland) Act 2004 (asp 11) have the meanings given in that Act.
17 Shared plots

(1) This section applies where a plot of land—

(a) is owned in common by the proprietors of two or more other plots of land by virtue of their ownership of those other plots,

(b) is not owned in common by anyone else.

(2) The Keeper may, if the Keeper considers it appropriate, designate the title sheet of the plot of land to be a “shared plot title sheet”.

(3) In this section and in sections 18 and 19—

(a) references to a “shared plot” are to a plot of land the title sheet of which is designated under subsection (2),

(b) references to the “sharing plots” are to the other plots of land the proprietors of which own the shared plot in common.

(4) Unless the context otherwise requires, any reference in a document to a sharing plot is to be taken to include a reference to the share in the shared plot which pertains to the sharing plot.

(5) Registration has the same effect in relation to a share in a shared plot which pertains to a sharing plot as it has in relation to the sharing plot (except in so far as may otherwise be provided in the deed registered).

18 Shared plot and sharing plot title sheets

(1) The Keeper must enter—

(a) in the property section of the title sheet of each of the sharing plots, the title number of the shared plot title sheet,

(b) in the proprietorship section of the shared plot title sheet, the title numbers of the title sheets of each of the sharing plots.

(2) The Keeper must also enter—

(a) in the property section of the title sheet of each sharing plot, the quantum of the share which the proprietor of that sharing plot has in the shared plot,

(b) in the proprietorship section of the shared plot title sheet, in relation to the information required by section 7(1)(b), the respective share each sharing plot has in the shared plot,

(c) in the securities section of that title sheet, a statement to the effect that the shared plot may be subject to a heritable security registered against a sharing plot,

(d) in the burdens section of that title sheet, a statement to the effect that the shared plot may be subject to some other encumbrance so registered.

(3) The Keeper must not enter in or, if entered, must omit from—

(a) the proprietorship section of the shared plot title sheet, the information that would otherwise be required under section 7(1)(a),

(b) the securities section of that title sheet, the information that would otherwise be required under section 8(1) unless the security is over the shared plot only,
(c) that title sheet, any matter that would otherwise be required under section 10(2)(b).

(4) The Keeper may, if the condition mentioned in subsection (5) is satisfied and the Keeper considers it appropriate, omit from the burdens section of the shared plot title sheet any entry which would otherwise be required under section 9(1).

(5) The condition is that the encumbrance to which the entry would relate is (or falls to be) registered against each of the sharing plots.

19 Conversion of shared plot title sheet to ordinary title sheet

(1) The Keeper may at any time revoke a designation under section 17(2) of a title sheet as a shared plot title sheet.

(2) Where the Keeper revokes a designation, the Keeper must make such changes to the title sheets of the plots of land that were, in relation to the shared plot title sheet, the shared plot and the sharing plots as are consequential upon the revocation.

20 Shared plot title sheets in relation to registered leases

Schedule 1 makes provision for registered leases tenanted in common similar to that made by sections 17 to 19 for plots of land owned in common.

PART 2
REGISTRATION
Applications for registration

21 Application for registration of deed

(1) A person may apply to the Keeper for registration of a registrable deed.

(2) The Keeper must accept an application under subsection (1) to the extent the applicant satisfies the Keeper that, as at the date of application, the general application conditions are met and—

(a) where the application is made in respect of a disposition of, or a notice of title to, an unregistered plot, the conditions set out in section 23 are met,

(b) where section 25 applies, the conditions set out in that section are met,

(c) in any other case, the conditions set out in section 26 are met.

(3) To the extent the applicant does not so satisfy the Keeper, the Keeper must reject the application.

(4) Subsection (2) is subject to section 44(5).

22 General application conditions

(1) The general application conditions are—

(a) the application is such that the Keeper is able to comply, in respect of it, with such duties as the Keeper has under Part 1,

(b) the application does not relate to a souvenir plot,
(c) the application does not fall to be rejected by virtue of section 6 or 9G of the
Requirements of Writing (Scotland) Act 1995 (c.7) (registration of document) or
of a prohibition in an enactment,

(d) the application is in the form (if any) prescribed by land register rules, and

(e) either—

   (i) such fee as is payable for registration is paid, or

   (ii) arrangements satisfactory to the Keeper are made for payment of that fee.

(2) In subsection (1)(b), “souvenir plot” means a plot of land which—

   (a) is of inconsiderable size and of no practical utility, and

   (b) is neither—

      (i) a registered plot, nor

      (ii) a plot the ownership of which has, at any time, separately been constituted
           or transferred by a document recorded in the Register of Sasines.

23 Conditions of registration: transfer of unregistered plot

(1) The conditions are that—

   (a) the application is made by the grantee of the disposition or as the case may be the
       person in whose favour is the notice of title,

   (b) the deed is valid,

   (c) the deed so describes the plot as to enable the Keeper to delineate its boundaries
       on the cadastral map,

   (d) where within the plot there is a lesser area in respect of which a registrable
       encumbrance is constituted there is included in, or submitted with, the application
       a plan or description sufficient to enable the Keeper to delineate the boundaries of
       the lesser area on the cadastral map,

   (e) there is included in the application a description of every public right of way (by
       whatever means) over or through the plot in so far as known to the applicant.

(2) Subsection (1)(c) and (d) do not apply—

   (a) if the plot to which the application relates is a flat in a flatted building, and

   (b) either—

      (i) the flatted building is, by virtue of section 16, represented as a single
          cadastral unit on the cadastral map, or

      (ii) the Keeper has indicated that the flatted building is, by virtue of that
           section, to be so represented.

(3) Despite subsection (2), subsection (1)(c) and (d) apply in so far as the plot includes a
pertinent outwith the flatted building, being a pertinent only of the plot.

(4) Subsection (1)(d) does not apply in relation to an encumbrance which consists of—

   (a) a right to lead a pipe, cable, wire or other such enclosed unit over or under land,

   (b) a servitude created other than by registration.

(5) In this section, “the deed” means the disposition or as the case may be the notice of title.
24 **Circumstances in which section 25 applies**

(1) Section 25 applies where any of subsections (2) to (7) apply.

(2) This subsection applies where—
   (a) the application is in respect of a grant of a lease, and
   (b) the subjects of the lease consist of or form part of an unregistered plot of land.

(3) This subsection applies where—
   (a) the application is in respect of an assignation of an unregistered lease, and
   (b) the subjects of the lease consist of or form part of an unregistered plot of land.

(4) This subsection applies where—
   (a) the application is in respect of a sublease granted by a tenant, and
   (b) the subjects of the tenant’s lease consist of or form part of an unregistered plot of land.

(5) This subsection applies where—
   (a) the application is in respect of a deed registrable by virtue of section 47(4), and
   (b) the land to which the deed relates consists of or forms part of an unregistered plot of land.

(6) This subsection applies where—
   (a) the application is in respect of a notice of title to a subordinate real right,
   (b) the notice of title is registrable by virtue of section 4A (as inserted by section 52(3)) of the Conveyancing (Scotland) Act 1924 (c.27),
   (c) the last completed title to the subordinate real right is recorded in the Register of Sasines, and
   (d) the land in respect of which the subordinate real right is constituted consists of or forms part of an unregistered plot of land.

(7) This subsection applies where—
   (a) the application is in respect of a standard security granted over an unregistered subordinate real right, and
   (b) the land in respect of which the subordinate real right is constituted consists of or forms part of an unregistered plot of land.

25 **Conditions of registration: certain deeds relating to unregistered plots**

(1) The conditions are that—
   (a) the deed is valid,
   (b) the deed so describes the plot as to enable the Keeper to delineate its boundaries on the cadastral map,
   (c) where within the plot there is a lesser area in respect of which a registrable encumbrance is constituted there is included in, or submitted with, the application a plan or description sufficient to enable the Keeper to delineate the boundaries of the lesser area on the cadastral map,
(d) there is included in the application a description of every public right of way (by whatever means) over or through the plot in so far as known to the applicant.

(2) Subsection (1)(b) and (c) do not apply—
(a) if the plot to which the deed relates is a flat in a flatted building, and
(b) either—
   (i) the flatted building is, by virtue of section 16, represented as a single cadastral unit in the cadastral map, or
   (ii) the Keeper has indicated that the flatted building is, by virtue of that section, to be so represented.

(3) Despite subsection (2), subsection (1)(b) and (c) apply in so far as the plot includes a pertinent outwith the flatted building, being a pertinent only of the plot.

(4) Subsection (1)(c) does not apply in relation to an encumbrance which consists of—
   (a) a right to lead a pipe, cable, wire or other such enclosed unit over or under land,
   (b) a servitude created other than by registration.

(5) In this section and sections 30 and 40 in so far as they apply by virtue of this section, references to the plot are to be read as references to—
   (a) where this section applies by virtue of section 24(2), (3) or (4), the area of land which forms the subjects of the lease,
   (b) where this section applies by virtue of section 24(5), the area of land to which the deed relates,
   (c) where this section applies by virtue of section 24(6) or (7), the area of land in respect of which the subordinate real right is constituted.

26 Conditions of registration: deeds relating to registered plots

(1) The conditions are that—
   (a) the deed is valid,
   (b) the deed relates to a registered plot of land,
   (c) the deed narrates the title number of each title sheet to which the application relates, and
   (d) the deed, in so far as it relates to part only of a plot of land or of the subjects of a lease, so describes the part as to enable the Keeper to delineate on the cadastral map the boundaries of the part.

(2) Where the title number of the title sheet of a sharing plot is narrated in the deed, subsection (1)(c) does not require the narration of the title number of the title sheet of the shared plot.

(3) Subsection (1)(d) does not apply if—
   (a) the part to which the deed relates is a flat in a flatted building, and
   (b) either—
      (i) the flatted building is, by virtue of section 16, represented as a single cadastral unit in the cadastral map, or
(ii) the Keeper has indicated that the flatted building is, by virtue of that section, to be so depicted.

(4) Despite subsection (3), subsection (1)(d) applies in so far as the part includes a pertinent outwith the flatted building, being a pertinent only of the part.

(5) Subsection (1)(d) does not apply in the case of an application which relates to registration to create as a servitude a right to lead a pipe, cable, wire or other such enclosed unit over or under land.

Registration without deed

27 Application for voluntary registration

(1) A person mentioned in subsection (2) may apply for registration of an unregistered plot of land or any part of that plot.

(2) The person is the owner (or, in the case of ownership in common, any of the owners) of the plot.

(3) The Keeper must accept an application under subsection (1) to the extent—

(a) the applicant satisfies the Keeper that, as at the date of the application, the following are met—

   (i) the general application conditions, and

   (ii) the conditions mentioned in section 28, and

(b) the Keeper is satisfied that it is expedient that the plot (or the part of the plot) should be registered.

(4) To the extent the applicant does not so satisfy the Keeper, the Keeper must reject the application.

(5) Where the application is in respect of a part of a plot of land, references to the plot in section 28 and section 30 in so far as it applies by virtue of this section are to be read as references to the part.

(6) The Scottish Ministers may by order repeal subsection (3)(b).

(7) Before making such an order, the Scottish Ministers must consult the Keeper.

(8) An order under subsection (6) may make different provision for different areas.

28 Conditions of registration: voluntary registration

(1) The conditions are that—

(a) there is submitted with the application a plan or description of the plot sufficient to enable the Keeper to delineate the plot’s boundaries in the cadastral map,

(b) where within the plot there is a lesser area in respect of which a registrable encumbrance is constituted there is included in, or submitted with, the application a plan or description sufficient to enable the Keeper to delineate the boundaries of the lesser area in the cadastral map.

(2) Subsection (1)(a) and (b) does not apply—

(a) if the plot to which the application relates is a flat in a flatted building, and

(b) either—
(i) the flatted building is, by virtue of section 16, represented as a single cadastral unit on the cadastral map, or
(ii) the Keeper has indicated that the flatted building is, by virtue of that section, to be so depicted.

(3) Despite subsection (2), subsection (1)(a) and (b) applies in so far as the plot includes a pertinent outwith the flatted building, being a pertinent only of the plot.

(4) Subsection (1)(b) does not apply in relation to an encumbrance which consists of—
   (a) a right to lead a pipe, cable, wire or other such enclosed unit over or under land, or
   (b) a servitude created other than by registration.

29 Keeper-induced registration

(1) Other than on application and irrespective of whether the proprietor or any other person consents, the Keeper may register an unregistered plot of land or part of that plot.

(2) Where the Keeper decides under this section to register a part of a plot, references to the plot in section 30 are to be read as references to the part.

30 Completion of registration of plot

(1) This section applies where—
   (a) the Keeper accepts—
      (i) an application under section 21 in respect of a disposition of, or a notice of title to, an unregistered plot of land,
      (ii) an application under section 21 by virtue of it meeting the conditions in section 25, or
      (iii) an application under section 27 in respect of a plot of land or a part of a plot, or
   (b) the Keeper decides to register a plot of land or a part of a plot under section 29.

(2) The Keeper must—
   (a) make up a title sheet for the plot,
   (b) make such other changes to the title sheet record as are necessary or expedient,
   (c) create a cadastral unit for the plot,
   (d) make such other changes to the cadastral map as are necessary or expedient, and
   (e) copy into the archive record any document which—
      (i) has been submitted to the Keeper or, where this section applies by virtue of subsection (1)(a)(ii) or (1)(b), is reasonably available to the Keeper, and
      (ii) is relevant to the accuracy of the register.

(3) Subsection (2)(e) is subject to section 14(3).

(4) Changes under paragraph (b) or (d) of subsection (2) may include—
   (a) cancelling a title sheet and cadastral unit, or
(b) making up a new title sheet and creating a new cadastral unit.

(5) In a case where—
   (a) this section applies by virtue of subsection (1)(a)(ii) or (1)(b), and
   (b) any name or designation to be entered in the new title sheet to be made up cannot, or cannot with reasonable certainty, be determined by the Keeper,

the Keeper may, in place of or as part of that entry, enter a statement that the name or designation is not known or as the case may be is not known with reasonable certainty.

31 Completion of registration of deed
(1) This section applies where the Keeper accepts an application under section 21 other than an application to which section 30 applies.
(2) The Keeper must as soon as reasonably practicable after accepting the application—
   (a) make such changes to the title sheet, or each of the title sheets, to which the application relates as are necessary to give effect to the deed,
   (b) make such other changes (if any) to the title sheet record as are necessary or expedient,
   (c) make such changes (if any) to the cadastral map as are necessary or expedient, and
   (d) copy into the archive record—
      (i) the deed being given effect to by registration, and
      (ii) any other document which has been submitted to the Keeper and is relevant to the accuracy of the register.
(3) Subsection (2)(d)(ii) is subject to section 14(3).
(4) Changes under paragraphs (a) to (c) of subsection (2) may include—
   (a) cancelling a title sheet and cadastral unit, or
   (b) making up a new title sheet and creating a new cadastral unit.

31A References to certain entries in Register of Inhibitions
(1) Subsection (2) applies where—
   (a) the Keeper accepts an application for registration under section 21, and
   (b) the validity of the deed to which the application relates might be affected by an entry in the Register of Inhibitions.
(2) The Keeper must, as soon as reasonably practicable after accepting the application, enter a reference to the entry in the title sheet.
(3) Subsection (2) does not apply where the entry mentioned in subsection (1)(b) is—
   (a) a notice of land attachment (within the meaning of section 83(1) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3)), or
   (b) a notice of a signeted summons in an action of reduction of a deed granted in breach of inhibition.
32 **Recording in application record**

(1) On receipt of an application for registration, the Keeper must—
   (a) as soon as reasonably practicable, or
   (b) if the application record is not open for the making of entries, as soon as reasonably practicable on the application record next opening for that purpose,

enter in the application record details of the application (including the date the entry under this subsection is made).

(2) No such entry need be made however if, on receipt of the application, it is immediately apparent to the Keeper that the application falls to be rejected.

(3) On an application being—
   (a) withdrawn,
   (b) accepted by the Keeper, or
   (c) rejected by the Keeper,

the Keeper must remove the entry relating to it from the application record.

33 **Withdrawal and amendments etc. of application**

(1) While an application for registration is pending, the applicant—
   (a) may withdraw it, but
   (b) except with the consent of the Keeper, may not substitute it or amend it.

(2) Land register rules may specify circumstances in which consent under subsection (1)(b) must be given.

34 **Period within which decision must be made**

(1) The Keeper’s decision as to whether to accept or reject an application for registration must be made within such period as may be prescribed in land register rules.

(2) Different periods may be so prescribed for different kinds of application.

(3) The Keeper must deal with an application without unreasonable delay.

35 **Date of application**

Any reference in this Act, however expressed, to the date of an application for registration is a reference to the date an entry in respect of the application is made in the application record under subsection (1) of section 32 (or, but for subsection (2) of that section, would fall to be made).
36 Date and time of registration

(1) Where the Keeper accepts an application for registration, the date of registration is the date of the application.

(2) The time of registration is deemed to be the moment at which, following the application being received by the Keeper, the application record next closes.

(3) The Scottish Ministers may by order—
   (a) amend subsection (2) so as to make different provision as regards time of registration, and
   (b) make such other amendments to this Act as are consequential upon that amendment.

(4) Before making such an order, the Scottish Ministers must consult the Keeper.

37 Power to amend section 6 of the Land Registers (Scotland) Act 1868

If, under section 36(3)(a), the Scottish Ministers amend this Act, they may, in that order, correspondingly amend section 6 of the Land Registers (Scotland) Act 1868 (c.64) (which provides for registration in the General Register of Sasines) and make such other amendments to that Act as are consequential upon that amendment to that section.

Applications in relation to the same land

38 Order in which applications are to be dealt with

(1) The Keeper must deal with two or more applications for registration in relation to the same land in order of receipt.

(2) In the absence of evidence to the contrary, the order of receipt is to be taken to be the order in which the details of the applications were entered in the application record.

(3) Subsection (1) is subject to subsections (4) to (7).

(4) Subsection (5) applies where—
   (a) two applications (“application A” and “application B”) are received on the same date in relation to the same land,
   (b) to accept one of the applications would require the Keeper to reject the other,
   (c) the deed to which application A purports to give effect is a deed in relation to which a protected period is running, and
   (d) the deed to which application B purports to give effect either—
      (i) is not such a deed, or
      (ii) is such a deed but the protected period relating to the deed to which application A purports to give effect began before the protected period relating to the deed to which application B purports to give effect.

(5) The Keeper must deal with application A before application B.

(6) Subsection (7) applies where—
   (a) two applications (“application C” and “application D”) are received on the same date in relation to the same land,
(b) the deed to which one of them (application C) purports to give effect is a deed in favour of a person (“X”), and
(c) the deed to which the other (application D) purports to give effect is a deed granted by X.

(6A) Subsection (7) also applies where—
(a) two applications (“application C” and “application D”) are received on the same date in relation to the same land,
(b) one application (application C) is an application under section 27, and
(c) the other (application D) is an application under section 21.

(7) The Keeper must deal with application C before application D.

Notification

39 Notification of acceptance, rejection or withdrawal of application

(1) On an application for registration being accepted or rejected, the Keeper must notify—
(a) the applicant,
(b) the granter of the deed sought to be registered (if any),
(c) if notification of receipt of the application was given under section 44(1), those to whom it was given, and
(d) any other person the Keeper considers appropriate.

(2) On an application for registration being withdrawn, the Keeper must notify—
(a) the granter of the deed which had been sought to be registered (if any),
(b) if such notification as is mentioned in subsection (1)(c) was given, those to whom it was given, and
(c) any other person the Keeper considers appropriate.

(3) The Keeper’s duty to notify persons under subsections (1) and (2) only applies in so far as the Keeper considers it reasonably practicable to notify them.

(4) Notification is to be by such means as the Keeper considers appropriate.

(5) Land register rules may make further provision about notification under subsections (1) and (2).

(6) A failure to comply with subsections (1) and (2) or with any rules so made does not affect the competence or validity of the acceptance, rejection or withdrawal in question.

40 Notification to proprietor

(1) This section applies where—
(a) the Keeper accepts an application under section 21 by virtue of it meeting the conditions in section 25, or
(b) the Keeper registers a plot of land under section 29.

(2) The Keeper is to notify—
(a) the proprietor of the plot, and
(b) any other person the Keeper considers appropriate.

(3) The Keeper’s duty to notify persons under subsection (2) only applies in so far as the Keeper considers it reasonably practicable to notify them.

(4) Notification is to be by such means as the Keeper considers appropriate.

(5) Land register rules may make further provision about notification under subsection (2).

(6) A failure to comply with subsection (2) or with any rules so made does not affect the competence or validity—

(a) of the acceptance of the application in question, or

(b) of the registration of the plot of land in question.

41 Notification to Scottish Ministers of certain applications

(1) This section applies where an application under section 21 is rejected on the ground that (or on grounds which include the ground that) the Keeper is not satisfied that the application does not relate to a transfer prohibited—

(a) by section 40(1) of the Land Reform (Scotland) Act 2003 (asp 2) (effect of registration of community interest in land), or

(b) under section 37(5)(e) of that Act (prohibition pending determination as to whether a community interest in land is to be registered).

(2) However, this section does not apply where the only reason for the Keeper not being satisfied as mentioned in subsection (1) is that the application is not accompanied by a declaration required under section 43(2) of that Act (incorporation of certain declarations into deed giving effect to transfer).

(3) The Keeper must—

(a) notify the Scottish Ministers, and

(b) provide them with a copy of the application.

Prescriptive claimants etc.

42 Prescriptive claimants

(1) For the purposes of sections 23(1)(b), and 26(1)(a), a disposition is to be treated as being valid despite not being so if the conditions mentioned in subsections (2) to (4) are met.

(2) It appears to the Keeper that the disposition is not valid (or, as regards part of the land to which the application relates, is not valid) for the reason only that the person who granted it had no title to do so.

(3) The applicant satisfies the Keeper that the land to which the application relates (or as the case may be the part in question) has been possessed openly, peaceably and without judicial interruption—

(a) by the disponer or the applicant for a continuous period of 1 year immediately preceding the date of application, or

(b) first by the disponer and then by the applicant for periods which together constitute such a period.

(4) The applicant satisfies the Keeper that the following person has been notified of the application—
(a) the proprietor,
(b) if there is no proprietor (or none can be identified), any person who appears to be able to take steps to complete title as proprietor, or
(c) if there is no proprietor and no such person (or, in either case, none can be identified), the Crown.

(5) For the purposes of section 26(1)(a), a deed is to be treated as being valid despite not being so if—
(a) the deed is granted by or is directed against a prescriptive claimant, and
(b) the application would be accepted were the prescriptive claimant’s title valid.

(6) In subsection (5), a “prescriptive claimant” is—
(a) a person whose name is entered as proprietor in the proprietorship section of a title sheet, on an application being accepted by virtue of subsection (1),
(b) a person whose name is entered as holder of a right, in the appropriate section of a title sheet, the entry in relation to the right being one marked provisional under section 79(3)(a)(i),
(c) any person in right of a person mentioned in paragraph (a) or (b).

(7) Land register rules may make further provision about notification under subsection (4).

(8) The Scottish Ministers may, by order, amend subsection (3) so as to substitute for the period for the time being mentioned there a different period.

(9) Before making such an order, the Scottish Ministers must consult the Keeper.

43 Provisional entries on title sheet

(1) Where the Keeper accepts an application under section 21 by virtue of section 42(1) or (5), the Keeper is to mark any resulting entry in the title sheet as provisional.

(2) The Keeper is to remove the provisional marking from an entry if and when the real right to which the entry relates becomes, under section 1 of the Prescription and Limitation (Scotland) Act 1973 (c.52) (validity of right), exempt from challenge.

(3) While an entry remains provisional—
(a) it does not affect any right held by any person in the land to which the entry relates, and
(b) rights set out in the register are not to be altered or deleted by virtue only of the entry.

44 Notification of prescriptive applications

(1) Before accepting an application under section 21 which is received by virtue of section 42(1), the Keeper must notify—
(a) the proprietor,
(b) if there is no proprietor (or none can be identified), any person who appears to the Keeper able to take steps to complete title as proprietor, or
(c) if there is no proprietor and no such person (or, in either case, none can be identified), the Crown.
(2) The Keeper’s duty to notify persons under subsection (1) only applies in so far as the Keeper considers it reasonably practicable to notify them.

(3) Notification is to be by such means as the Keeper considers appropriate.

(4) A person to whom a notice is given under subsection (1) may object in writing to the application being accepted.

(5) If the Keeper receives such an objection within 60 days of the notice, the Keeper must reject the application.

(6) Land register rules may make further provision about notification under subsection (1).

(7) The Scottish Ministers may, by order, amend subsection (5) so as to substitute for the number of days for the time being mentioned there a different number of days.

(8) Before making such an order, the Scottish Ministers must consult the Keeper.

Further provision

Applications relating to compulsory acquisition

In the application of sections 21, 23, 30 and 47 to a case in which transfer of ownership is by virtue of compulsory acquisition, any reference in those sections to a “disposition” includes a reference to—

(a) a conveyance the form of which is provided for by an enactment,

(b) a notarial instrument, or

(c) a general vesting declaration.

Effect of death or dissolution

(1) The Keeper must reject an application if the applicant dies, or as the case may be is dissolved, before the date of the application.

(2) An application is not incompetent by reason only that the person who granted the deed sought to be registered dies, or as the case may be is dissolved, after the delivery of the deed.

Closure of Register of Sasines etc.

(1) The recording of any of the following in the Register of Sasines has no effect—

(a) a disposition,

(b) a lease,

(c) an assignation of a lease,

(d) any other deed in so far as it relates to a registered plot of land or to a registered lease.

(2) The recording, on or after such day as is prescribed, of a standard security in the Register of Sasines has no effect.

(3) The recording, on or after such day as is prescribed, of a deed other than one mentioned in subsection (1) or (2) in the Register of Sasines has no effect.
(4) On and after the day prescribed under subsection (3), any deed the recording of which would, by virtue of that subsection, have no effect is (subject to the provisions of this Act) registrable in the Land Register.

(5) Where by virtue of this section the recording of a deed, disposition, lease, assignation or standard security in the Register of Sasines would have no effect, the Keeper is to reject any application to record it.

(6) Subsection (1)(a) is without prejudice to sections 4 (creation of real burden) and 75 (creation of positive servitude by writing: deed to be registered) of the Title Conditions (Scotland) Act 2003 (asp 9).

(7) Any day prescribed under subsection (2) or (3) is to be a day no earlier than the day subsection (3)(b) of section 27 is repealed by virtue of subsection (6) of that section.

(8) In subsections (2) and (3), “prescribed” means prescribed by the Scottish Ministers by order.

(9) An order under subsection (2) or (3) may make different provision for different areas.

(10) Before making an order under subsection (2) or (3), the Scottish Ministers must consult—

(a) the Keeper, and

(b) such other persons appearing to have an interest in the closure of the Register of Sasines to the recording of deeds as the Scottish Ministers consider appropriate.

PART 3

COMPETENCE AND EFFECT OF REGISTRATION

Registrable deeds

(1) A deed is registrable only if and in so far as its registration is authorised (whether expressly or not) by—

(a) this Act,

(b) an enactment mentioned in subsection (3), or

(c) any other enactment.

(2) Registration of such a deed has the effect provided for (whether expressly or not) by—

(a) this Act,

(b) an enactment mentioned in subsection (3),

(c) any other enactment, or

(d) any rule of law.

(3) The enactments referred to in subsections (1) and (2) are—

(a) the Registration of Leases (Scotland) Act 1857 (c.26),

(b) the Conveyancing (Scotland) Act 1924 (c.27),

(c) the Conveyancing and Feudal Reform (Scotland) Act 1970 (c.35),

(d) the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73).
(4) Registration of an invalid deed confers real effect only to the extent that an enactment so provides.

Specific provisions on competence and effect of registration

49 Transfer by disposition

(1) A disposition of land may be registered.

(2) Registration of a valid disposition transfers ownership.

(3) An unregistered disposition does not transfer ownership.

(4) Subsections (1) to (3) are subject to—

(a) sections 42 and 82, and

(b) any other enactment or rule of law by or under which ownership of land may pass.

(5) In subsection (1), “land” includes land held on udal title.

50 Proper liferents

(1) A deed creating a proper liferent over land may be—

(a) registered, or

(b) recorded in the Register of Sasines.

(2) The proper liferent is not created before the deed is so registered or recorded.

(3) Subsections (1) and (2) are subject to any other enactment or any rule of law by or under which a proper liferent over land may be created.

(4) References in this section to the recording of a deed include references to the recording of a notice of title deducing title through a deed.

51 Registration of, and of transactions and events affecting, leases

(1) The Registration of Leases (Scotland) Act 1857 (c.26) is amended as follows.

(2) After section 20 insert—

“20A Certain transactions or events registrable in the Land Register of Scotland

(1) A deed mentioned in subsection (2) which affects a lease registered in the Land Register of Scotland is registrable in that register.

(2) The deed is one—

(a) terminating the lease,

(b) extending the duration of the lease,

(c) otherwise altering the terms of the lease.

20B Effect of registration in the Land Register of Scotland

(1) Registration in the Land Register of Scotland has the effect of—
(a) vesting in the person registered as entitled to the lease a real right in and to the lease and in and to any right or pertinent, express or implied, forming part of the lease, subject only to the effect of any matter entered in that register so far as adverse to the entitlement,

(b) making any registered right or obligation relating to the registered lease a real right or obligation, and

(c) affecting any registered real right or obligation relating to the registered lease,

in so far as the right or obligation is capable, under any enactment or rule of law, of being vested as a real right, of being made real or (as the case may be) of being affected as a real right.

(2) Registration in the Land Register of Scotland is the only means—

(a) whereby rights or obligations relating to a registered lease become real rights or obligations, or

(b) of affecting such real rights or obligations.

(3) Subject to Part 9 of the Land Registration etc. (Scotland) Act 2012 (asp 00) (rights to persons acquiring etc. in good faith), registration of an invalid deed confers no real effect.

(3) Schedule 2, which contains minor and consequential modifications of the 1857 Act in consequence on this Act, has effect.

52 Completion of title

(1) The Conveyancing (Scotland) Act 1924 (c.27) is amended as follows.

(2) In section 4 (completion of title)—

(a) for “by a title which has not been completed by being recorded in the appropriate Register of Sasines, may” substitute “may, if the last recorded title to the right is recorded in the General Register of Sasines,”,

(b) the title of the section becomes “Completion of title: General Register of Sasines”.

(3) After section 4 insert—

“4A Completion of title: Land Register

Any person having right either to land or to a heritable security may complete title by registration in the Land Register of a notice of title in or as nearly as may be in the terms of the form in schedule BA to this Act.

4B Further provision as regards completion of title

(1) If it is competent to register a disposition or assignation in the Land Register, it is not competent for the disponee or assignee to complete title in the manner provided for in section 4 of this Act.

(2) In this section and in section 4A of this Act, “Land Register” means the Land Register of Scotland.”.

(4) After section 49 insert—
“49A Power of the Scottish Ministers to prescribe forms

(1) The Scottish Ministers may, by order, modify any schedule to this Act.

(2) Such an order may, in particular, substitute for any form, notice, clause, warrant or other deed for the time being set out in such a schedule another such form, notice, clause, warrant or other deed.

(3) An order under this section is subject to the affirmative procedure.”.

(5) After schedule B insert—

“SCHEDULE BA
FORM OF NOTICE OF TITLE: LAND REGISTER

Be it known that A.B. (designation) has right as proprietor to all and whole (description) conform to the last completed title and subsequent writ (or writs), which title and writ (or writs) have been examined by me, Y.Z. (designation), Notary Public (or Law Agent).

[Testing clause.]

Y.Z.

NOTES TO SCHEDULE BA

Note 1: Where the notice is in respect of a subordinate real right, other than a registered lease having its own title sheet, for “proprietor to” substitute “holder of liferent (or other right, as the case may be) over”.

Note 2: Where the notice is in respect of a registered lease having its own title sheet, for “proprietor to” substitute “tenant of”.

Note 3: If any writ by which A.B. acquired right contains a new title condition, whether burdening or benefiting the property, the condition is to be inserted in full after the description of the property.

Note 4: In the case of a traditional document, subscription of it by the notary public (or law agent) on behalf of the granter will suffice for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes: see the Requirements of Writing (Scotland) Act 1995 (c.7) (which also makes provision as regards the authentication of an electronic document).”.

53 Registration of decree of reduction

After section 46 of the Conveyancing (Scotland) Act 1924 (c.27) insert—

“46A Further provision as regards decree of reduction

(1) Where a deed mentioned in subsection (2) is reduced, the decree of reduction—

(a) may be registered in the Land Register of Scotland, and

(b) does not have real effect until so registered.

(2) The deed is one which—
(a) is voidable, and
(b) relates to a plot of land or lease registered in the Land Register of Scotland.

(3) Subsection (1) applies to an arbitral award which—
(a) orders the reduction of a deed mentioned in subsection (2), and
(b) may be enforced in accordance with section 12 of the Arbitration (Scotland) Act 2010 (asp 1),
as it applies to a decree of reduction.”.

54 Registration of order for rectification of document etc.

(1) The Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73) is amended as follows.

(2) In section 8 (rectification of defectively expressed documents)—
(a) in subsection (3), after “made to it” insert “and in either case after calling all parties who appear to it to have an interest”,
(b) after that subsection insert—
“(3A) If a document is registered in the Land Register of Scotland in favour of a person acting in good faith then, unless the person consents to rectification of the document, it is not competent to order its rectification under subsection (3) above.”,
(c) in subsection (4), for “section 9(4)” substitute “sections 8A and 9(4)”.

(3) After section 8 insert—
“8A Registration of order for rectification
An order for rectification made under section 8 of this Act in respect of a document which has been registered in the Land Register of Scotland—
(a) may be registered in that register, and
(b) does not have real effect until so registered.”.

(4) In section 9 (provisions supplementary to section 8: protection of other interest)—
(a) in subsection (2)—
(i) for “subsection (3)” substitute “subsections (2A) and (3)”,
(ii) repeal “or on the title sheet of an interest in land registered in the Land Register of Scotland being an interest to which the document relates”,
(b) after that subsection insert—
“(2A) This section does not apply where the document to be rectified is a deed registered in the Land Register of Scotland.”,
(c) in subsection (3)—
(i) in paragraph (a), repeal “or (as the case may be) the title sheet”,
(ii) in paragraph (b), repeal “or on the title sheet”,

(5) In section 10 (provisions supplementary to section 9: protection of other interest)—
(a) in subsection (1), for “section 8(3)” substitute “section 8A(3)”,
(b) in subsection (2), for “section 8(4)” substitute “section 8A(4)”,
(c) in subsection (3), for “section 9(3)” substitute “section 9A(3)”,
(d) in subsection (4), for “section 9(4)” substitute “section 9A(4)”. 
(d) subsection (6) is repealed.

**PART 4**

**ADVANCE NOTICES**

**55** **Advance notices**

1. An advance notice is a notice—
   (a) stating that a person intends to grant a deed to another person,
   (b) stating the name and designation of both persons,
   (c) describing the nature of the intended deed (as for example whether it is to be a disposition),
   (d) where the intended deed relates to a registered lease or a registered plot of land—
      (i) stating the title number of the title sheet to which the deed is to relate,
      (ii) where the deed is to relate to a registered lease which does not have a lease title sheet, stating the particulars of the lease, and
      (iii) where the deed is to relate to part only of the subjects of the lease, or to part only of the plot, describing the part so as to enable the Keeper to delineate on the cadastral map the boundaries of the part, and
   (e) where the intended deed relates to an unregistered lease or unregistered plot of land, describing the lease or, as the case may be, plot.

2. Subsection (1)(d)(iii) does not apply if—
   (a) the part to which the deed relates is a flat in a flatted building, and
   (b) either—
      (i) the flatted building is, by virtue of section 16, represented as a single cadastral unit on the cadastral map, or
      (ii) the Keeper has indicated that the flatted building is, by virtue of that section, to be so depicted.

3. Despite subsection (2), subsection (1)(d)(iii) applies in so far as the part includes a pertinent outwith the flatted building, being a pertinent only of the part.

4. The Scottish Ministers may by regulations make provision about the description to be contained in an advance notice by virtue of subsection (1)(e).

**56** **Application for advance notice**

1. A person falling within subsection (2) may apply to the Keeper for an advance notice in relation to a registrable deed which the person intends to grant.

2. A person falls within this subsection if—
   (a) the person may validly grant the intended deed, or
   (b) the person has the consent of such a person to apply.

3. The Keeper may accept an application under subsection (1) only if—
   (a) such fee as is payable in respect of the application is paid, or
(b) arrangements satisfactory to the Keeper are made for payment of that fee.

(4) If the Keeper accepts an application under subsection (1), the Keeper must—

(a) where the intended deed relates to a registered plot of land—

(i) as soon as reasonably practicable or, if the application record is not open for the making of entries, as soon as reasonably practicable on the application record next opening for that purpose, enter an advance notice in the application record, and

(ii) where (and to the extent that) section 55(1)(d)(iii) applies in relation to the notice, delineate the boundaries of the part on the cadastral map,

(b) in any other case, record an advance notice in the Register of Sasines.

57 Period of effect of advance notice

(1) An advance notice has effect for the period of 35 days beginning with the day after the notice is entered in the application record or, as the case may be, recorded in the Register of Sasines.

(2) Subsection (1) is subject to section 60.

(3) The period during which an advance notice has effect is referred to in this Act as the “protected period”.

(4) Subsection (5) applies where two advance notices in relation to the same plot of land or lease are entered into the application record or recorded in the Register of Sasines on the same date.

(5) The protected period in relation to the advance notice which is first to be entered in the application record, or as the case may be recorded in the Register of Sasines, is deemed to begin before the protected period in relation to the other advance notice.

(6) The Scottish Ministers may, by order amend subsection (1) so as to substitute for the period for the time being mentioned there a different period.

(7) Before making such an order, the Scottish Ministers must consult the Keeper.

58 Effect of advance notice: registered deeds

(1) Subsections (2) and (3) apply in relation to any two deeds (“deed Y” and “deed Z”) relating to the same plot of land where—

(a) during a protected period relating to deed Y—

(i) an application is made for registration of deed Z, and

(ii) on or after the date of that application, an application is made for registration of deed Y, and

(b) deed Z either—

(i) is not a deed in relation to which a protected period is running, or

(ii) is such a deed, but the protected period relating to deed Y began before the protected period relating to deed Z.

(2) If deed Z is registered before the Keeper comes to make any decision as to whether or not to accept the application for registration of deed Y, that decision is to be taken as if deed Z had not been registered.
(3) If the decision mentioned in subsection (2) is to accept the application—
   (a) deed Y has on registration the same effect as if deed Z had not been registered, and
   (b) the Keeper must amend the register so that it gives effect (if any) to deed Z as if it
       were registered after deed Y.

58A  Effect of advance notice: recorded deeds
(1) Subsections (2) and (3) apply in relation to any two deeds (“deed Y” and “deed Z”) relating to the same plot of land where, during a protected period relating to deed Y—
   (a) deed Z is recorded in the Register of Sasines, and
   (b) on or after the date of recording, an application is made for registration of deed Y.
(2) The decision as to whether or not to accept the application for registration of deed Y is to be taken as if deed Z had not been recorded.
(3) If the decision mentioned in subsection (2) is to accept the application—
   (a) deed Y has on registration the same effect as if deed Z had not been recorded, and
   (b) in making up the title sheet for the plot, the Keeper must give effect (if any) to
       deed Z as if it were not recorded but registered after deed Y.

58B  Effect of advance notice: further provision
(1) A deed to which an advance notice relates, if registered on a date which falls within the protected period, is not subject to—
   (a) an inhibition registered in the Register of Inhibitions against the granter and
       taking effect before that date but during that period, or
   (b) anything registered or recorded in that register and taking effect, before that date
       but during that period, as if an inhibition registered against the granter.
(2) Sections 58 and 58A apply irrespective of whether a deed is voluntary or involuntary.
(3) Sections 58 and 58A do not apply in relation to—
   (a) a notice registered, or intended or sought to be registered, under—
       (i) section 10(2A) of the Title Conditions (Scotland) Act 2003 (asp 9), or
       (ii) section 12(3) of the Tenements (Scotland) Act 2004 (asp 11), and
   (b) such other deeds as the Scottish Ministers may by order specify.
(4) Before making an order under subsection (3)(b), the Scottish Ministers must consult the Keeper.

59  Removal of advance notice etc.
(1) After the protected period in relation to an advance notice has elapsed, the Keeper must, if the notice was entered in the application record—
   (a) remove it from there, and
   (b) if the notice has not already been entered in the archive record, enter it in that
       record.
(2) After such period in relation to an advance notice as may be prescribed in land register rules the Keeper must, if the intended deed has not been registered, remove from the cadastral map any delineation effected under section 56(4)(a)(ii).

60 Discharge of advance notice

(1) A person who applied for an advance notice may apply to the Keeper for the discharge of that notice.

(2) An application under subsection (1) may be made only during the protected period.

(3) The Keeper may accept an application under subsection (1) only if—

(a) the person to whom the intended deed would be granted consents, and

(b) either—

(i) such fee as is payable in respect of the application is paid, or

(ii) arrangements satisfactory to the Keeper are made for payment of that fee.

(4) If the Keeper accepts the application, the Keeper must—

(a) if the advance notice was entered in the application record—

(i) remove it from there, and

(ii) if the notice has not already been entered in the archive record, enter it in that record,

(b) if the advance notice was recorded in the Register of Sasines, record a notice of discharge in relation to the advance notice.

(5) On the advance notice being removed from the application record or, as the case may be, a notice of discharge being recorded, the advance notice ceases to have effect.

61 Application of Part to specific deeds

(1) The Scottish Ministers may by order modify the application of this Part in relation to any deed of a kind specified in the order.

(2) Before making such an order, the Scottish Ministers must consult the Keeper.

PART 5

INACCURACIES IN THE REGISTER

62 Meaning of “inaccuracy”

(1) A title sheet is inaccurate in so far as it—

(a) misstates what the position is in law or in fact,

(b) omits anything required, by or under an enactment, to be included in it, or

(c) includes anything the inclusion of which is not expressly or impliedly permitted by or under an enactment.

(2) The cadastral map is inaccurate in so far as it—

(a) wrongly depicts or shows what the position is in law or in fact,
(b) omits anything required, by or under an enactment, to be depicted or shown on it, or
(c) depicts or shows anything the depiction or showing of which is not expressly or impliedly permitted by or under an enactment.

(3) The cadastral map is not inaccurate in so far as it does not depict something correctly by reason only of an inexactness in the base map which is within the published accuracy tolerances relevant to the scale of map involved.

(4) Neither a title sheet nor the cadastral map is inaccurate by reason only that a deed which gave rise to the acquisition, variation or discharge of a real right—
(a) was voidable and has been reduced, or
(b) has been rectified under section 8 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73) (rectification of defectively expressed documents).

(5) This section is subject to section 63(3).

63 Shifting boundaries

(1) This section applies where the proprietors of adjacent plots of land affected by alluvion agree that their common boundary (or part of it) is not to be so affected.

(2) Such an agreement may, on the joint application of both proprietors, be registered in the title sheets of both plots of land.

(3) Where such an agreement is registered, the cadastral map and the title sheets of the plots do not become inaccurate as a result of alluvion affecting the boundary (or part of it) occurring after registration.

PART 6
Caveats

65 Warrant to place a caveat

(1) This section applies to civil proceedings—
(a) for the reduction of a registered deed on the ground that it is voidable,
(b) which could result in a judicial determination that the register is inaccurate, or
(c) for an order which, if granted, would be registrable under section 8A of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73) (registration of order for rectification).

(2) A party to the proceedings may, at any time while the proceedings are in dependence, apply to the court for warrant to place a caveat on the title sheet of a plot of land to which the proceedings relate.

(3) The court may, if satisfied as to the matters mentioned in subsection (4), make an order granting the warrant applied for.

(4) The matters are that—
(a) the applicant has a prima facie case on the merits of the proceedings,
(b) were warrant for placing the caveat not granted, there is a real and substantial risk that enforcement of any decree or order in the proceedings granted in favour of the applicant would be defeated or prejudiced by reason of the other party being likely to deal with the plot of land, and

5  (c) in all the circumstances, including the effect which granting the warrant may have on any person having an interest, it is reasonable to make the order granting it.

(5) The onus is on the applicant to satisfy the court that the order granting the warrant should be made.

66  **Duration of caveat**

10  (1) A caveat, warrant for which is granted under section 65(3), expires 12 months after it is placed on the title sheet unless renewed, recalled or discharged before the expiry of that period.

(2) Subsection (1) applies to a caveat renewed under section 67(2) as it applies to a caveat warrant for which is granted under section 65(3).

15  (3) The Scottish Ministers may, by order, amend subsection (1) so as to substitute for the period for the time being mentioned in the subsection a different period.

(4) Before making such an order, the Scottish Ministers must consult the Keeper.

67  **Renewal of caveat**

(1) The applicant may apply to the court which granted the warrant to place the caveat for warrant to renew it.

(2) The court may, if satisfied as to the matters mentioned in subsection (3), make an order granting warrant to renew the caveat.

(3) The matters are that—

(a) the applicant has a prima facie case on the merits of the proceedings,

(b) were warrant to renew the caveat not granted, there is a real and substantial risk that enforcement of any decree or order in the proceedings granted in favour of the applicant would be defeated or prejudiced by reason of the other party being likely to deal with the plot of land, and

(c) in all the circumstances, including the effect which renewing the caveat may have on any person having an interest, it is reasonable to make the order renewing it.

(4) The onus is on the applicant to satisfy the court that the order renewing the caveat should be made.

(5) The court may renew a caveat on more than one occasion.

(6) In this section and in sections 68 and 69, “the applicant” means the person who has placed a caveat on the title sheet.

68  **Restriction of caveat**

(1) Any person with an interest, other than the applicant, may at any time apply to the court which granted the warrant to place the caveat for an order restricting the caveat.

(2) The court may, if satisfied—
(a) as to the matters mentioned in subsection (3), and
(b) that it is reasonable in all the circumstances to do so,
make an order restricting the caveat.

(3) The matters are that—

(a) the applicant has a prima facie case on the merits of the proceedings,
(b) there is a real and substantial risk that enforcement of any decree or order in the
proceedings granted in favour of the applicant would be defeated or prejudiced by
reason of the other party being likely to deal with the plot of land, and
(c) in all the circumstances, including the effect which granting the warrant to place
the caveat may have on any person having an interest, it is reasonable for the
caveat to continue to have effect.

(4) The onus is on the applicant to satisfy the court that the order restricting the caveat
should not be made.

69 Recall of caveat

(1) Any person with an interest, other than the applicant, may at any time apply to the court
which granted the warrant to place the caveat for the caveat to be recalled.

(2) The court must, if no longer satisfied as to the matters mentioned in subsection (3),
make an order recalling the caveat.

(3) The matters are that—

(a) the applicant has a prima facie case on the merits of the proceedings,
(b) there is a real and substantial risk that enforcement of any decree or order in the
proceedings granted in favour of the applicant would be defeated or prejudiced by
reason of the other party being likely to deal with the plot of land, and
(c) in all the circumstances, including the effect which granting the warrant to place
the caveat may have on any person having an interest, it is reasonable for the
caveat to continue to have effect.

(4) The onus is on the applicant to satisfy the court that the order recalling the caveat
should not be made.

70 Discharge of caveat

A person—

(a) in whose favour warrant to place a caveat has been granted, or
(b) who has renewed a caveat under section 67(2),
may at any time discharge the caveat.
PART 7
KEEPER’S WARRANTY

Keeper’s warranty

(1) The Keeper, in accepting an application for registration, warrants to the applicant that, as at the time of registration, the title sheet to which the application relates—

(a) is accurate—

   (i) in so far as it shows an acquisition, variation or discharge in favour of the applicant, or

   (ii) in the case of an application under section 27, in so far as it shows the applicant to be the proprietor or proprietor in common, and

(b) is not inaccurate in so far as there is omitted from it any encumbrance the inclusion of which is permitted or required by or under an enactment.

(2) But the Keeper does not warrant that—

(a) the plot of land to which the application relates is unencumbered by any public right of way,

(b) the land is unencumbered by a path delineated in an order under section 22 of the Land Reform (Scotland) Act 2003 (asp 2) (compulsory powers to delineate paths in land in respect of which access rights are exercisable),

(c) the land is unencumbered by a servitude created other than by registration in accordance with section 75(1) of the Title Conditions (Scotland) Act 2003 (asp 9) (creation of positive servitude by writing: deed to be registered),

(d) a right appearing on the title sheet as a pertinent is of a kind capable of being a valid pertinent,

(e) a pertinent appearing on the title sheet and of a kind extinguishable or variable without registration against the title of the benefited property has not been extinguished, or varied, without registration,

(f) the applicant has by registration acquired a right to mines or minerals,

(g) a registered lease has not been varied or terminated without the variation or termination having been registered,

(h) the title sheet to which the application relates is accurate—

   (i) in so far as it shows an acquisition, variation or discharge more extensive than the deed registered bore to effect, or

   (ii) in the case of an application under section 27, in so far as it shows the applicant to be the proprietor or proprietor in common of a plot of land more extensive than the plot registration of which the application bore to effect, or

   (i) alluvion has not had an effect on a boundary.

(3) The benefit of warranty extends to persons to whom the benefit of warrandice by the granter of a deed would extend.
(4) In relation to an application for registration of a deed relating to a title condition, references in subsections (1) and (2) and in section 76 to the applicant are to be read as references to the person benefiting from the deed given effect to.

(5) The Keeper does not warrant as provided for in subsections (1) and (2) where the application for registration is accepted by virtue of section 42.

(6) This section is subject to sections 73 and 74.

72 Keeper’s warranty on registration under sections 25 and 29

(1) The Keeper, on registering a plot of land by virtue of section 25 or under section 29, warrants to the owner that, as at the time of registration, the title sheet of the plot—

(a) is accurate in so far as it shows the owner to be the proprietor or proprietor in common, and

(b) is not inaccurate in so far as there is omitted from it any encumbrance the inclusion of which is permitted or required by or under an enactment.

(2) Subsections (2), (3) and (5) of section 71 apply to warranty under this section as they apply to warranty under that section.

(3) Subsection (2) of section 71 is subject to the following modifications—

(a) for paragraph (h) substitute—

“(h) in the case of registration by virtue of section 25, the title sheet is accurate in so far as it shows the owner to be the proprietor or proprietor in common of a plot of land more extensive than the area of land which forms the subjects of the lease, to which the deed relates or, as the case may be, in respect of which the subordinate real right is constituted,

(ha) in the case of registration under section 29, the title sheet is accurate in so far as it shows the owner to be the proprietor or proprietor in common of a plot of land more extensive than the plot the Keeper sought to register, or”,

(b) references in that subsection to—

(i) the application are to be read as references to the registration by virtue of section 25 or under section 29,

(ii) to the applicant are to be construed as references to the owner.

(4) This section is subject to sections 73 and 74.

73 Extension, limitation or exclusion of warranty

(1) The Keeper may—

(a) if satisfied (having regard to sufficiency of evidence as to title) that it is appropriate to do so, grant more extensive warranty than is provided for in section 71 or 72, or

(b) if not satisfied as to the validity of the acquisition, variation or discharge mentioned in section 71(1)(a)(i) or that the applicant or owner is the proprietor as mentioned in section 71(1)(a)(ii) or 72(1)(a)—

(i) grant less extensive warranty than is so provided for, or
(ii) exclude warranty.

(2) For the purposes of subsection (1), the Keeper must have regard to any relevant caveat placed on the title sheet by virtue of section 65.

(3) Where warranty is granted or excluded under subsection (1), the Keeper must give effect to the grant or exclusion by entering a statement describing it in the title sheet.

(4) If an entry made in the title sheet on an application being accepted by virtue of section 42 ceases to be provisional, the Keeper may—

(a) grant such warranty as the Keeper (having regard to sufficiency of evidence as to title) considers appropriate, and

(b) give effect to the grant by entering a statement describing it in the title sheet.

74 Variation of warranty

(1) This section applies where warranty is—

(a) as provided for in section 71 or 72,

(b) granted under section 73(1)(a), (b)(i) or (4)(a), or

(c) excluded under section 73(1)(b)(ii).

(2) The Keeper may, if the Keeper comes to be satisfied (having regard to sufficiency of evidence as to title) that it is appropriate to do so, grant—

(a) warranty as provided for in section 71,

(b) less extensive warranty than as so provided, or

(c) more extensive warranty than as so provided.

(3) The Keeper may not, under subsection (2), grant warranty that is less extensive than the warranty which was originally provided for or granted as mentioned in subsection (1)(a) or (b).

(4) For the purposes of subsection (2), the Keeper must have regard to any relevant caveat placed on the title sheet by virtue of section 65.

(5) Where the Keeper grants warranty or more extensive warranty under subsection (2), the Keeper must—

(a) unless the warranty granted is warranty only as provided for in section 71, give effect to the grant by entering a statement describing it on the title sheet, and

(b) remove any statement previously entered under section 73(3) or (4)(b).

Claims under warranty

75 Claims under Keeper’s warranty

(1) The Keeper must pay compensation for loss incurred as a result of a breach of the Keeper’s warranty.

(2) Liability to pay such compensation arises only if and when the inaccuracy giving rise to the claim for compensation is rectified.

(3) A claimant is not required to exhaust other remedies before making a claim to such compensation.
(4) Payment by the Keeper under this section does not extinguish any rights which the claimant may have against another person in respect of the loss compensated.

(5) But it is a condition of any such payment that the claimant assign any such rights to the Keeper.

5 **Claims under warranty: circumstances where liability excluded**

The Keeper has no liability to pay compensation by virtue of section 75(1)—

(a) if the inaccuracy is consequent upon an error in the cadastral map and that error was made in reasonable reliance upon the base map,

(b) if the existence of the inaccuracy was, or ought to have been, known to—

(i) the applicant, or

(ii) any person acting as solicitor or other legal adviser to the applicant,

at the time of registration,

(c) in so far as the inaccuracy is attributable to a failure of—

(i) the applicant, or

(ii) any person acting as solicitor or other legal adviser to the applicant,

to comply with the duty owed to the Keeper under section 107,

(d) in so far as the claimant’s loss could have been avoided by the applicant, owner or claimant taking certain measures which it would have been reasonable for the applicant, owner or claimant to take,

(e) in so far as the connection between the claimant’s loss and the inaccuracy is too remote, or

(f) for non-patrimonial loss.

77 **Claims under warranty: quantification of compensation**

(1) Compensation payable by virtue of section 75(1)—

(a) is, in so far as it is not compensation mentioned in paragraph (b), to be quantified as at the date on which the inaccuracy giving rise to the claim is rectified, and

(b) is to include—

(i) reimbursement of reasonable extra-judicial legal expenses, and

(ii) compensation for any other consequential loss.

(2) Interest on a sum so payable runs from the date mentioned in subsection (3) until the sum in question is paid.

(3) The date is—

(a) where the sum is payable other than by virtue of subsection (1)(b), the date mentioned in subsection (1)(a),

(b) where the sum is payable by virtue of subsection (1)(b)(i), the date on which the claimant paid the sum in question, and

(c) where the sum is payable by virtue of subsection (1)(b)(ii), the date on which the loss was sustained.
(4) The Scottish Ministers may by regulations make provision as to the rate of interest payable by virtue of subsection (2).

**PART 8**

**RECTIFICATION OF THE REGISTER**

**Rectification**

78 **Rectification of the register**

(1) This section applies where the Keeper becomes aware of a manifest inaccuracy in a title sheet or in the cadastral map.

(2) The Keeper must rectify the inaccuracy if what is needed to do so is manifest.

(3) Where what is so needed is not manifest, the Keeper must enter a note identifying the inaccuracy in the title sheet or, as the case may be, in the cadastral map.

(4) Where the Keeper rectifies an inaccuracy, the Keeper must—

(a) include in the archive record a copy of any document which discloses, or contributes to disclosing, the inaccuracy, and

(b) give notice of the rectification to any person who appears to the Keeper to be affected by it materially.

(5) Land register rules may make provision about—

(a) the persons to be notified by the Keeper, and

(b) the method by which such notice is to be given.

(6) A failure to comply with subsection (4) or with any rules so made does not affect the validity of a rectification under subsection (2).

79 **Rectification where registration provisional etc.**

(1) This section applies where it appears to the Keeper that rectification of an inaccuracy would interrupt a period of possession—

(a) which is current, and

(b) which, if uninterrupted, would, under section 1(1) or 2(1) of the Prescription and Limitation (Scotland) Act 1973 (c.52) (sections which provide for positive prescription), affect a real right.

(2) If the inaccuracy is in an entry marked provisional by virtue of section 43, the Keeper—

(a) may rectify the register if all those affected consent,

(b) where there is no such consent, must not rectify the register before the existence of the inaccuracy is judicially determined.

(3) In any other case, the Keeper—

(a) must—

(i) mark the relevant entry in the title sheet provisional,

(ii) enter in the appropriate section of the title sheet the name and designation of the true holder of the right affected by the inaccuracy (if any such person can be identified),
(b) may rectify the register if all those affected consent,
(c) where there is no such consent, must not rectify the register before the existence of the inaccuracy is judicially determined.

Referral of questions to Lands Tribunal

79A Referral to the Lands Tribunal for Scotland

(1) A person with an interest may refer a question relating to—
   (a) the accuracy of the register, or
   (b) what is needed to rectify an inaccuracy in the register,
   to the Lands Tribunal for Scotland.

(2) The Lands Tribunal must, on determining the question, give notice to—
   (a) the applicant,
   (b) any other person appearing to them to have an interest, and
   (c) the Keeper.

(3) This section is without prejudice to any other right of recourse, whether under an enactment or under a rule of law.

Keeper’s right to be heard in proceedings

64 Proceedings involving the accuracy of the register

The Keeper is entitled to appear and be heard in any civil proceedings, whether before a court or tribunal, in which—

(a) the accuracy of the register, or
(b) what is needed to rectify an inaccuracy in the register,

is put in question.

Compensation in consequence of rectification

80 Rectification: compensation for certain expenses and losses

(1) The Keeper must pay compensation for—
   (a) reimbursement of reasonable extra-judicial legal expenses incurred by a person in securing rectification of the register, and
   (b) any loss sustained by the person in consequence of the inaccuracy rectified.

(2) A claimant is not required to exhaust other remedies before making a claim to such compensation.

(3) Payment by the Keeper under this section does not extinguish any rights which the claimant may have against another person in respect of the loss compensated.

(4) But it is a condition of any such payment that the claimant assigns any such rights to the Keeper.
(5) Interest on a sum payable under this section runs from the date mentioned in subsection (6) until the sum in question is paid.

(6) The date is—
    (a) where the sum is payable by virtue of subsection (1)(a), the date on which the claimant paid the sum in question,
    (b) where the sum is payable by virtue of subsection (1)(b), the date on which the loss was sustained.

(7) The Scottish Ministers may by regulations make provision as to the rate of interest payable by virtue of subsection (5).

81 Rectification: circumstances where liability excluded

The Keeper has no liability to pay compensation under section 80—
    (a) if the inaccuracy is caused other than by a change made by the Keeper to a title sheet or the cadastral map,
    (b) if the inaccuracy is consequent on an error in the cadastral map and that error was made in reasonable reliance on the base map,
    (c) in so far as the inaccuracy is in an entry made on an application being accepted by virtue of section 42(1) or under section 42(5),
    (d) in so far as the inaccuracy is caused by some act or omission on the part of the claimant,
    (e) in so far as the claimant’s loss could have been avoided by the claimant taking certain measures which it would have been reasonable for the claimant to take,
    (f) in so far as the connection between the claimant’s loss and the inaccuracy is too remote, or
    (g) for non-patrimonial loss.

PART 9

RIGHTS OF PERSONS ACQUIRING ETC. IN GOOD FAITH

Ownership

82 Acquisition from disponent without valid title

(1) This section applies where a person (“A”), who is not the proprietor of a registered plot of land but—
    (a) is entered in the proprietorship section of the title sheet as proprietor, and
    (b) is in possession of the land,

purports to dispone the land.

(2) The disponee (“B”) acquires ownership of the land provided that the conditions in subsection (3) are met.

(3) The conditions are that—
    (a) the land has been in the possession, openly, peaceably and without judicial interruption—
(i) of A for a continuous period of at least 1 year, or  
(ii) of A and then of B for periods which together constitute such a period,

(b) at no time during that period did the Keeper become aware that the register was inaccurate as a result of A (or B) not being the proprietor,

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(c) B is in good faith,

(d) the disposition would have conferred ownership on B had A been proprietor when the land was disponed,

(e) at no time during the period mentioned in paragraph (a)—

(i) was the title sheet subject, by virtue of section 65, to a caveat relevant to the acquisition by B,

(ii) did the title sheet contain a statement under section 30(5), and

(f) the Keeper warrants (or is to be taken to warrant) A’s title.

(4) The date on which ownership is acquired by virtue of subsection (2) is—

(a) where subsection (5) applies, the date on which the disposition is registered,

(b) where subsection (6) applies, the date on which the period of possession mentioned in that subsection expires.

(5) This subsection applies where, as at the date of registration, the land has been in the possession, openly, peaceably and without judicial interruption—

(a) of A for a continuous period of at least 1 year, or

(b) of A and then of B for periods which together constitute such a period.

(6) This subsection applies where there is a continuous period of possession such as is mentioned in subsection (5) but that period, though it commences before registration on the application of B, does not expire until a date later than the date of registration.

83 Acquisition from representative of disponer without valid title

(1) Section 82 also applies where a person (“P”), who is not entered in the proprietorship section of the title sheet as proprietor but who would have power to dispose the land—

(a) were A the proprietor, or

(b) (where A has died) had A been the proprietor, purports to dispose it.

(2) For the purposes of section 82, possession of the plot of land by P is to be treated as if it were possession of the land by A.

Leases

84 Acquisition from assigner without valid title

(1) This section applies where a person (“A”), who is not the tenant under a registered lease but—

(a) is shown in the title sheet as tenant, and

(b) is in possession of the subjects of the lease, purports to assign the lease.
(2) The assignee ("B") acquires the lease provided that the conditions in subsection (3) are met.

(3) The conditions are that—

(a) the subjects of the lease have been in the possession, openly, peaceably and without judicial interruption—
   (i) of A for a continuous period of at least 1 year, or
   (ii) of A and then of B for periods which together constitute such a period,

(b) at no time during that period did the Keeper become aware that the register was inaccurate as a result of A (or B) not being the tenant,

(c) B is in good faith,

(d) the lease is extant,

(e) B would have acquired the lease had A been tenant when the lease was assigned,

(f) at no time during the period mentioned in paragraph (a) was the title sheet subject, by virtue of section 65, to a caveat relevant to the acquisition by B, and

(g) the Keeper warrants (or is to be taken to warrant) A’s title.

(4) The date on which the lease is acquired by virtue of subsection (2) is—

(a) where subsection (5) applies, the date on which the deed of assignation is registered,

(b) where subsection (6) applies, the date on which the period of possession mentioned in that subsection expires.

(5) This subsection applies where, as at the date of registration, the subjects of the lease have been in the possession, openly, peaceably and without judicial interruption—

(a) of A for a continuous period of at least 1 year, or

(b) of A and then of B for periods which together constitute such a period.

(6) This subsection applies where there is a continuous period of possession such as is mentioned in subsection (5) but that period, though it commences before registration on the application of B, does not expire until a date later than the date of registration.

**85 Acquisition from representative of assigner without valid title**

(1) Section 84 also applies where a person ("P"), who is not entered in the title sheet as tenant but who would have power to assign the lease—

(a) were A the tenant, or

(b) (where A has died) had A been the tenant, purports to assign it.

(2) For the purposes of section 84, possession of the subjects of the lease by P is to be treated as if it were possession of the subjects by A.
Servitudes

86 Grant of servitude by person not proprietor

(1) This section applies where a person (“A”), who is not the proprietor of a registered plot of land but—

(a) is entered in the proprietorship section of the title sheet as proprietor, and

(b) is in possession of the land,

purports to create a servitude, with the land as the burdened property.

(2) The servitude is created provided that the conditions mentioned in subsection (3) are met.

(3) The conditions are that—

(a) the land has been in the possession of A, openly, peaceably and without judicial interruption, for a continuous period of at least 1 year,

(b) at no time during that period did the Keeper become aware that the register was inaccurate as a result of A not being the proprietor,

(c) the proprietor of what is to be the benefited property is in good faith,

(d) at no time during the period mentioned in paragraph (a) was the title sheet subject, by virtue of section 65, to a caveat relevant to the creation of the servitude, and

(e) the Keeper warrants (or is to be taken to warrant) A’s title.

(4) The date on which the servitude is created by virtue of subsection (2) is—

(a) where subsection (5) applies, the date of registration,

(b) where subsection (6) applies, the date on which the period mentioned in that subsection expires.

(5) This subsection applies where, as at the date of registration, the land has been in the possession of A, openly, peaceably and without judicial interruption, for a continuous period of at least 1 year.

(6) This subsection applies where there is a continuous period of possession such as is mentioned in subsection (5) but that period, though it commences before registration, does not expire until a date later than the date of registration.

(7) This section is subject to section 75 of the Title Conditions (Scotland) Act 2003 (asp 9) (creation of positive servitude by writing: deed to be registered).

Extinction of encumbrances etc.

87 Extinction of encumbrance when land dispossed

(1) Where the conditions mentioned in subsection (2) are met, a person (“A”) who acquires ownership of land on registration or on a later date by virtue of section 82(4)(b)—

(a) takes the land free of an encumbrance which is not entered in the title sheet as at the date on which A acquires ownership of the land, and

(b) any such encumbrance is extinguished.

(2) The conditions are that, as at the date on which ownership is acquired—

(a) A is in good faith, and
(b) the title sheet is not, by virtue of section 65, subject to a caveat relevant to such acquisition by A.

(3) Subsection (1) does not apply to an heritable security which is not entered in the securities section of a shared plot title sheet by virtue of section 18(3)(b).

(4) “Encumbrance” in subsection (1) does not include—

(a) a public right of way,

(b) a path delineated in an order under section 22 of the Land Reform (Scotland) Act 2003 (asp 2) (compulsory powers to delineate paths in land in respect of which access rights are exercisable),

(c) a servitude created other than under section 75(1) of the Title Conditions (Scotland) Act 2003 (asp 9),

(d) a lease, or

(e) an encumbrance the creation of which does not require registration of the constitutive deed.

88 Extinction of encumbrance when lease assigned

(1) Where the conditions mentioned in subsection (2) are met, a person (“A”) who acquires a registered lease on registration or on a later date by virtue of section 84(4)(b)—

(a) takes that lease free of an encumbrance—

(i) of a kind mentioned in subsection (4), and

(ii) which is not entered in the title sheet as at the date on which A acquires the registered lease, and

(b) any such encumbrance is extinguished.

(2) The conditions are that, as at the date on which the lease is acquired—

(a) A is in good faith, and

(b) the title sheet is not, by virtue of section 65, subject to a caveat relevant to such acquisition by A.

(3) Subsection (1) does not apply to an heritable security which is not entered in the securities section of a shared lease title sheet by virtue of paragraph 8(b) of schedule 1.

(4) The encumbrances are—

(a) a heritable security over the lease,

(b) a title condition such as is mentioned in paragraph (d) or (e) of the definition of “title condition” in section 122(1) of the Title Conditions (Scotland) Act 2003 (asp 9).

89 Extinction of floating charge when land disposed

A person who, in good faith, acquires ownership of land from another person (“A”), takes the land free of any floating charge which was granted by a predecessor in title of A.
90 Compensation for loss incurred in consequence of this Part

(1) The Keeper must pay compensation for loss incurred by a person mentioned in subsection (2).

(2) The person is one who—

(a) is deprived of a right by virtue of this Part, or

(b) is the proprietor of a property burdened by a servitude created by virtue of section 86.

(3) A claimant is not required to exhaust other remedies before making a claim to such compensation.

(4) Payment by the Keeper under this section does not extinguish any rights which the claimant may have against another person in respect of the loss compensated.

(5) But it is a condition of any such payment that the claimant assigns any such rights to the Keeper.

(6) The Keeper has no liability to pay compensation—

(a) in so far as the claimant’s loss could have been avoided by the claimant taking certain measures which it would have been reasonable for the claimant to take,

(b) in so far as the claimant’s loss is too remote, or

(c) for non-patrimonial loss.

91 Quantification of compensation

(1) Compensation payable by virtue of section 90(1)—

(a) is, in so far as it is not compensation mentioned in paragraph (b), to be quantified as at the date on which the claimant lost the right or, as the case may be, on which the servitude was created, and

(b) is to include—

(i) reimbursement of reasonable extra-judicial legal expenses, and

(ii) compensation for any other consequential loss.

(2) Interest on a sum so payable runs from the date mentioned in subsection (3) until the sum in question is paid.

(3) The date is—

(a) where the sum is payable other than by virtue of subsection (1)(b), the date mentioned in subsection (1)(a),

(b) where the sum is payable by virtue of subsection (1)(b)(i), the date on which the claimant paid the sum in question, and

(c) where the sum is payable by virtue of subsection (1)(b)(ii), the date on which the loss was sustained.

(4) The Scottish Ministers may by regulations make provision as to the rate of interest payable by virtue of subsection (2).
PART 10

ELECTRONIC DOCUMENTS, ELECTRONIC CONVEYANCING AND ELECTRONIC REGISTRATION

92 Where requirement for writing satisfied by electronic document

(1) The Requirements of Writing (Scotland) Act 1995 (c.7) (the “1995 Act”) is amended as follows.

(2) In section 1 (writing required for certain contracts, obligations, trusts, conveyances and wills)—

(a) in subsection (2)—

(i) for “subsections (2A) and” substitute “subsection”,
(ii) after “written document” insert “which is a traditional document”,
(iii) after “section 2” insert “or an electronic document complying with section 9B”,
(iv) after paragraph (b) insert—

“(ba) the constitution of an agreement under section 63(1) of the Land Registration etc. (Scotland) Act 2012 (asp 00),”,

(b) in subsection (3)—

(i) for “subsections (2)(a) or (2A)” substitute “subsection (2)(a)”,
(ii) repeal “written”,
(iii) for “an electronic document complying with section 2A,” substitute “section 9B”,

(c) in subsection (5), for “subsections (2)(a) or (2A)” substitute “subsection (2)(a)”.

(3) The provisions of section 1 as amended by subsection (2) become Part 1 of the Act.

(4) The title of Part 1 is “When writing is required”.

93 Electronic documents

(1) The 1995 Act is further amended as follows.

(2) After section 9 insert—

“PART 3

ELECTRONIC DOCUMENTS

9A Application of Part 3

This Part applies to documents which, rather than being written on paper, parchment or some similar tangible surface are created in electronic form ("electronic documents").

9B Validity of electronic documents

(1) No electronic document required by section 1(2) is valid in respect of the formalities of execution unless—
Part 10—Electronic documents, electronic conveyancing and electronic registration

(2) An electronic document is authenticated by a person if the electronic signature of that person—

(a) is incorporated into, or logically associated with, the electronic document,

(b) was created by the person by whom it purports to have been created, and

(c) is of such type, and satisfies such requirements (if any), as may be prescribed by the Scottish Ministers in regulations.

(3) A contract mentioned in section 1(2)(a) may be regarded as constituted or varied (as the case may be) if—

(a) the offer is contained in one or more electronic documents,

(b) the acceptance is contained in another electronic document or in other such documents, and

(c) each of the documents is authenticated by its granter or granters.

(4) Where a person grants an electronic document in more than one capacity, authentication by the person of the document, in accordance with subsection (3), is sufficient to bind the person in all such capacities.

(5) Nothing in this section prevents an electronic document which has not been authenticated by the granter or granters of it from being used as evidence in relation to any right or obligation to which the document relates.

(6) Regulations under subsection (1)(b) or (2)(c) are subject to the negative procedure.

9C Presumption as to authentication of electronic documents

(1) Where—

(a) an electronic document bears to have been authenticated by the granter,

(b) nothing in the document or in the authentication indicates that it was not so authenticated, and

(c) the conditions set out in subsection (2) are satisfied,

the document is to be presumed to have been authenticated by the granter.

(2) The conditions are that the electronic signature incorporated into, or logically associated with, the document—

(a) is of such type and satisfies such requirements as may be prescribed by the Scottish Ministers in regulations, and

(b) (either or both)—

(i) is used in such circumstances as may be so prescribed,

(ii) bears to be certified,
and that if the electronic signature bears to be certified (and does not conform with paragraph (b)(i)) the certification is of such type and satisfies such requirements as may be so prescribed.

(3) Regulations under subsection (2) are subject to the negative procedure.

9D Presumptions as to granter’s authentication etc. when established in court proceedings

(1) Where—
(a) an electronic document bears to have been authenticated by a granter of it, and
(b) there is no presumption under section 9C that the document has been authenticated by that granter,

the court must, on an application being made to it by any person who has an interest in the document, if satisfied that the document was authenticated by that granter, grant decree to that effect.

(2) Where—
(a) an electronic document bears to have been authenticated by a granter of it, and
(b) there is no presumption by virtue of section 9E(1) as to the time, date or place of authentication,

the court must, on an application being made to it by any person who has an interest in the document, if satisfied as to that time, date or place, grant decree to that effect.

(3) On an application under subsection (1) or (2), evidence is, unless the court otherwise directs, to be given by affidavit.

(4) An application under subsection (1) or (2) may be made either as a summary application or as incidental to, and in the course of, other proceedings.

(5) The effect of a decree—
(a) under subsection (1), is to establish a presumption that the document has been authenticated by the granter concerned, or
(b) under subsection (2), is to establish a presumption that the statement in the decree as to time, date or place is correct.

(6) In this section, “the court” means—
(a) in the case of a summary application—
(i) the sheriff in whose sheriffdom the applicant resides, or
(ii) if the applicant does not reside in Scotland, the sheriff at Edinburgh, or
(b) in the case of an application made in the course of other proceedings, the court before which those proceedings are pending.
9E Further provision by Scottish Ministers about electronic documents

(1) The Scottish Ministers may, in regulations, make provision as to the effectiveness or formal validity of, or presumptions to be made with regard to—

(a) any alteration made, whether before or after authentication, to an electronic document,
(b) the authentication, by or on behalf of the grantor, of such a document,
(c) the authentication, by or on behalf of a person with a disability, of such a document, or
(d) any annexation to such a document,

(including, without prejudice to the generality of this subsection, presumptions to be made with regard to the time, date and place of authentication of such a document).

(2) Regulations under subsection (1) may make such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient for the purposes of, or in consequence of the regulations.

(3) Subject to subsection (4), regulations under subsection (1) are subject to the negative procedure.

(4) Regulations which—

(a) make provision of the kind mentioned in subsection (1)(b), or
(b) add to, replace or omit any part of an Act (including this Act),

are subject to the affirmative procedure.

9F Delivery of electronic documents

(1) An electronic document may be delivered electronically or by such other means as are reasonably practicable.

(2) But such a document must be in a form, and such delivery must be by a means—

(a) the intended recipient has agreed to accept, or
(b) which it is reasonable in all the circumstances for the intended recipient to accept.

9G Registration and recording of electronic documents

(1) Subject to subsection (6), it is not competent—

(a) to record an electronic document in the Register of Sasines,
(b) to register such a document in the Land Register of Scotland,
(c) to register such a document for execution or preservation in the Books of Council and Session, or
(d) to record or register such a document in any other register under the management and control of the Keeper of the Registers of Scotland,
unless both subsection (2) and subsection (3) apply in relation to the document.

(2) This subsection applies where—

(a) the document is presumed under section 9C or 9D or by virtue of section 9E(1) to have been authenticated by the granter, or

(b) if there is more than one granter, the document is presumed by virtue of any of those provisions to have been authenticated by at least one of the granters.

(3) This subsection applies where—

(a) the document,

(b) the electronic signature authenticating it, and

(c) if the document bears to be certified, the certification,

are in such form and of such type as are prescribed by the Scottish Ministers in regulations.

(4) Before making regulations under subsection (3), the Scottish Ministers must consult with—

(a) the Keeper of the Registers of Scotland,

(b) the Keeper of the Records of Scotland, and

(c) the Lord President of the Court of Session.

(5) Regulations under subsection (3)—

(a) may make different provision for different cases or classes of case, and

(b) are subject to the negative procedure.

(6) Subsection (1) above does not apply in relation to—

(a) a document’s—

(i) being recorded in the Register of Sasines,

(ii) being registered in the Land Register of Scotland or in the Books of Council and Session, or

(iii) being recorded or registered in any other register under the management and control of the Keeper of the Registers of Scotland,

if an enactment requires or expressly permits such recording or registration notwithstanding that the document is not presumed to have been authenticated by the granter or by at least one of the granters,

(b) the recording of a court decree in the Register of Sasines or the registering of such a decree in the Land Register of Scotland,

(c) the registering in the Books of Council and Session of—

(i) a document registration of which is directed by the Court of Session,
(ii) a document the formal validity of which is governed by a law other than Scots law, provided that the Keeper of the Registers of Scotland is satisfied that the document is formally valid according to that other law,

(iii) a court decree granted under section 9D, or by virtue of section 9E(1), of this Act in relation to a document already registered in the Books of Council and Session, or

(d) the registration of a court decree in a separate register maintained for that purpose.

(7) An electronic document may be registered for preservation in the Books of Council and Session without a clause of consent to registration.”.

94 Amendment of Requirements of Writing (Scotland) Act 1995

Schedule 3, which contains modifications of the 1995 Act consequential on sections 92 and 93, has effect.

Electronic conveyancing

95 Automated registration

(1) The Keeper may, by means of a computer system under the Keeper’s management and control, enable—

(a) the creation of electronic documents,

(b) the electronic generation and communication of applications for registration in the register, and

(c) automated registration in the register.

(2) Only a person authorised by the Keeper, whether directly or indirectly, may use the system mentioned in subsection (1) to make applications for registration.

(3) The Scottish Ministers may, by regulations, make provision about the system mentioned in subsection (1) including—

(a) the kinds of deeds which may be authorised for use in the system,

(b) the persons who may be authorised to use the system,

(c) the suspension or revocation of a person’s authorisation under subsection (2),

(d) the method of appeal against any such suspension or revocation,

(e) the imposition of obligations on persons using the system, and

(f) the creation of deemed warranties (whether in favour of the Keeper or of other users) by persons using the system.

(4) Before making such regulations, the Scottish Ministers must consult the Keeper.
Electronic recording and registration

96 Power to enable electronic registration

(1) The Scottish Ministers may, by regulations, make provision to enable the recording or registration of electronic documents in any register under the management and control of the Keeper.

(2) Regulations under subsection (1) may, in particular, make provision—
   (a) regulating the making up and keeping of any such register,
   (b) regulating the procedure to be followed by any person applying for recording or registration in any such register,
   (c) regulating the procedure to be followed by the Keeper in relation to—
      (i) any such application, and
      (ii) the recording or registration of electronic documents to which such an application relates,
   (d) that the Scottish Ministers consider necessary or expedient to enable recording or registration of electronic documents in any such register.

(3) Regulations under subsection (1) may modify any enactment.

(4) Before making regulations under subsection (1), the Scottish Ministers must consult—
   (a) the Keeper,
   (b) the Keeper of the Records of Scotland, and
   (c) the Lord President of the Court of Session.

97 Deduction of title

Deduction of title

(1) Where a person applies to register a deed mentioned in subsection (2), the deed need not deduce title.

(2) The deed is one validly granted by the unregistered holder of—
   (a) land, or
   (b) a real right in land,
   to which the deed relates.

Notes on register

98 Note of date on which entry in register is made

When an entry is made in the register there is to be included in that entry the date on which it is made.
Appeals

99 Appeals

(1) An appeal may be made to the Lands Tribunal for Scotland, on a question of fact or on a point of law, against any decision of the Keeper under this Act.

(2) Subsection (1) is without prejudice to any other right of recourse, whether under an enactment or under a rule of law.

(3) Where a person successfully appeals against a decision of the Keeper to reject an application for registration, the application is not revived.

Extracts and certified copies

100 Extracts and certified copies: general

(1) A person may apply to the Keeper for an extract—
   (a) of, or of any part of, a title sheet,
   (b) of any part of the cadastral map, or
   (c) of, or of any part of, a document in the archive record.

(2) A person may apply to the Keeper for a certified copy—
   (a) of an application or advance notice in the application record,
   (b) of, or of any part of, any other document in that record.

(3) The Keeper must issue the extract or, as the case may be the certified copy, if—
   (a) such fee as is payable for issuing it is paid, or
   (b) arrangements satisfactory to the Keeper are made for payment of that fee.

(4) If, on application under subsection (1)(a) or (b), the applicant requests an extract in relation to a title sheet or the cadastral map as at a specific date, the Keeper need comply with the request only to the extent that it is reasonably practicable to do so.

(5) An extract of a part of the cadastral map issued under subsection (3)—
   (a) must include the base map so far as relating to that part either—
      (i) as at the date on which the extract is issued, or
      (ii) if the Keeper considers it appropriate to do so, as at some earlier date, and
   (b) must specify the base map date opted for under paragraph (a).

(6) The Keeper may authenticate the extract or, as the case may be the certified copy, as the Keeper considers appropriate.

(7) The Keeper may issue the extract, or as the case may be the certified copy, as an electronic document if (and only if) the applicant requests that it be issued in that form.

101 Evidential status of extract or certified copy

(1) An extract or certified copy issued under subsection (3) of section 100 in relation to an application under subsection (1)(a) or (b) or (2)(a) of that section is to be accepted for all purposes as sufficient evidence of the contents—
   (a) of the original, and
   (b) of any matter relating to the original which appears on the extract or copy.
(2) An extract or certified copy issued under subsection (3) of that section in relation to an application under subsection (1)(c) or (2)(b) of that section is to be accepted for all purposes as sufficient evidence of the contents—

(a) of the document as submitted to the Keeper, and

(b) of any matter relating to the document as so submitted which appears on the extract or copy.

102 Liability of Keeper in respect of extracts, information and lost documents etc.

(1) A person is entitled to be compensated by the Keeper in respect of loss suffered as a consequence of—

(a) the issue of an extract or certified copy under section 100 that is not a true extract, or as the case may be a true copy,

(b) the provision (in writing or in such other manner as provision is made for in an order under section 103(1)(a)) of other information as to the contents of the register that is incorrect,

(c) a document being lost, damaged or destroyed while lodged with the Keeper.

(2) The Keeper has no liability under subsection (1)—

(a) in so far as the claimant’s loss could have been avoided by the applicant or claimant taking certain measures which it would have been reasonable for the applicant or claimant to take,

(b) in so far as a claimant’s loss is too remote, or

(c) for non-patrimonial loss.

Information and access

103 Information and access

(1) The Scottish Ministers may, by order, make further provision as regards—

(a) information to be made available by the Keeper and the manner in which it is to be made available,

(b) access to any register under the management and control of the Keeper.

(2) In subsection (1)(a), “information” includes information in the form of extracts and certified copies.

Keeper’s functions

104 Provision of services by the Keeper

(1) The Keeper may provide consultancy, advisory or other commercial services.

(2) Those services need not relate to the law and practice of registration.

(3) The terms on which those services are provided (including the fees charged for provision of them) are to be such as may be agreed between the Keeper and those provided with them.

(4) If the Keeper considers it expedient to do so in connection with the provision of any of those services, the Keeper may (either or both)—
(a) form, or participate in the forming of, a body corporate or other entity,
(b) purchase, or invest in, a body corporate or other entity.

(5) This section does not affect any other power or duty of the Keeper.

105 Performance of Keeper’s functions during vacancy in office etc.

(1) This section applies where—
(a) there is a vacancy in the office of the Keeper or the Keeper is incapable by reason of ill health of performing the Keeper’s functions, and
(b) no person has been authorised by the Scottish Ministers, under section 1(6) of the Public Registers and Records (Scotland) Act 1948 (c.57), to perform the functions of the Keeper.

(2) A member of the Keeper’s staff may perform the Keeper’s functions.

(3) Any function performed by a member of the Keeper’s staff by virtue of subsection (2) is to be treated as if it had been performed by the Keeper.

Fees

106 Fees

(1) The Scottish Ministers may, by order—
(a) provide for the fees payable in relation to—
   (i) registering, recording or entering in any register under the management and control of the Keeper,
   (ii) access to such a register,
   (iii) information made available by the Keeper,
(b) provide for the method of paying any such fees, and
(c) authorise the Keeper to determine, in such circumstances and subject to such limitations and conditions as may be specified in the order, any such fees.

(2) An order under this section may make different provision for different cases or for different classes of case.

(3) Before making an order under this section, the Scottish Ministers must consult the Keeper about, among other things—
(a) the expenses incurred by the Keeper in relation to administering and improving the systems of—
   (i) registering, recording or entering in any register under the management and control of the Keeper,
   (ii) providing access to any such register, and
   (iii) making information available,
(b) in the case of the register, the expenses incurred by the Keeper in bringing all titles to land into it,
(c) the desirability of encouraging registering, recording and entering in any register under the management and control of the Keeper.
(4) In subsections (1)(a)(iii) and (3)(a)(iii), “information”—
   (a) includes information in the form of extracts and certified copies,
   (b) does not include information provided by virtue of section 104.

Duty to take reasonable care

5 107 Duties of certain persons

(1) A person mentioned in subsection (2) must take reasonable care to ensure that the Keeper does not inadvertently make the register inaccurate as a result of a change made in consequence of the grant mentioned in that subsection.

(2) The persons are—

   (a) a person granting a deed intended to be registered,
   (b) a person who, in connection with the grant, acts as a solicitor or other legal adviser to the grantee.

(3) A person mentioned in subsection (4) must take reasonable care to ensure that the Keeper does not inadvertently make the register inaccurate as a result of a change made in consequence of the application mentioned in that subsection.

(4) The persons are—

   (a) a person making an application for registration,
   (b) a person who, in connection with the application, acts as a solicitor or other legal adviser to the applicant.

(5) The Keeper is entitled to be compensated by a person in breach of the duty under subsection (1) or (3) for any loss suffered as a consequence of that breach.

(6) But a person has no liability under subsection (5) in so far as—

   (a) the Keeper’s loss could have been avoided by the Keeper taking certain measures which it would have been reasonable for the Keeper to take, or
   (b) the Keeper’s loss is too remote.

Offence

108 Offence relating to applications for registration

(1) A person mentioned in subsection (2) commits an offence if the person—

   (a) makes a materially false or misleading statement in relation to an application for registration knowing that, or being reckless as to whether, the statement is false or misleading, or
   (b) intentionally fails to disclose material information in relation to such an application or is reckless as to whether all material information is disclosed.

(2) The persons are—

   (a) a person making an application for registration, or
   (b) a person who, in connection with such an application, acts as solicitor or other legal adviser to the applicant.
(3) It is a defence for a person charged with an offence under subsection (1) (the “accused”) that the accused took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(4) The defence is established if the accused—

(a) acted in reliance on information supplied by another person, and
(b) did not know and had no reason to suppose that—
   (i) the information was false or misleading, or
   (ii) all material information had not been disclosed.

(5) Subsection (4) does not exclude other ways of establishing the defence mentioned in subsection (3).

(6) An accused may not rely on a defence involving the allegation that the commission of the offence was due to reliance on information supplied by another person unless—

(a) the accused has complied with subsection (7), or
(b) the court grants leave.

(7) The accused must serve on the prosecutor a notice giving such information identifying or assisting in the identification of the other person as is in the accused’s possession—

(a) in proceedings on indictment, at least 14 clear days before the preliminary hearing (where the case is to be tried in the High Court) or the first diet (where the case is to be tried in the sheriff court),

(b) in summary proceedings—
   (i) where an intermediate diet is held, at or before that diet,
   (ii) where no such diet is held, at least 10 clear days before the trial diet.

(7A) Subsection (6) does not apply where—

(a) the accused lodges a defence statement—
   (i) under section 70A of the Criminal Procedure (Scotland) Act 1995 (c.46), or
   (ii) under section 125 of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) in accordance with the time limits mentioned in subsection (7)(b), and

(b) the accused’s defence involves an allegation that the commission of the offence was due to reliance on information supplied by another person.

(8) A person guilty of an offence under subsection (1) is liable—

(a) on summary conviction, to imprisonment for a period not exceeding 12 months, to a fine not exceeding the statutory maximum, or to both,
(b) on conviction on indictment, to imprisonment for a period not exceeding 2 years, to a fine, or to both.

General provisions

Interpretation

(1) In this Act, unless the context otherwise requires—

“1995 Act” means the Requirements of Writing (Scotland) Act 1995 (c.7),
“advance notice” has the meaning given by section 55(1),

“application for registration” means an application under section 21 or 27,

“archive record” has the meaning given by section 14(1),

“application record” has the meaning given by section 15,

“the base map” has the meaning given by section 11(6),

“benefited property” has the meaning given by section 122(1) of the Title Conditions (Scotland) Act 2003 (asp 9),

“burdened property” has the meaning given by section 122(1) of the Title Conditions (Scotland) Act 2003 (asp 9),

“cadastral map” has the meaning given by section 11(1),

“cadastral unit” has the meaning given by section 12,

“date of application” (in relation to an application for registration) has the meaning given by section 35,

“date of registration” has the meaning given by 36(1),

“deed” means a document (and includes a decree which is registrable under an enactment),

“designation” includes—

(a) where the person designated is not a natural person—

(i) the legal system under which the person is incorporated or otherwise established,

(ii) if a number has been allocated to the person under section 1066 of the Companies Act 2006 (c.46), that number, and

(iii) any other identifier (whether or not a number) peculiar to the person,

and

(b) if the person designated has a right in land in a special capacity, a description of that capacity,

“the designated day” has the meaning given by section 118,

“enactment” includes—

(a) an enactment comprised in, or in an instrument made under, this Act, and

(b) a local and personal or private Act,

“existing title sheet” means a title sheet which is in existence immediately before the commencement of the designated day,

“flat” has the meaning given by section 29(1) of the Tenements (Scotland) Act 2004 (asp 11),

“flatted building” has the meaning given by section 16(4),

“heritable creditor” means the holder of a heritable security,

“heritable security” means—

(a) a standard security, or
(b) any other right in security over heritable property provided that it is not a right in security created as a floating charge,

“the Keeper” means the Keeper of the Registers of Scotland,

“land” includes—

(a) buildings and other structures,

(b) the seabed of the territorial sea of the United Kingdom adjacent to Scotland (including land within the ebb and flow of the tide at ordinary spring tides), and

(c) other land covered with water,

“land register rules” means rules made under section 111(1),

“lease” includes sub-lease,

“lease title sheet” means a title sheet for a registered lease,

“personal real burden” has the meaning given by section 122(1) of the Title Conditions (Scotland) Act 2003 (asp 9),

“plot of land” has the meaning given by section 3(4) and (5),

“possession” includes civil possession (analogous expressions being construed accordingly),

“proprietor” means a person who has a valid completed title as proprietor to a plot of land,

“protected period” has the meaning given by section 57(3),

“the register” means the Land Register of Scotland,

“registrable deed” is to be construed in accordance with section 48,

“sharing plot” and “shared plot” are to be construed in accordance with section 17(3),

“tenement” has the meaning given by section 26 of the Tenements (Scotland) Act 2004 (asp 11),

“title condition” has the meaning given by section 122(1) of the Title Conditions (Scotland) Act 2003 (asp 9),

“title sheet record” has the meaning given by section 3(3).

(2) A deed on which an application under section 21 is based is “valid” for the purposes of this Act if—

(a) by the registration applied for a right would be acquired, varied or extinguished, or

(b) the deed is certificatory of an acquisition, variation or extinction which has taken place.

(3) In relation to a lease title sheet, any reference in this Act—

(a) to a proprietor is (except in section 63) to be read as a reference to the tenant,

(b) to a proprietorship section is to be construed as a reference to a tenancy section, and

(c) to ownership in common is to be construed as a reference to tenancy in common.
(4) The Scottish Ministers may, by order, amend paragraph (b) of the definition of “designation” in subsection (1).

(5) Before making such an order, the Scottish Ministers must consult the Keeper.

110 References to “registering” etc. in the Land Register of Scotland

(1) In this Act (other than subsection (2)), unless the context otherwise requires—
   (a) any reference to “registration” is to registration in the register, and
   (b) analogous expressions are to be construed accordingly.

(2) Unless the context otherwise requires—
   (a) any reference, however expressed, in any enactment to “registering” a document in the register, is to be construed as including a reference to giving effect to that document in accordance either with section 30 or with section 31, and
   (b) analogous expressions are to be construed accordingly.

111 Land register rules

(1) The Scottish Ministers may, by regulations, make land register rules—
   (a) regulating the making up and keeping of the register,
   (b) regulating the procedure in relation to applications for registration,
   (c) prescribing forms to be used in relation to the register,
   (d) as to when the application record is open for the making of entries,
   (e) requiring the Keeper to enter in the title sheet record such information as may be specified in the rules or authorising or requiring the Keeper to enter in that record such rights or obligations as may be so specified,
   (f) relating to any other matter which this Act provides may or must be provided for by land register rules, or
   (g) concerning other matters and seeming to them to be necessary or expedient in order to give full effect to the purposes of this Act.

(2) Before making land register rules, the Scottish Ministers must consult the Keeper.

112 Subordinate legislation

(1) Any power conferred by this Act on the Scottish Ministers to make orders or regulations may be exercised to make different provision for different cases or descriptions of case or for different purposes.

(2) Orders and regulations under the following sections are subject to the negative procedure—
   (a) section 11(6)(b),
   (b) section 27(6),
   (c) section 44(7),
   (ca) section 47(2) or (3),
   (cb) section 55(4),
(f) subject to subsection (4)(a), section 96(1),
(g) section 111(1),
(h) subject to subsection (4)(b), section 113(1).

(3) Orders and regulations under the following provisions are subject to the affirmative procedure—

(a) section 36(3),
(b) section 42(8),
(e) section 57(6),
(ea) section 58B(3)(b),

(eb) section 61(1),
(f) section 66(3),
(fa) section 77(4),
(fb) section 80(7),
(fc) section 91(4),

(g) section 95(3),
(h) section 103(1),
(i) section 106(1),
(j) section 109(4).

(4) Orders and regulations under the following sections which add to, replace or omit the

(a) section 96(1),
(b) section 113(1).

113 Ancillary provision

(1) The Scottish Ministers may, by order, make such incidental, supplementary, consequential, transitory, transitional or saving provision as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, any provision made by or under this Act.

(2) An order under subsection (1) may modify any enactment (including this Act).

114 Transitional provisions

Schedule 4, which contains transitional provisions, has effect.

115 Minor and consequential modifications

Schedule 5, which contains minor amendments and repeals, and amendments and repeals consequential upon the provisions of this Act, has effect.
116  Saving provisions

(1) The amendments to the Prescription and Limitation (Scotland) Act 1973 (c.52) made by paragraph 18(2) and (4) of schedule 5 do not apply in relation to a continuous period which has expired before the designated day.

(2) Despite the repeal, by paragraph 19(5) of schedule 5, of section 28(1) of the Land Registration (Scotland) Act 1979 (c.33), that section continues to have effect for the purposes of sections 15(4), 16, 20 to 22A and 29 of and schedules 1 and 3 to the 1979 Act.

117  Crown application

(1) No contravention by the Crown of section 108 makes the Crown criminally liable.

(2) But the Court of Session may, on the application of the Keeper or any person authorised by the Keeper, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Despite subsection (1), section 108 applies to persons in the public service of the Crown as it applies to other persons.

118  The designated day

The Scottish Ministers may, for the purposes of this Act, by order, designate a day (“the designated day”), being a day which falls not less than 6 months after the order is made.

119  Commencement

(1) The following sections come into force on the day after Royal Assent—

(a) section 109,
(b) section 110,
(c) section 112,
(d) section 113,
(e) section 118,
(f) this section, and
(g) section 120.

(2) The following provisions of this Act come into force on the designated day—

(a) Parts 1 to 9 and schedules 1 and 2,
(b) sections 97 to 103,
(c) section 107,
(d) section 108,
(e) section 111,
(f) section 114 and schedule 4,
(g) section 115 and schedule 5,
(h) section 116, and
(i) section 117.
(3) The other provisions of this Act come into force on such day as the Scottish Ministers may, by order, appoint.

120 **Short title**

The short title of this Act is the Land Registration etc. (Scotland) Act 2012.
SCHEDULE 1
(introduced by section 20)

REGISTERED LEASES TENANTED IN COMMON

Shared leases

1 This schedule applies where—
   (a) an area of land—
       (i) is tenanted in common by the tenants of two or more registered leases by
           virtue of their tenancy under those leases,
       (ii) is not tenanted in common by anyone else,
   (b) those registered leases have lease title sheets.

2 The Keeper may, if the Keeper considers it appropriate—
   (a) where the area tenanted in common does not have a lease title sheet, make up such
       a title sheet and designate it as a “shared lease title sheet”,
   (b) where that area is the subjects of a registered lease, make up (if necessary) a lease
       title sheet and designate it as a shared lease title sheet.

3 In the following provisions of this schedule—
   (a) references to a “shared lease” are to a lease the title sheet of which is designated
       under paragraph 2,
   (b) references to the “sharing leases” are to the other leases the tenants of which are
       tenants in common of the shared lease.

4 Unless the context otherwise requires, any reference in a document to a sharing lease is
   to be taken to include a reference to the share in the shared lease which pertains to the
   sharing lease.

5 Registration has the same effect in relation to a share in a shared lease which pertains to
   a sharing lease as it has in relation to the sharing lease (except in so far as may otherwise
   be provided in the deed registered).

Shared lease and sharing lease title sheets

6 The Keeper must enter—
   (a) in the property section of the title sheet of each of the sharing leases the title
       number of the shared lease title sheet,
   (b) in the proprietorship section of the shared lease title sheet, the title numbers of the
       title sheets of each sharing lease.

7 The Keeper must also enter—
   (a) in the property section of the title sheet of each sharing lease, the quantum of the
       share which the tenant of that sharing lease has in the shared lease,
   (b) in the proprietorship section of that title sheet, in relation to the information
       required by section 7(1)(b), the respective share each sharing lease has in the
       shared lease,
(c) in the securities section of the shared lease title sheet, a statement to the effect that
the shared lease may be subject to a heritable security registered against a sharing
lease,

(d) in the burdens section of that title sheet, a statement to the effect that the shared
lease may be subject to some other encumbrance so registered.

8 The Keeper must not enter in or, if entered, must omit from—

(a) the proprietorship section of the shared lease title sheet, the information that
would otherwise be required under section 7(1)(a),

(b) the securities section of that title sheet, the information that would otherwise be
required under section 8(1) unless the security is over the shared lease only,

(c) that title sheet, any matter that would otherwise be required under section
10(2)(b).

9 The Keeper may, if the condition mentioned in paragraph 10 is satisfied and the Keeper
considers it appropriate, omit from the burdens section of the shared lease title sheet any
entry which would otherwise be required under section 9(1).

10 The condition is that the encumbrance to which the entry would relate is (or falls to be)
registered against each of the sharing leases.

Conversion of shared lease title sheet to ordinary lease title sheet

11 The Keeper may at any time revoke a designation under paragraph 2 of a lease title sheet
as a shared lease title sheet.

12 Where the Keeper revokes a designation, the Keeper must make such changes to the title
sheets of the leases that were, in relation to the shared lease title sheet, the shared lease
and the sharing leases as are consequential upon the revocation.

SCHEDULE 2
(introduced by section 51)

AMENDMENT OF REGISTRATION OF LEASES (SCOTLAND) ACT 1857

1 The Registration of Leases (Scotland) Act 1857 (c.26) is amended as follows.

2 In section 1 (long leases, and assignations thereof, registrable in Register of Sasines)—

(a) before first “record” insert “register in the Land Register of Scotland or as the
case may be”,

(b) for second “record” to “thereof” substitute “register or record assignations and
translations of such leases”,

(c) the existing provisions as so amended become subsection (1),

(d) after that subsection insert—

“(2) In subsection (1) above, the expression “lands and heritages in Scotland” is,
without prejudice to its generality, to be construed as including the seabed of
the territorial sea of the United Kingdom adjacent to Scotland.”.

3 In the title of section 1 as so amended, for “registerable” substitute “registrable in Land
Register of Scotland or Register of Sasines”.

4
In section 2 (recorded leases effectual against singular successors in the lands let)—

(a) after “duly” insert “registered or”,

(b) in the proviso, after first “of” insert “, and subject to section 20C of,”.

In the title of section 2 as so amended, for “Recorded” substitute “Registered and recorded”.

In section 3 (assignations of recorded leases)—

(a) in subsection (1)—

(i) after first “been” insert “registered or”,

(ii) before second “recorded” insert “registered or”,

(iii) after “Schedule” insert “(ZA.) or, as the case may be,,”,

(iv) before “recording” insert “registering or”,

(b) in subsection (2)—

(i) repeal “recording of such assignation or the”,

(ii) after first “interest” insert “or the registration of such assignation under the Land Registration etc. (Scotland) Act 2012 (asp 00) or the recording of such assignation”,

(iii) for “and it” to the end substitute “and, as the case may be, the grantee’s interest or the lease had been so registered or the lease had been duly recorded.”,

(c) in subsection (2C), repeal—

(i) “, notwithstanding section 3(4) of the Land Registration (Scotland) Act 1979 (c.33) (creation of real right or obligation on date of registration etc.),”,

(ii) “of an interest in land under”.

In the title of section 3 as so amended, before “recorded” insert “registered or”.

In section 10 (adjudgers to complete right by recording abbreviate)—

(a) after first “lease” insert “registered or recorded”,

(b) before “recording” insert “registering or”,

(c) before second “recorded” insert “registered or”.

In section 12 (preferences regulated by date of recording transfer)—

(a) after first “assignations” insert “of any such lease registered or recorded as aforesaid”,

(b) before second “recorded” insert “registered or”,

(c) before “recording” insert “registering or”.

In the title of section 12 as so amended, before “recording” insert “registering or”.

In section 13 (renunciations and discharges to be recorded)—

(a) after first “aforesaid” insert “registered or”,

(b) for “(G.)” substitute “(ZG.) (or (G.))”,

(c) before “recording” insert “registering or”.

In the title of section 13 as so amended, before “(G.)” substitute “(ZG.)”.
(c) after “duly” insert “register or”.

12 In the title of section 13 as so amended, before “recorded” insert “registered or”.

13 In section 14 (entry of decree of reduction)—

(a) after “renunciation” insert “registered or as the case may be”,

(b) after “duly” insert “register or”.

14 In section 15 (mode of registering etc.)—

(a) the existing provisions become subsection (1),

(b) after that subsection insert—

“(2) References in subsection (1) above to registration are not to be construed as including references to registration in the Land Register of Scotland.”.

15 In section 16 (registration equivalent to possession), after subsection (2) insert—

“(3) References in subsections (1) and (2) above to registration are not to be construed as including references to registration in the Land Register of Scotland.”.

16 After section 20B (as inserted by section 51) insert—

“20C Disapplication of Leases Act 1449

The Leases Act 1449 (c.6) does not apply to a lease registrable under this Act and granted on or after the date on which—

(a) the land to which the lease relates, or any part of that land, became land within an operational area (that is to say within an area in respect of which the provisions of the Land Registration (Scotland) Act 1979 (c.33) had come into operation), or

(b) section 51 of the Land Registration etc. (Scotland) Act 2012 (asp 00) (amendment of Registration of Leases (Scotland) Act 1857 (c.26)) comes into force.

20D Long fishing leases

This Act applies to a contract within the meaning of section 66 of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 (asp 15) (application of Leases Act 1449) as it does to a lease described in section 1 of this Act provided that the contract in question—

(a) is for a period exceeding 20 years, or

(b) includes an obligation such as is described in section 17 of this Act.

20E The expression “the register”

Except where the context otherwise requires, in this Act—

(a) the expression “the register” is to be construed as including a reference to the Land Register of Scotland, and

(b) analogous expressions are to be construed accordingly.”.
Before schedule (A.) insert—

“SCHEDULE (Z.A.)

FORM OF ASSIGNATION OF LEASE REGISTERED IN THE LAND REGISTER OF SCOTLAND

I, A.B., [designation] in consideration of the sum now paid to me, [or otherwise, as the case may be,] assign to C.D. [designation] a lease registered in the Land Register of Scotland under title number [number] [but (where the lease is assigned in part only) in so far only as regards the following portion of the subjects leased; viz. (specify particularly the portion),] with entry as at [term of entry]. And [where sub-lease] I assign the rents from [term]; and I grant warrandice; and I bind myself to free and relieve the said C.D. of all rents and burdens due to the landlord or others at and prior to the term of entry in respect of said lease; and I consent to registration for preservation and execution.

[Testing clause.†]

†Note.—In the case of a traditional document, subscription of it by the granter will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes: see the Requirements of Writing (Scotland) Act 1995 (c.7) (which also makes provision as regards the authentication of an electronic document).”.

In each of schedules (A.) (form of assignation of lease), (G.) (renunciation of lease) and (H.) (form of discharge of bond and assignation in security), in the note relating to subscription of the document in question—

(a) for “Subscription of the document by the granter of it” substitute “In the case of a traditional document, subscription of it by the granter”,

(b) after “1995” insert “, which also makes provision as regards the authentication of an electronic document”.

In the title of schedule (A.), at the end insert “recorded in Register of Sasines”.

Schedule (B.) (form of bond and assignation in security) and the note to that schedule are repealed.

Schedule (D.) (form of translation of assignation in security) and the note to that schedule are repealed.

Before schedule (G.) insert—

“SCHEDULE (ZG.)

RENUNCIATION OF LEASE REGISTERED IN THE LAND REGISTER OF SCOTLAND

I, A.B. [designation] renounce as from the term of [term] in favour of C.D. [or as the case may be] a lease granted by the said C.D. [or as the case may be] and registered in the Land Register of Scotland under title number [number].

[Testing clause.†]

†Note.—In the case of a traditional document, subscription of it by the granter will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes: see the Requirements of
Writing (Scotland) Act 1995 (c.7) (which also makes provision as regards the authentication of an electronic document).”.

In the title of schedule (G.), at the end insert “recorded in the Register of Sasines”.

SCHEDULE 3
(introduced by section 94)

AMENDMENT OF REQUIREMENTS OF WRITING (SCOTLAND) ACT 1995

1 The 1995 Act is amended as follows.

2 After section 1 insert—

“PART 2

TRADITIONAL DOCUMENTS

1A Application of Part 2

This Part of this Act applies to documents written on paper, parchment or some similar tangible surface (“traditional documents”).”.

3 In section 2 (type of writing required for formal validity of certain documents)—

(a) in subsection (1), after “No” insert “traditional”;

(b) in subsection (2)—

(i) for “documents” in both places substitute “traditional documents”;

(ii) for first “document” substitute “traditional document”;

(iii) after “each” substitute “such”;

(c) in subsection (3), for first “document” substitute “traditional document”.

4 In the title of section 2, after “certain” insert “traditional”.

5 Sections 2A, 2B and 2C are repealed.

6 In section 3 (presumption as to granter’s subscription or date or place of subscription)—

(a) in subsection (1)(a), for “document” substitute “traditional document”,

(b) in subsection (2), for “testamentary document consists” substitute “traditional document is a testamentary document consisting”;

(c) in subsection (4), for first “document” substitute “traditional document”;

(d) in subsection (9), for “document” substitute “traditional document”;

(c) in subsection (10)(a), for “testamentary document bears” substitute “traditional document is a testamentary document bearing”.

7 Section 3A is repealed.

8 In section 4 (presumption as to granter’s subscription or date or place of subscription when established in court proceedings)—

(a) in subsection (1), for first “document” substitute “traditional document”,

(b) in subsection (2), for first “document” substitute “traditional document”.

9 In section 5 (alterations to documents: formal validity and presumptions)—
(a) in subsection (1), for first “document” substitute “traditional document”,
(b) in subsection (3), for first “document” substitute “traditional document”,
(c) in subsection (4), for first “document” substitute “traditional document”,
(d) in subsection (8), for first “document” substitute “traditional document”,
(e) subsection (9) is repealed.

5 In the title of section 5, for “documents” substitute “traditional documents”.

10 In section 6 (registration of documents)—
(a) in subsection (1), repeal “and section 6A of this Act”,
(b) in subsection (1)(a), for “document” substitute “traditional document”,
(c) in subsection (1)(b), for “document” substitute “traditional document”,

(ca) after subsection (1)(b) insert—

“(ba) to register a traditional document in the Land Register of Scotland,”,

(cb) for subsection (3)(a) substitute—

“(a) a document’s—

(i) being recorded in the Register of Sasines, or
(ii) being registered in the Land Register of Scotland, in the Books of Council and Session or in sheriff court books,

if an enactment requires or expressly permits such recording or registration notwithstanding that the document is not presumed to have been subscribed by the granter or by at least one of the granters,”,

(cc) in subsection (3)(b), after “Sasines” insert “or the registering of such a decree in the Land Register of Scotland”,

(d) in subsection (4), for “document” substitute “traditional document”.

12 In the title of section 6, for “documents” substitute “traditional documents”.

25 Section 6A is repealed.

14 In section 7 (subscription and signing)—
(a) in subsection (1), for first “document” substitute “traditional document”,
(b) in subsection (2)—

(i) for first “document” substitute “traditional document”,
(ii) for second “a document” substitute “such a document”,

(c) in subsection (4), for first “document” substitute “traditional document”,
(d) in subsection (5)—

(i) for first “document” substitute “traditional document”,
(ii) for second “a document” substitute “such a document”,

(e) in subsection (7), for “documents” substitute “traditional documents”.

15 In section 8 (annexations to documents)—
(a) in subsection (1), for first “document” substitute “traditional document”,

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(b) in subsection (4), for first “document” substitute “traditional document”,
(c) in subsection (5), for first “document” substitute “traditional document”.

16 In the title of section 8, for “documents” substitute “traditional documents”.

17 In section 9 (subscription on behalf of blind granter or granter unable to write)—
(a) for first “document” substitute “traditional document”,
(b) in subsection (5)—
   (i) in paragraph (a), for “document” substitute “traditional document”,
   (ii) in paragraph (b), for first “document” substitute “traditional document as mentioned in section 5(1)”.

18 Section 11 is repealed.

19 In section 12 (interpretation)—
(a) in subsection (1)—
   (i) repeal the definition of “ARTL System”,
   (ii) after the definition of “authorised” insert—
         ““certification”, in relation to an electronic signature incorporated into or logically associated with an electronic document, means confirming in a statement that—
         (a) the electronic signature,
         (b) a means of producing, communicating or verifying that signature, or
         (c) a procedure applied to that signature,

20 is, either alone or combined with other factors, a valid means of establishing the authenticity of the electronic document, its integrity or both its authenticity and its integrity (it being immaterial, in construing this definition, whether the statement is made before or after the authentication of an electronic document to which the statement relates),”,

(iii) repeal the definition of “dealing”,
(iv) repeal the definition of “digital signature”,
(v) in the definition of “document”, after first “includes” insert “, in the case of a traditional document,”,
(vi) repeal the definition of “electronic communication”,
(vii) for the definition of “electronic document” substitute—
         ““electronic document” has the meaning given by section 9A,
         “electronic signature” means so much of anything in electronic form as—
         (a) is incorporated into, or logically associated with, an electronic document, and
(b) purports to be so incorporated or associated for the purpose of being used in establishing the authenticity of the electronic document, its integrity or both its authenticity and its integrity,”,

(viii) repeal the definitions of “signature-creation data” and “signature-creation device”,

(ix) at the end insert—

““traditional document” has the meaning given by section 1A.”,

(b) after subsection (3) insert—

“(4) In relation to an electronic document—

(a) references to authenticity—

(i) are references to whether the document has been electronically signed by a particular person, and

(ii) may include references to whether the document is accurately timed or dated, and

(b) references to integrity are references as to whether there has been any tampering with, or other modification of, the document.”.

19A In section 13 (Crown application), in subsection (1)(c), after “Sasines” insert “, registered in the Land Register of Scotland”.

20 The provisions of sections 10 to 15 as amended by this schedule become Part 4 of the Act.

21 The title of Part 4 is “General provisions”.

22 In schedule 1 (alterations made to documents after subscription)—

(a) in paragraph 1(1)(a), for first “document” substitute “traditional document”,

(b) in paragraph 2—

(i) in sub-paragraph (1), for first “document” substitute “traditional document”,

(ii) in sub-paragraph (2), for first “document” substitute “traditional document”.

23 In the title to schedule 1, for “document” substitute “traditional document”.

24 In schedule 2 (subscription and signing: special cases)—

(a) in paragraph 1, for first “document” substitute “traditional document”,

(b) in paragraph 2(1), for first “document” substitute “traditional document”,

(c) in paragraph 3—

(i) in sub-paragraph (1), for first “document” substitute “traditional document”,

(ii) in sub-paragraph (4), for “document” substitute “traditional document”,

(iii) in sub-paragraph (5)(a), in paragraph (a) of the first subsection set out in substitution for section 3(1), for first “document” substitute “traditional document”,

25
(iv) in sub-paragraph (6)(a), in paragraph (a) of the sub-paragraph set out in substitution for paragraph 1(1) of schedule 1, for “document” substitute “traditional document”,

(d) in paragraph 3A—

5  (i) in sub-paragraph (1), for first “document” substitute “traditional document”,

(ii) in sub-paragraph (4), for “document” substitute “traditional document”,

(iii) in sub-paragraph (5)(a), in paragraph (a) of the first subsection set out in substitution for section 3(1), for “document” substitute “traditional document”,

10  (iv) in sub-paragraph (6)(a), in paragraph (a) of the first sub-paragraph set out in substitution for paragraph 1(1) of schedule 1, for “document” substitute “traditional document”,

(e) in paragraph 4—

15  (i) in sub-paragraph (1), for first “document” substitute “traditional document”,

(ii) in sub-paragraph (4), for “document” substitute “traditional document”,

(iii) in sub-paragraph (5), in paragraph (a) of the first subsection set out in substitution for section 3(1), for “document” substitute “traditional document”,

20  (iv) in sub-paragraph (7), in paragraph (a) of the first sub-paragraph set out in substitution for paragraph 1(1) of schedule 1, for “document” substitute “traditional document”,

(f) in paragraph 5—

25  (i) in sub-paragraph (2), for first “document” substitute “traditional document”,

(ii) in sub-paragraph (4), for “document” substitute “traditional document”,

(iii) in sub-paragraph (5), in paragraph (a) of the first subsection set out in substitution for section 3(1), for first “document” substitute “traditional document”,

30  (iv) in sub-paragraph (7), in paragraph (a) of the first sub-paragraph set out in substitution for paragraph 1(1) of schedule 1, for “document” substitute “traditional document”,

(g) in paragraph 6—

35  (i) in sub-paragraph (1), for first “document” substitute “traditional document”,

(ii) in sub-paragraph (5), for “document” substitute “traditional document”,

(iii) in sub-paragraph (6), in paragraph (a) of the first subsection set out in substitution for section 3(1), for first “document” substitute “traditional document”,

40  (iv) in sub-paragraph (7), in paragraph (a) of the first sub-paragraph set out in substitution for paragraph 1(1) of schedule 1, for first “document” substitute “traditional document”.


In schedule 3 (modifications of the Act in relation to subscription or signing by relevant person under section 9 of the Act)—
(a) in paragraph 2, in paragraph (a) of the subsection set out in substitution for section 3(1), for “document” substitute “traditional document”,
(b) in paragraph 4, in the subsection set out in substitution for section 3(4), for first “document” substitute “traditional document”,
(c) in paragraph 7, in paragraph (a) of the subsection set out in substitution for section 4(1), for “document” substitute “traditional document”,
(d) in paragraph 9, in sub-paragraph (a) of the paragraph set out in substitution for paragraph 1(1) of schedule 1, for first “document” substitute “traditional document”,
(e) in paragraph 14, in sub-paragraph (a) of the paragraph set out in substitution for paragraph 2(1) of schedule 1, for first “document” substitute “traditional document”.

In paragraph 1 of schedule 4 (minor and consequential amendments)—
(a) in sub-paragraph (1), after “section 6(2)” insert “or 9F(2)”, and
(b) in sub-paragraph (2), for “or subscribed” substitute “, subscribed or authenticated”.

SCHEDULE 4
(introduced by section 114)
TRANSITIONAL PROVISIONS

Existing title sheets
1 On the designated day an existing title sheet becomes part of the title sheet record.

2 An existing title sheet which becomes, under paragraph 1, part of the title sheet record, may be amended by the Keeper so as—
(a) to conform with a requirement of, or imposed by virtue of, this Act, or
(b) to reflect something permitted by, or by virtue of, this Act.

3 An amendment under paragraph 2 may be made on the designated day or at such later date as the Keeper considers appropriate.

4 An existing title sheet as respects an interest of ownership becomes under paragraph 1 a title sheet as respects a plot of land; and the Keeper, on or as soon as practicable after the designated day, must create a cadastral unit for that plot.

5 An existing title sheet as respects an interest of tenancy becomes under paragraph 1 a lease title sheet.

6 Section 12(2) does not apply to a cadastral unit created under paragraph 4.
Common areas: general

7 If, by reason of being owned in common, the selfsame area of land is, immediately before the designated day, included in two or more existing title sheets the Keeper may, if the Keeper considers it appropriate, make up a title sheet for that area and create a cadastral unit for it.

8 Where a title sheet is created by virtue of paragraph 7—
   (a) the Keeper is to make such changes to the other title sheets mentioned in that paragraph and to the cadastral map as are consequential upon its being so constituted; and
   (b) the respective shares of the proprietors of the area of land need only be entered in the title sheet if they were entered in the existing title sheets.

Common areas: developments begun before designated day

9 If, by reason of being owned in common, the selfsame area of land (in this paragraph and in paragraph 11 referred to as “area A”) is, immediately before the designated day, included in two or more existing title sheets and on or after that day title sheets (in this paragraph and in paragraph 10 referred to as the “new title sheets”) are to be constituted for plots of land the proprietors of which will (qua proprietors of those plots) be comprised within those who own area A in common, area A may, by reason of being owned in common, be included in the new title sheets.

10 Where the respective shares of the proprietors were not entered in the existing title sheets they need not be entered in the new title sheets.

11 The Keeper may at any time create a separate title sheet for area A.

Archive record

12 The Keeper must include in the archive record—
   (a) all copies of documents upon which the terms of the existing title sheets are founded,
   (b) all copies of documents which relate to past states of title sheets and title plans, and
   (c) such other information, in whatever form, as so relates,
   in so far as those copy documents, and as the case may be that other information, is held by the Keeper immediately before the designated day.

Pending applications

13 Nothing in this Act, other than provision made by or by virtue of section 34, affects an application under section 4 (applications for registration) of the Land Registration (Scotland) Act 1979 (c.33) (the “1979 Act”) provided that the date of receipt of the application is before the designated day.

14 An application by virtue of section 9(1) of the 1979 Act (rectification of the register) falls if it has not been determined by the Keeper as at the designated day.
Claims under the 1979 Act

15 Where, immediately before the designated day, a person has an entitlement to claim indemnity under section 12(1) of the 1979 Act (indemnity in respect of loss) but either—

(a) no such claim has been made, or

(b) any such claim as has been made is as yet undetermined,
nothing in this Act affects the entitlement or claim.

16 Nothing in this Act affects any entitlement to reimbursement under subsection (1) of section 13 of the 1979 Act (reimbursement of certain expenditure) or any claim made by virtue of that subsection.

Bijural inaccuracies

17 If there is in the register, immediately before the designated day, an inaccuracy which the Keeper has power to rectify under section 9 of the 1979 Act (rectification of the register) then, as from that day—

(a) any person whose rights in land would have been affected by such rectification has such rights (if any) in the land as that person would have if the power had been exercised, and

(b) the register is inaccurate in so far as it does not show those rights as so affected.

18 For the purpose of determining whether the Keeper has the power mentioned in paragraphs 17 and 22, the person registered as proprietor of the land is to be presumed to be in possession unless the contrary is shown.

19 Where, by virtue of paragraph 17—

(a) a right is lost, compensation is payable under Part 7 as if warranty had been granted under section 71 in accepting an application by the person in whom the right was vested, or

(b) an encumbrance is revived, compensation is so payable as if such warranty had been granted in respect of an omission of the encumbrance.

20 Except that—

(a) compensation is not so payable in so far as, had the Keeper rectified the inaccuracy before the designated day, either a right to indemnity under section 12 of the 1979 Act (indemnity in respect of loss) was excluded by virtue of subsection (2) of that section or there would, by virtue of subsection (3) of that section, have been no entitlement to such indemnity,

(b) any compensation so payable is to be reduced to the extent that, had the Keeper rectified the inaccuracy before the designated day, the amount of any indemnity would have been reduced by virtue of section 13(4) of that Act (reduction proportionate to the extent to which a claimant has contributed, by fraudulent or careless act or omission, to loss), and

(c) in construing Part 7 for the purposes of paragraph 19, paragraphs (b) and (c) of section 76 are to be disregarded.

21 Section 75(4) and (5) applies in relation to a payment made by virtue of paragraph 19(a) as that section applies in relation to any other payment under Part 7.
Schedule 5—Minor and consequential modifications

22 If there is in the register, immediately before the designated day, an inaccuracy which the Keeper does not have power to rectify under section 9 of the 1979 Act, then on that day it ceases to be an inaccuracy.

23 Where, by virtue of paragraph 22, a person suffers loss which, had it been suffered by virtue of paragraph (b) of section 12(1) of the 1979 Act, would (after allowing for the effect of subsections (2) and (3) of that section) have given rise before the designated day to an entitlement under that section, the person is entitled to claim compensation, by virtue of this paragraph, from the Keeper in respect of that loss.

24 Sections 90(3) to (6) and 91 apply in respect of a claim by virtue of paragraph 23 as they apply in respect of a claim by virtue of section 90(1), but with the modification that, for paragraph (a) of section 91(1), there is substituted—

“(a) is, in so far as it is not compensation mentioned in paragraph (b), to be quantified as at the date on which the register became inaccurate.”.

Depiction of tenement etc.

25 Section 16(3) does not apply if any of the flats comprised in the flatted building mentioned in that subsection—

(a) is recorded in the Register of Sasines, or

(b) is registered by virtue of an application accepted under section 4 of the 1979 Act.

SCHEDULE 5
(introduced by section 115)

MINOR AND CONSEQUENTIAL MODIFICATIONS

Lands Clauses Consolidation (Scotland) Act 1845 (c.19)

1 In the Lands Clauses Consolidation (Scotland) Act 1845, in the note to schedule (A.) (form of conveyance)—

25 (a) for “Subscription of the document by the granter of it” substitute “In the case of a traditional document, subscription of it by the granter”,

(b) after “1995” insert “, which also makes provision as regards the authentication of an electronic document”.

Commissioners Clauses Act 1847 (c.16)

2 (1) The Commissioners Clauses Act 1847 is amended as follows.

(2) In section 59(2) (conveyance of lands by commissioners)—

(a) in paragraph (a)—

30 (i) for “in accordance with section 7 of, and paragraph 5 of Schedule 2 to,” substitute “or authenticated in accordance with”;

35 (ii) for “subscribed in accordance with the said section 7” substitute “so subscribed or authenticated”;

(iii) for “, followed by infeftment duly recorded” substitute “or authenticated, duly registered in the Land Register of Scotland”,
(b) in paragraph (b), for “word “subscribed”” substitute “the words “subscribed or authenticated””.

(3) In section 75(2)(c) (form of mortgage)—
(a) in sub-paragraph (i), repeal “section 7 of, and paragraph 5 of Schedule 2 to,”,
(b) in sub-paragraph (ii), for “section 7” substitute “Act”.

Ordnance Board Transfer Act 1855 (c.117)

3 In section 5(2) of the Ordnance Board Transfer Act 1855 (description in conveyances etc.), after “subscribing” insert “, or as the case may be authenticating.”.

Transmission of Moveable Property (Scotland) Act 1862 (c.85)

4 In the Transmission of Moveable Property (Scotland) Act 1862, in the note to each of schedules A (form for assignation of bond or conveyance) and B (form of bond or conveyance)—
(a) for “Subscription of the document by the granter of it” substitute “In the case of a traditional document, subscription of it by the granter”,
(b) after “1995” insert “, which also makes provision as regards the authentication of an electronic document”.

Land Registers (Scotland) Act 1868 (c.64)

5 (1) The Land Registers (Scotland) Act 1868 is amended as follows.
(2) Sections 13, 19 and 25 are repealed.

Titles to Land Consolidation (Scotland) Act 1868 (c.101)

6 (1) The Titles to Land Consolidation (Scotland) Act 1868 is amended as follows.
(2) In section 159 (litigiosity not to begin before date of registration of notice of summons)—
(a) the existing provisions become subsection (1),
(b) after that subsection insert—
“(2) A notice registered under subsection (1) on or after the date on which section 65 of the Land Registration etc. (Scotland) Act 2012 (asp 00) (warrant to place a caveat) comes into force shall not have any effect in rendering litigious any land a title sheet for which is comprised in the Land Register of Scotland or in placing in bad faith any person acquiring such land.”.

30 (3) In section 159A (registration of notice of summons of action of reduction)—
(a) in each of subsections (2)(b) and (3)(b), repeal “register in the Land Register of Scotland or, as the case may be,”,
(b) after subsection (3) insert—
“(4) This section does not apply in relation to lands for which there is a title sheet in the Land Register of Scotland.”.

35 (4) In schedule B, in form No. 1 (formal clauses of a disposition of land etc.), in the note relating to subscription of the document in question—
(a) for “Subscription of the document by the granter of it” substitute “In the case of a traditional document, subscription of it by the grantor”,

(b) after “1995” insert “, which also makes provision as regards the authentication of an electronic document”.

Conveyancing (Scotland) Act 1874 (c.94)

7 (1) The Conveyancing (Scotland) Act 1874 is amended as follows.

(2) In schedule M (form of assignation of right of relief etc.), in the note—

(a) for “Subscription of the document by the granter of it” substitute “In the case of a traditional document, subscription of it by the granter”,

(b) after “1995” insert “, which also makes provision as regards the authentication of an electronic document”.

Trusts (Scotland) Act 1921 (c.58)

8 (1) The Trusts (Scotland) Act 1921 is amended as follows.

(2) In schedule A (form of minute of resignation), in the note—

(a) for “Subscription of the document by the granter of it” substitute “In the case of a traditional document, subscription of it by the granter”,

(b) after “1995” insert “, which also makes provision as regards the authentication of an electronic document”.

(3) In schedule B (form of deed of assumption), in the note—

(a) for “Subscription of the document by the granter or granters of it” substitute “In the case of a traditional document, subscription of it by the grantor or granters”,

(b) after “1995” insert “, which also makes provision as regards the authentication of an electronic document”.

Conveyancing (Scotland) Act 1924 (c.27)

9 (1) The Conveyancing (Scotland) Act 1924 is amended as follows.

(2) In section 2(5) (interpretation), after “registrable” insert “in the Land Register of Scotland or”.

(3) In section 3 (disposition etc.), for “manner” substitute “such manner as was (immediately before the repeal of the note)”. 

(4) In section 44 (General Register of Inhibitions and Register of Adjudications to be combined; limitation of effect of entries therein), after subsection (2) insert—

“(2A) A notice registered under subsection (2)(a)(i) of this section on or after the date on which section 65 of the Land Registration etc. (Scotland) Act 2012 (asp 00) (warrant to place a caveat) comes into force shall not have any effect in rendering—

(a) any land or lease for which there is a title sheet in the Land Register of Scotland, or

(b) any heritable security the particulars of which are entered in a title sheet in that register,
(5) In schedule B (notice of title), in note 8—
(a) for “Subscription of the document” substitute “In the case of a traditional
document, subscription of it”,
(b) after “1995” insert “, which also makes provision as regards the authentication of
an electronic document”.
(6) The title of schedule B becomes—
“FORMS OF NOTICE OF TITLE: REGISTER OF SASINES”.

**Burgh Registers (Scotland) Act 1926 (c.50)**

10 The Burgh Registers (Scotland) Act 1926 is repealed.

**Public Registers and Records (Scotland) Act 1948 (c.57)**

11 Section 4 of the Public Registers and Records (Scotland) Act 1948 is repealed.

**Land Drainage (Scotland) Act 1958 (c.24)**

12 In section 18(1) of the Land Drainage (Scotland) Act 1958 (interpretation), in the
definition of “long lease”, after “being,” insert “registered in the Land Register of
Scotland or”.

**Harbours Act 1964 (c.40)**

13 In section 57(1) of the Harbours Act 1964 (interpretation), in the definition of “long
lease”, after “being,” insert “registered in the Land Register of Scotland or”.

**Succession (Scotland) Act 1964 (c.41)**

14 In section 21A(a) of the Succession (Scotland) Act 1964 (evidence as to testamentary
documents in commissary proceedings), for “or 4” substitute “or 9D”.

**Industrial and Provident Societies Act 1965 (c.12)**

15 (1) The Industrial and Provident Societies Act 1965 is amended as follows.

(2) In section 29D(1) (execution of documents: Scotland), after “subscribed” insert “(or, in
the case of an electronic document, authenticated)”.

(3) In section 29G(2)(a) (authorisation of use of official seal), after “subscribed” insert “or
authenticated”.

(4) In schedule 3 (form of receipt on mortgage, heritable security etc.), in Part 2, in the note
to each of forms C, D and E—
(a) for “Subscription of the document by the granter of it” substitute “In the case of a
traditional document, subscription of it by the granter”,
(b) after “1995” insert “, which also makes provision as regards the authentication of
an electronic document”.

litigious or in placing in bad faith any person acquiring such land, lease or
heritable security.”.
(5) In schedule 4 (forms of bond for officers of society), in Part 2, in the note to form C—
   (a) for “Subscription of the document” substitute “In the case of a traditional document, subscription of it”,
   (b) after “1995” insert “, which also makes provision as regards the authentication of an electronic document”.

Gas Act 1965 (c.36)

16 In section 28(1) of the Gas Act 1965 (interpretation of Part 2 of the Act), in the definition of “long lease” for the purposes of the definition of “owner”, after “being,” insert “registered in the Land Register of Scotland or”.

Conveyancing and Feudal Reform (Scotland) Act 1970 (c.35)

10 (1) The Conveyancing and Feudal Reform (Scotland) Act 1970 is amended as follows.
   (2) In section 9 (the standard security)—
      (a) in subsection (2), after first “to” insert “grant and register in the Land Register of Scotland or to”,
      (b) in subsection (4)—
         (i) after “duly” insert “registered or”,
         (ii) after “clear” insert “the Land Register of Scotland or”,
      (c) in subsection (8), both—
         (i) in paragraph (a), after second “being” insert “registered in the Land Register of Scotland or”,
         (ii) in paragraph (b), after “be” insert “registered in the Land Register of Scotland or”.
   (3) In section 10(4) (import of forms of, and certain clauses in, standard security), after “duly” insert “registered or”.
   (4) In section 11(1) (effect of recorded standard security, and incorporation of standard security), after “duly” insert “registered or”.
   (5) In the title of section 11 as so amended, after first “of” insert “registered or”.
   (6) In section 12 (standard security may be granted by person uninfeft)—
      (a) for subsection (1) substitute—
         “(1) Notwithstanding any rule of law, a standard security may be granted over land or a real right in land by a person whose title thereto has not been completed by being duly registered or recorded.
         (1A) If the deed expressing the security is to be recorded in the Register of Sasines, the grantor must, in that deed, deduce his title to the land or real right from the person who appears in the Register of Sasines as having the last recorded title thereto.”,
      (b) in subsection (2)—
         (i) for “such a deed being” substitute “a deed expressing the security being registered or”,

(ii) repeal “to which he has deduced title therein”,
(iii) after “last” insert “registered or”.

(7) In section 13 (ranking of standard securities)—
   (a) in subsection (1)—
      (i) after “duly” insert “registered or”,
      (ii) after “so” insert “registered or”,
   (b) in subsection (2)(a)—
      (i) after “duly” insert “registered or”,
      (ii) after “subsequent” insert “registration or”,
   (c) after third “the” insert “Land Register of Scotland or”,
   “(4) An agreement as to the ranking among themselves of two or more standard securities which are granted over the same land or the same real right in land may be registered in the Land Register of Scotland.”.

(8) In section 14(1) (assignation of standard security), after “duly”, in both places, insert “registered or”.

(9) In section 15 (restriction of standard security)—
   (a) in subsection (1), after “duly”, in both places, insert “registered or”,
   (b) in subsection (2), after “duly” insert “registered or”.

(10) In section 16 (variation of standard security)—
   (a) in subsection (1), after “duly”, in both places, insert “registered or”,
   (b) in subsection (2)—
      (i) after “duly” insert “registered or”,
      (ii) after “so” insert “registered or”,
      (iii) after “be” insert “registered in the Land Register of Scotland or”,
   (c) in subsection (4)—
      (i) after first “is” insert “registered or”,
      (ii) after “an” insert “unregistered or”.

(11) In section 17 (discharge of standard security), after “duly”, in both places, insert “registered or”.

(12) In section 18(3) (redemption of standard security), after “duly” insert “registered or”.

(13) In section 19 (calling-up of standard security)—
   (a) in subsection (2)—
      (i) after “last”, in both places, insert “registered or”,
      (ii) after first “appearing” insert “in the Land Register of Scotland or”,
      (iii) after “record” insert “of the Register of Sasines”,
      (iv) before “Register” insert “Land Register of Scotland or”,
(b) in subsection (3), after the word “last”, in both places, insert “registered or”.

(14) In section 26 (disposition by creditor on sale)—
   (a) in subsection (1), after “duly” insert “registered or”,
   (b) in subsection (2), after second “the” insert “registration or”.

(15) In section 27(1)(c) (application of proceeds of sale), after “duly” insert “registered or”.

(16) In section 28 (foreclosure)—
   (a) in subsection (5)—
      (i) after “duly” insert “registered or”,
      (ii) for “section 15 of the Land Registration (Scotland) Act 1979” substitute “the Land Registration etc. (Scotland) Act 2012 (asp 00)”,
      (iii) after “warrant” insert “for registering the extract of the decree in the Land Register of Scotland or”,
   (b) in subsection (6)—
      (i) after “duly”, in both places, insert “registered or”,
      (ii) in paragraph (a), after “date” insert “of the registration or”,
   (c) in subsection (7), after “due” insert “registration or”.

(17) In section 30(1) (interpretation of Part 2)—
   (a) for the definition of “duly recorded” substitute—
      ““duly registered or recorded” means registered in the Land Register of Scotland or recorded in the Register of Sasines;”,
   (b) after the definition of “real right in land” insert—
      ““recorded” means recorded in the Register of Sasines;”,
   (c) after the definition of “Register of Sasines” insert—
      ““registered” means registered in the Land Register of Scotland;”.

(18) In section 53(4) (interpretation of Act other than Part 2), for the definition of “duly recorded” substitute—
      ““duly registered or recorded” means registered in the Land Register of Scotland or recorded in the Register of Sasines;”.

(19) In the notes to schedule 2 (forms of standard security)—
   (a) in note 2, after first “subjects” insert “and the deed is to be recorded in the Register of Sasines”,
   (b) in note 3, after first “security” insert “to be recorded in the Register of Sasines”,
   (c) in note 4, after second “be” insert “registered in the Land Register of Scotland or”,
   (d) in note 8—
      (i) for “Subscription of the document by the granter of it” substitute “In the case of a traditional document, subscription of it by the granter”,
      (ii) after “1995” insert “, which also makes provision as regards the authentication of an electronic document”. 
(20) In paragraph 12 of schedule 3 (the standard conditions)—
   (a) before “recorded” insert “registered or”,
   (b) before “recording” insert “registration or”.

(21) In schedule 4 (forms of deeds of assignation, restriction etc.) in each of forms A, C, D, E and F, for “recorded in the register for……on…….” substitute “registered in the Land Register of Scotland on……over title number…..(or recorded in the Register for……on…….)”.

(22) In the notes to schedule 4—
   (a) in note 1—
      (i) after first “title” insert “and the deed is to be recorded in the Register of Sasines”,
      (ii) before fourth “recorded” insert “registered or”,
   (b) in note 3—
      (i) after first “by” insert “registration of the security in the Land Register of Scotland or”,
      (ii) for “‘recorded’” substitute “‘registered (or recorded)’”,
   (c) in note 5—
      (i) before “recorded”, in the first two places, insert “registered or”,
      (ii) before third “recorded” insert “registered in the Land Register of Scotland or”,
   (d) in note 6, after first “subjects” insert “and the deed is to be recorded in the Register of Sasines”,
   (e) in note 7—
      (i) for “Subscription of the document by the granter of it” substitute “In the case of a traditional document, subscription of it by the granter”,
      (ii) after “1995” insert “, which also makes provision as regards the authentication of an electronic document”.

(23) In schedule 5 (procedures as to redemption)—
   (a) in form A, for “recorded in the register for……on…….” substitute “registered in the Land Register of Scotland on……over title number…..(or recorded in the Register for……on…….)”,
   (b) in form D (nos. 1 and 2), for “recorded in the register for……on…….” substitute “registered in the Land Register of Scotland on……over title number…..(or recorded in the Register for……on…….)”,
   (c) in each of the notes to form D—
      (i) for “Subscription of the document by the granter of it” substitute “In the case of a traditional document, subscription of it by the granter”,
      (ii) after “1995” insert “, which also makes provision as regards the authentication of an electronic document”.
(24) In schedule 6 (procedures as to calling-up and default), in each of forms A and B, for “recorded in the register for……on…..” substitute “registered in the Land Register of Scotland over title number…..(or recorded in the Register for……on…..)”.

(25) In schedule 9 (discharge of heritable security constituted by ex facie absolute conveyance), in note 4—

(a) for “Subscription of the document by the granter of it” substitute “In the case of a traditional document, subscription of it by the granter”,

(b) after “1995” insert “, which also makes provision as regards the authentication of an electronic document”.

Prescription and Limitation (Scotland) Act 1973 (c.52)

18 (1) The Prescription and Limitation (Scotland) Act 1973 is amended as follows.

(2) In section 1 of the Prescription and Limitation (Scotland) Act 1973 (c.52) (validity of right), for subsection (1)(b) substitute—

“(b) the registration of a deed which is sufficient in respect of its terms to constitute in favour of that person a real right in—

(i) that land; or

(ii) land of a description habile to include that land.”.

(3) In section 2 (special cases)—

(a) in subsection (1)(b), for “recorded or not” substitute “or not registered or recorded”,

(b) in subsection (2)(b), after “been” insert “registered or”, and

(c) in subsection (3), for “section 3(3) of the Land Registration (Scotland) Act 1979 (c.33)” substitute “section 20B or 20C of the Registration of Leases (Scotland) Act 1857 (c.26)”.

(4) In section 5 (further provision supplementary to sections 1, 2 and 3 of the Prescription and Limitation (Scotland) Act 1973), after subsection (1) insert—

“(1A) Any reference in those sections to a real right’s being exempt from challenge as from the expiration of some continuous period is to be construed, if the real right of the possessor was void immediately before that expiration, as including reference to acquisition of the real right by the possessor.”.

(5) In section 15(1) (interpretation of Part 1 of the Act), at end insert “and to the registering of a deed are to the registering thereof in the Land Register of Scotland”.

(6) In paragraph 1 of schedule 1 (obligations affected by prescriptive periods of 5 years under section 6 of that Act), after sub-paragraph (ac) insert—

“(ad) to any obligation of the Keeper of the Registers of Scotland to pay compensation by virtue of section 80 of the Land Registration etc. (Scotland) Act 2012 (asp 00);

(ae) to any obligation to pay compensation by virtue of section 107 of that Act;”.

(7) In paragraph 2 of that schedule (obligations which, notwithstanding paragraph 1 of the schedule, are not affected by prescriptive periods of 5 years under section 6 of that Act), in sub-paragraph (e)—
(a) for “or (ac)” substitute “, (ac), (ad), or (ae)”,
(b) after “servitude)” insert “and any obligation of the Keeper of the Registers of Scotland to pay compensation by virtue of section 75 or 90 of the Land Registration etc. (Scotland) Act 2012 (asp 00)”.

(8) In schedule 3 (rights and obligations which are imprescriptible for certain purposes of that Act) after sub-paragraph (h) insert—

“(i) any obligation of the Keeper of the Registers of Scotland to rectify an inaccuracy in the Land Register of Scotland”.

Land Registration (Scotland) Act 1979 (c.33)

19 (1) The Land Registration (Scotland) Act 1979 is amended as follows.

(2) Sections 1 to 14 are repealed.

(3) In section 15 (simplification of deeds relating to registered interests)—

(a) subsections (1) to (3) are repealed,
(b) in subsection (4)—

(i) for “registered interest in land” substitute “plot of land or lease registered in the Land Register of Scotland”,
(ii) for “that interest” substitute “the plot or lease”.

(4) Section 19 is repealed.

(5) Sections 23 to 28 are repealed.

(6) In section 29(3) (references to recording to include references to registering), paragraph (b) is repealed.

(7) Section 30 is repealed.

(8) Schedule 2 is repealed.

(9) In schedule 3 (enactments not affected by section 29(2))—

(a) paragraphs 3, 4, 10, 12 and 13 are repealed,
(b) in paragraph 5, for paragraphs (a) to (c) substitute “The Whole Act.”,
(c) in paragraph 6—

(i) for paragraph (d) substitute—

“(d) Section 12.
(da) Section 14.”,
(ii) paragraph (e) is repealed,
(d) in paragraph 7, paragraphs (a), (c) to (f), (i) and (j)) are repealed,
(e) in paragraph 8, paragraph (b) is repealed,
(f) in paragraph 11—

(i) in paragraph (a), repeal “and note 2 to Schedule K”,
(ii) paragraphs (d) and (e) are repealed,
(iii) in paragraph (f), for “24(3)” to the end substitute “24(2) and (3) and that part of subsection (5) from the words “provided that” to the end”,

(iv) for paragraph (g) substitute—

“(ga) Section 46”,

(v) after paragraph (i) insert—

“(j) Schedule J”,

(g) in paragraph 16, for paragraphs (a) and (b) substitute “The Whole Act.”.

(10) Schedule 4 is repealed.

Education (Scotland) Act 1980 (c.44)

In section 16(2) of the Education (Scotland) Act 1980 (transference of denominational schools to education authorities)—

(a) for paragraphs (a) and (b) substitute “by registration in the Land Register of Scotland of an ordinary disposition or other deed of conveyance by the persons vested with the title”, and

(b) for “the recording of the deed of conveyance or, as the case may be,” substitute “such”.

Water (Scotland) Act 1980 (c.45)

(1) The Water (Scotland) Act 1980 is amended as follows.

(2) In section 58(5) (termination of right to supply of water on special terms), for “record” to the end substitute “—

(a) register in the Land Register of Scotland any agreement entered into, or order made, under the foregoing provisions of this section terminating an obligation to which this section applies if the obligation was itself registered in the Land Register, or

(b) record in the Register of Sasines any such agreement or order if the obligation was itself recorded in the Register of Sasines.”.

(3) In section 68(2) (agreements as to drainage), for “recorded in the appropriate” substitute “registered in the Land Register of Scotland or recorded in the”.

(4) Section 109(5) is repealed.

Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c.59)

In section 13(8) of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (transfer of tenancy), in the definition of “long lease”, for “section 28(1) of the Land Registration (Scotland) Act 1979” substitute “section 9(2) of the Land Registration etc. (Scotland) Act 2012 (asp 00)”.

Civil Aviation Act 1982 (c.16)

In section 55 of the Civil Aviation Act 1982 (c.16) (registration of orders etc. under Part 2 of the Act)—
(a) in subsection (2), repeal “in the Land Register of Scotland”,

(b) in subsection (3), for second “as” to “interest” substitute “, and on being registered
shall be enforceable against any person having or subsequently acquiring any
right”, and

(c) for subsection (4) substitute—

“(4) References in—

(a) subsection (2) above to registering a grant or agreement, or

(b) subsection (3) above to registering an instrument,

are to registering it in the Land Register of Scotland or, as the case may be, to
recording it in the Register of Sasines.”.

Litter Act 1983 (c.35)

24 In section 8 of the Litter Act 1983 (provisions supplementary to section 7 of the Act)—

(a) in subsection (3)—

(i) repeal “Subject to subsection (4) below,”,

(ii) for the words from “be registered” to “so registered” substitute “—

(a) if the land is registered in the Land Register of Scotland, be registered in
that register, and

(b) in any other case, be recorded in the Register of Sasines,

and if the agreement is so registered or recorded it”, and

(b) subsection (4) is repealed.

Health and Social Services and Social Security Adjudications Act 1983 (c.41)

25 In section 23(1) of the Health and Social Services and Social Security Adjudications Act
1983 (arrears of contributions secured over interest in land in Scotland), for “Land
Registration (Scotland) Act 1979” substitute “Land Registration etc. (Scotland) Act
2012”.

Telecommunications Act 1984 (c.12)

26 In schedule 4 of the Telecommunications Act 1984 (minor and consequential
amendments), paragraph 71 is repealed.

Matrimonial and Family Proceedings Act 1984 (c.42)

27 In schedule 1 of the Matrimonial and Family Proceedings Act 1984 (minor and
consequential amendments), paragraph 28 is repealed.

Bankruptcy (Scotland) Act 1985 (c.66)

28 (1) The Bankruptcy (Scotland) Act 1985 is amended as follows.
(2) In section 5 (sequestration of estate of a living or deceased debtor), in subsection (4AA)(1)(a)(ii), for “28(1) of the Land Registration (Scotland) Act 1979 (c.33)” substitute “9(2) of the Land Registration etc. (Scotland) Act 2012 (asp 00))”.

(3) In schedule 7 (consequential amendments), paragraph 15 is repealed.

5 Housing Associations Act 1985 (c.69)

29 In section 68(6) of the Housing Associations Act 1985 (loans by Public Works Loan Commissioners: Scotland), after “lease” insert “registered or”.

Law Reform (Miscellaneous Provisions)(Scotland) Act 1985 (c.73)

30 In section 8 of the Law Reform (Miscellaneous Provisions)(Scotland) Act 1985 (rectification of defectively expressed documents)—

(a) in subsection (7), at end insert “except that this subsection is subject to subsection (8A) below.”, and

(b) after subsection (8) insert—

“(8A) A notice under subsection (7) above registered on or after the date on which section 65 of the Land Registration etc. (Scotland) Act 2012 (asp 00) (warrant to place a caveat) comes into force shall not have any effect in rendering litigious any land for which there is a title sheet in the Land Register of Scotland or in placing in bad faith any person acquiring such land.”.

Electricity Act 1989 (c.2)

31 In schedule 16 to the Electricity Act 1989 (minor and consequential amendments), paragraph 23 is repealed.

Property Misdescriptions Act 1991 (c.29)

32 In section 1 of the Property Misdescriptions Act 1991 (offence of property misdescription)—

(a) in subsection (6)(b), for “an “interest” to the end substitute “any right in or over land (“right in or over land” including ownership and any heritable security or servitude but excluding any lease which is not a long lease).”;

(b) after subsection (6) insert—

“(6A) In subsection (6)(b), “long lease” has the meaning given by section 9(2) of the Land Registration etc. (Scotland) Act 2012 (asp 00).”.

Agricultural Holdings (Scotland) Act 1991 (c.55)

33 In section 75(1) of the Agricultural Holdings (Scotland) Act 1991 (power of tenant and landlord to obtain charge on holding), after “recorded” insert “or registered”.

Coal Industry Act 1994 (c.21)

34 In the Coal Industry Act 1994, in schedule 9 (minor and consequential amendments), paragraph 20 is repealed.
Land Registers (Scotland) Act 1995 (c.14)

35 In section 1 of the Land Registers (Scotland) Act 1995 (prepayment of recording and registration fees)—

(a) in subsection (1), for “payment” to the end substitute “—

5 (a) such fee as is payable in that respect by virtue of section 106 of the Land Registration etc. (Scotland) Act 2012 (asp 00) is paid, or

(b) arrangements satisfactory to the Keeper are made for payment of that fee.”,

(b) subsection (3) is repealed.

Petroleum Act 1998 (c.17)

36 In section 5(9) of the Petroleum Act 1998 (existing licences), after “subscribed” insert “or authenticated”.

Public Finance and Accountability (Scotland) Act 2000 (asp 1)

37 In section 9(1) of the Public Finance and Accountability (Scotland) Act 2000 (Keeper of the Registers of Scotland: financial arrangements), for “section 25 of the Land Registers (Scotland) Act 1868 (c.64)” substitute “section 106 of the Land Registration etc. (Scotland) Act 2012 (asp 00)”.

Adults with Incapacity (Scotland) Act 2000 (asp 4)

38 (1) The Adults with Incapacity (Scotland) Act 2000 is amended as follows.

20 (2) In section 56(7) (registration of intervention order relating to heritable property, for “the updated Land Certificate or an office copy thereof” substitute “an extract of the updated title sheet”.

(3) In section 61(7) (registration of guardianship order relating to heritable property), for “the updated Land Certificate or an office copy thereof” substitute “an extract of the updated title sheet”.

Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5)

39 (1) The Abolition of Feudal Tenure etc. (Scotland) Act 2000 is amended as follows.

30 (2) Section 4 is repealed.

(3) In section 18A(8)(b) (personal pre-emption burdens and personal redemption burdens), for “15(3) of the Land Registration (Scotland) Act 1979 (c.33)” substitute “97 of the Land Registration etc. (Scotland) Act 2012 (asp 00)”.

(4) Section 46 is repealed.

(5) In section 63(2) (baronies and other dignities and offices), for “an interest in land for the purposes of the Land Registration (Scotland) Act 1979 (c.33) or a right as respects which a deed can be” substitute “a right as respects which a deed can be registered in the Land Register of Scotland or”.

(6) Section 65 is repealed.

(7) In section 65A (sporting rights), subsection (12) is repealed.
(8) In section 73 (feudal terms in enactments and documents: construction after abolition of feudal system)—
(a) in subsection (1)—
   (i) repeal “or” immediately after paragraph (c), and
   (ii) after paragraph (d) insert “or
   (e) in an extract or certified copy issued under section 100 of the Land Registration etc. (Scotland) Act 2012 (asp 00),”, and
(b) in subsection (2)(b), for “subsection (1)(d)” substitute “paragraph (d) of, or extract or certified copy such as is mentioned in paragraph (e) of, subsection (1)”.
(9) In schedule 11 (form of assignation, discharge or restriction of reserved right to claim compensation), repeal “section 3 of”.

Standards in Scotland’s Schools etc. Act 2000 (asp 6)
40 In section 58(1) of the Standards in Scotland’s Schools etc. Act 2000 (interpretation), in the definition of “land”, for “interests in land (within the meaning of the Land Registration (Scotland) Act 1979 (c.33)” substitute “rights registered in the Land Register of Scotland”.

National Parks (Scotland) Act 2000 (asp 10)
41 In section 15 of the National Parks (Scotland) Act 2000 (management agreements)—
(a) in subsection (1), for “an interest” substitute “a right”,
(b) for subsection (5) substitute—
   “(5) A management agreement which affects a right in land which is—
   (a) a right registered in the Land Register of Scotland, may be registered in that register,
   (b) a right registrable (but not registered) in that register, may be recorded in the Register of Sasines.”, and
(c) subsection (10) is repealed.

Housing (Scotland) Act 2001 (asp 10)
42 In the Housing (Scotland) Act 2001—
(c) in section 23(1)(b) (tenant’s right to written tenancy agreement and information), after “subscribed” insert “or authenticated”,
(d) in section 24(3) (restriction on variation of tenancy), after “subscribed” insert “or authenticated”.

Title Conditions (Scotland) Act 2003 (asp 9)
43 (1) The Title Conditions (Scotland) Act 2003 is amended as follows.
(2) In section 4 (creation of real burdens), in subsection (1), repeal “, notwithstanding section 3(4) of the 1979 Act (creation of real right or obligation on date of registration etc.),”.

721
(3) In section 41(b) (deed granted by holder of conservation burden without completing title), for “15(3) of the 1979 Act” substitute “97 of the Land Registration etc. (Scotland) Act 2012 (asp 00)”.

(4) Sections 51 and 58 are repealed.

(5) In section 60 (grant of deed where title not completed: requirements)—

(a) in subsection (1), for “15(3) of the 1979 Act” substitute “97 of the Land Registration etc. (Scotland) Act 2012 (asp 00)”, and

(b) in subsection (2), repeal “or with section 15(3) of the 1979 Act”.

(6) In section 71 (development management scheme), in subsection (1), repeal “, notwithstanding section 3(4) of the 1979 Act (creation of real right or obligation on date of registration etc.)”.

(7) In section 73 (disapplication of development management schemes), in subsection (1)(b), repeal “notwithstanding section 3(4) of the 1979 Act (creation of real right or obligation on date of registration etc.)”.

(8) In section 75 (creation of positive servitudes by writing: deed to be registered), in subsection (2), repeal “, notwithstanding section 3(4) of the 1979 Act (creation of real right or obligation on date of registration etc.)”.

(9) In section 84(2) (extinction following offer to sell), after “section 2” insert “or 9B”.

(10) In section 119 (savings and transitional provisions etc.), subsection (2) is repealed.

(11) In section 122 (interpretation)—

(a) in subsection (1)—

(i) in the definition of “constitutive deed”, after “is” insert “, subject to subsection (4) below,”,

(ii) in the definition of “title condition”, in paragraph (e)(i), for “assignation of” substitute “assignments of registered or”, and

(b) after subsection (3) insert—

“(4) If title is completed in the manner provided for in section 4 or 4A of the Conveyancing (Scotland) Act 1924 (c.27) (completion of title) and a midcouple relevant to the title sets out the terms of a title condition (or of a prospective title condition), then for the purposes of this Act the midcouple and notice of title are together the constitutive deed of the title condition.”.

Civil Partnership Act 2004 (c.33)

44 In section 112(9) of the Civil Partnership Act 2004 (transfer of tenancy), in the definition of “long lease”, for “28(1) of the Land Registration (Scotland) Act 1979 (c.33)” substitute “9(2) of the Land Registration etc. (Scotland) Act 2012 (asp 00)”.

Stirling-Alloa-Kincardine Railway and Linked Improvements Act 2004 (asp 10)

45 In section 16 of the Stirling-Alloa-Kincardine Railway and Linked Improvements Act 2004 (rights in roads or public places), for subsection (3) substitute—

“(3) The powers conferred by this section constitute a real right.”.
Tenements (Scotland) Act 2004 (asp 11)

46 (1) The Tenements (Scotland) Act 2004 is amended as follows.

(2) In section 1(2)(b) (determination of boundaries and pertinents)—

(a) repeal “an interest in”, and

(b) for “title sheet of that interest” substitute “relevant title sheet”.

5

(3) In paragraph 1(6) of schedule 3 (sale under section 22(3) or 23(1) of the Act), for paragraph (a) substitute—

“(a) where the flat or former flat has been registered in the Land Register of Scotland, the description refers to the number of the title sheet;”.

Edinburgh Tram (Line Two) Act 2006 (asp 6)

47 In section 25 of the Edinburgh Tram (Line Two) Act 2006 (rights under or over roads), for subsection (5) substitute—

“(5) The powers conferred by this section constitute a real right.”.

Edinburgh Tram (Line One) Act 2006 (asp 7)

48 In section 25 of the Edinburgh Tram (Line One) Act 2006 (rights under or over roads), for subsection (5) substitute—

“(5) The powers conferred by this section constitute a real right.”.

Waverley Railway (Scotland) Act 2006 (asp 13)

49 In section 16 of the Waverley Railway (Scotland) Act 2006 (rights in roads or public places), for subsection (3) substitute—

“(3) The powers conferred by this section constitute a real right.”.

Companies Act 2006 (c.46)

50 (1) The Companies Act 2006 is amended as follows.

(2) In section 48(3) (execution of documents by companies), after “subscribed” insert “(or, in the case of an electronic document, authenticated)”.

25

(3) In section 49(4)(b), after “subscribed” insert “or authenticated”.

(4) In section 1022(6)(b) (protection of persons holding under a lease), for “Land Registration (Scotland) Act 1979 (c.33)” substitute “Land Registration etc. (Scotland) Act 2012 (asp 00)”.

Glasgow Airport Rail Link Act 2007 (asp 1)

51 In section 15 of the Glasgow Airport Rail Link Act 2007 (rights in roads), for subsection (3) substitute—

“(3) The powers conferred by this section constitute a real right.”.
Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3)

52 (1) The Bankruptcy and Diligence etc. (Scotland) Act 2007 is amended as follows.

(2) In section 85 (restriction on priority of ranking of certain securities), in new section 13A (to be inserted in the Conveyancing and Feudal Reform (Scotland) Act 1970 (c.35)), in subsection (1)(a), after “duly” insert “registered or”.

(3) In section 128(1) (interpretation of chapter 2 of Part 4), in the definition of “long lease”, for “28(1) of the Land Registration (Scotland) Act 1979 (c.33)” substitute “9(2) of the Land Registration etc. (Scotland) Act 2012 (asp 00)”.

Edinburgh Airport Rail Link Act 2007 (asp 16)

53 (1) The Edinburgh Airport Rail Link Act 2007 is amended as follows.

(2) In section 9(1) (registration of vested land), for “section 4 of the Land Registration (Scotland) Act 1979 (c.33)” substitute “Part 2 of the Land Registration etc. (Scotland) Act 2012 (asp 00)”.

(3) In section 20 (rights in roads or public places), for subsection (6) substitute—

“(6) The powers conferred by this section constitute a real right.”.

Airdrie-Bathgate Railway and Linked Improvements Act 2007 (asp 19)

54 (1) The Airdrie-Bathgate Railway and Linked Improvements Act 2007 is amended as follows.

(2) In section 9(1) (registration of vested land), for “section 4 of the Land Registration (Scotland) Act 1979 (c.33)” substitute “Part 2 of the Land Registration etc. (Scotland) Act 2012 (asp 00)”.

(3) In section 20 (rights in roads or public places), for subsection (6) substitute—

“(6) The powers conferred by this section constitute a real right.”.

Energy Act 2008 (c.32)

55 In section 77(7) of the Energy Act 2008 (model clauses of petroleum licences), after “subscribed” insert “or authenticated”.

Land Registration etc. (Scotland) Bill
[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to reform and restate the law on the registration of rights to land in the land register; to enable electronic conveyancing and registration of electronic documents in the land register; to provide for the closure of the Register of Sasines in due course; to make provision about the functions of the Keeper of the Registers of Scotland; to allow electronic documents to be used for certain contracts, unilateral obligations and trusts that must be constituted by writing; to provide about the formal validity of electronic documents and for their registration; and for connected purposes.

Introduced by: John Swinney
On: 1 December 2011
Bill type: Executive Bill
LAND REGISTRATION ETC. (SCOTLAND) BILL

REVISED EXPLANATORY NOTES

CONTENTS
1. As required under Rule 9.7.8A of the Parliament’s Standing Orders, these revised Explanatory Notes are published to accompany the Land Registration etc. (Scotland) Bill (introduced in the Scottish Parliament on 1 December 2011) as amended at Stage 2. Text has been added as necessary to reflect amendments made to the Bill at Stage 2 and these changes are indicated by sidelining in the right margin.

INTRODUCTION
2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.
3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. Therefore, where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND
4. The Land Registration etc. (Scotland) Bill makes provision for land registration in Scotland and provides a new legislative basis for the Land Register. The Bill also increases the number of events that will trigger the transfer of property from the existing General Register of Sasines to the Land Register. This will ensure the eventual completion of the Land Register. The Bill makes provision for applications for voluntary registration of titles in the Land Register and a power for the Keeper of the Registers of Scotland (who manages and controls the Land Register) to register a title without an application (a “Keeper-induced” registration). The Bill seeks to re-align registration law with property law by, for example, adjusting the circumstances in which a person can recover their property rather than only receive compensation under the state guarantee of title from the Keeper of the Registers.

5. In addition to these matters affecting the Land Register, the Bill introduces a system of “advance notices” for conveyancing transactions. The period between delivery and registration of a deed disponing an interest in land is the period in which the grantee of the deed (normally the purchaser) is at risk. The two main risks that a purchaser in a conveyancing transaction is exposed to are (1) the insolvency of the granter of the deed (the seller), and (2) that a competing deed will be registered before that deed. This risk is currently underwritten by insurance.
Finally, the Bill introduces amendments to the Requirements of Writing (Scotland) Act 1995, which will allow Scottish Ministers to make subordinate legislation enabling electronic conveyancing and electronic registration.

6. In 2002, the Keeper, with the agreement of Scottish Ministers, invited the Scottish Law Commission ("the SLC") to review the law of land registration in Scotland. The SLC issued three discussion papers. The first was a Discussion Paper entitled *Land Registration: Void and Voidable Titles* (Scots Law Com DP No 125, 2004), the second was a Discussion Paper on *Land Registration: Registration, Rectification and Indemnity* (Scot Law Com DP No 128, 2005) and the third was a Discussion Paper on *Land Registration: Miscellaneous Issues* (Scot Law Com DP No 130, 2005). The SLC project culminated in the publication of its Final Report on Land Registration (Scot Law Com No 222), including a draft Land Registration (Scotland) Bill, in February 2010. The SLC report and draft Bill provides useful explanatory background. However, there are a number of differences of detail between the Bill as introduced and the SLC draft Bill.

**OVERVIEW OF THE BILL**

7. The Bill as a whole continues and improves the system for land registration in Scotland. It replaces much of the Land Registration (Scotland) Act 1979.

8. Part 1 of the Bill provides the new structure of the Land Register of Scotland.

9. Part 2 of the Bill provides for the process of registration in the Land Register, including the processes for the additional “triggers” for first registration of titles. A “first registration” is the processing of an application relating to land which is not on the Land Register, the completion of which results in a land registered title. These additional triggers will facilitate the eventual completion of the Land Register.

10. Part 3 of the Bill provides for which documents may be registered in the Land Register and makes provision about the competence and effect of registration.

11. Part 4 of the Bill makes provision for advance notices

12. Part 5 of the Bill makes provision about inaccuracy in the Land Register. This is closely linked to Part 8 below.

13. Part 6 of the Bill makes provision about caveats in the Land Register.

14. Part 7 of the Bill makes provision for state guarantee of title under the Keeper’s warranty.

15. Part 8 of the Bill is closely linked to Part 5 on inaccuracy of the Register. It provides for when and how the Land Register is to be rectified to correct inaccuracy.

17. Part 10 of the Bill makes provision about electronic documents (including electronic conveyancing) and electronic registration.

18. Part 11 of the Bill makes general and miscellaneous provision, including a power of Scottish Ministers to set fees for processing applications and a power to make the Land Register rules.

19. Schedule 1 to the Bill relates to registered leases tenanted in common.

20. Schedule 2 to the Bill contains amendments to the Registration of Leases (Scotland) Act 1857.


22. Schedule 4 to the Bill contains savings and transitional provision.

23. Schedule 5 to the Bill contains minor and consequential modifications.

PART 1: THE LAND REGISTER

Overview of Part 1

24. Part 1 of the Bill provides for the continuation of the Land Register and sets out what the component parts of the register are. It also makes provision for how the Land Register is to deal with common areas, both within tenements and in other places where property is shared (such as gardens and driveways).

The Land Register of Scotland

Section 1: The Land Register of Scotland

25. The section sets out the underlying legal basis for the Land Register in Scotland. Subsection (1) makes in plain that the register is a public register of rights in land. The equivalent 1979 Act provided for the Land Register to be a register of interests in land. This is not a substantive change, merely a change of emphasis.

26. Subsection (4) gives the Keeper of the Registers authority and flexibility as to the form of the Land Register. In particular, it allows the Land Register to be in electronic form.

27. Subsection (5) makes it clear that it is the Keeper’s responsibility to ensure that the Land Register is sufficiently protected, due to the significant implications that would result from problems with it.
Structure and contents of the register

Section 2: The parts of the register

28. This section provides for the constituent parts of the Land Register. The details relating to each part are provided for in the following sections. It is noteworthy that the formal parts of the Land Register are expanded to include the cadastral map, the archive record and the application record. These parts of the Land Register previously existed on an administrative basis only. Section 6 of the Land Registration (Scotland) Act 1979 made provision with regards to title sheets, but did not mention the title sheet record.

Title sheets and the title sheet record

Section 3: Title sheets and the title sheet record

29. Subsections (1) and (6) together establish a key principle that each registered plot of land has a title sheet and there is only one title sheet for each plot. This is however subject to exceptions in subsections (2) and (7).

30. Subsection (4) defines “plot of land” as an area or areas of land all of which are owned by one person or jointly by more than one person. A separate tenement, such as mineral rights, or a flat in a tenement building, is a plot of land for these purposes under subsection (5).

31. Subsection (2) allows the Keeper to continue the current practice of creating a title sheet for a registered lease. This means there may be more than one title sheet for a plot of land where all or part of the plot is leased. Lease title sheets are subsidiary to title sheets made up under subsection (1) of this section.

32. In the case of the exception for pertinents, subsection (7) allows exclusive pertinents (such as gardens, garages and bin-stores) to be included in the same title sheet as the main part of the land being registered. Where a pertinent is in common ownership, a shared plot title sheet may be created instead (see sections 17 to 20).

Section 4: Title and lease title numbers

33. This section is self-explanatory.

Section 5: Structure of title sheets

34. Subsection (1) of this section provides for the sections of a title sheet. This replicates the sections of the title sheets as they appear in existing title sheets. Statutory provision with regards to title sheets was made in section 6 of the Land Registration (Scotland) Act 1979 and in the Land Registration (Scotland) Rules 2006.

35. Subsection (2) contains a power of the Keeper to sub-divide sections of the title sheet, which would enable, for example, the proprietorship section of a title sheet to be divided to reflect the provisional ownership of a prescriptive claimant (see section 42) in one part and the underlying ownership of another person in the other part.
Section 6: The property section of the title sheet

36. This section sets out what has to be included in the property section of the title sheet. It is commonly known as the “A section”. The property section sets out what the registered property is. Subsection (1)(a)(i) requires the description of the plot of land to be a description by reference to the cadastral map. This reflects the importance of the cadastral map in the Land Register under the Bill in showing the registered boundaries of plots of land.

37. Subsection (1)(b) requires the particulars of incorporeal pertinents (such as servitudes) to be entered onto the property section.

38. Subsection (1)(c) requires alluvion agreements (made under section 63) to be entered on the property section.

39. Where the title sheet is for a sharing plot (see sections 17 to 19) or a sharing lease (see section 20 and schedule 1), subsection (1)(d) requires the property section of the title sheet to specify what the share in the shared plot or shared lease area is.

40. Subsection (1)(f) requires in the case of title sheets that relate to the same area of land (such as where both an ordinary title sheet and lease title sheet or salmon fishing title sheet exists), that the property section of each title sheet provide a cross-reference to any other title sheet.

Section 7: The proprietorship section of the title sheet

41. This section of the title sheet will set out who owns the property described in the property section and their respective shares (for common ownership). This section is commonly known as the “B” section.

42. For the purposes of subsection (1)(a), the “designation” of the proprietor is defined in section 109(1).

43. Subsection (2) provides for exceptions to these requirements in the case of shared plot and shared lease area title sheets (see section 17 and schedule 1), and for title sheets which show areas in common which were already included in two or more title sheets before the designated day. Also relevant to the effect of subsection (2) is:

- Where the title sheet is a shared plot or shared lease area title sheet, the plot numbers of the sharing plot are to be entered to make the link. The quantum of the shares (i.e. the share of the whole) in the shared plots must be entered (see section 18(2)(a) and paragraph 7(a) of schedule 1);

- For title sheets created before the commencement of the Bill, where (1) common areas were entered on more than one title sheet and the Keeper makes a shared plot or shared lease area title sheet, and (2) the quantum of shares were not entered on the existing title sheets, the respective shares of the common owner don’t have to be entered on the new shared plot or shared lease area title sheet (see paragraph 9 of schedule 4).
This document relates to the Land Registration etc. (Scotland) Bill as amended at Stage 2
(SP Bill 6A)

- Where the title sheet is for a flat in a tenement or other single flatted building and the Keeper has mapped the tenement (or flatted building) as provided for in section 16, the Keeper need not enter the respective shares (such as the common close).

Section 8: The securities section of the title sheet

44. Subsection (1) sets out the information that the Keeper must enter in the securities section of a title sheet. It is commonly known as the “C” or charges section.

45. Subsection (2) makes reference to provisions on shared plot and shared lease title sheets which make specific provision about the securities section of those title sheets.

Section 9: The burdens section of the title sheet

46. Subsection (1) sets out the information that the Keeper must enter in the burdens section of a title sheet in respect of the property. It is commonly known as the “D” section.

47. Certain burdens (such as short leases i.e. those lasting 20 years or less) are not capable of registration and so will not appear in the burdens section.

48. Subsection (3) allows the Keeper to omit burdens from a shared plot title sheet (or a shared lease area title sheet) where the burden is disclosed in the title sheets of each of the sharing plots anyway.

Section 10: What is entered or incorporated by reference in a title sheet

49. Subsection (2) sets out the additional matters that the Keeper must enter on a title sheet and includes a general duty to include such information as the Keeper considers appropriate. This might be used, for example, to enter statements on a title sheet about the existence of a real burden subsisting by virtue of any of sections 52 to 56 of the Title Conditions (Scotland) Act 2003 (various implied rights of enforcement) or section 60 of the Abolition of Feudal Tenure etc. (Scotland) Act 2000 (preserved right of Crown to maritime burdens).

50. Subsections (4) and (5) make it clear that the information entered cannot contain any rights or obligations not authorised by law, and if rights or obligations are so entered, their entry has no effect. Therefore, should a right and obligation appear on a title sheet when it is not authorised by law, or the entry relates to a right or obligation, which is merely a personal right, their entry is of no effect and does not constitute notification of the right to any party searching the Land Register.

51. Subsection (3) allows the Keeper to incorporate into the title sheet additional documents by reference. This includes documents in the archive record, such as supplementary plans or deeds registered in other registers the Keeper manages and controls (such as deeds in the General Registers of Sasines, the Register of Inhibitions or the Books of Council and Session).
52. Subsections (2)(b) and (6) mean that while particulars of special destinations can be entered on title sheets generally, they cannot be entered on shared plot title sheets or shared lease title sheets.

The cadastral map

Section 11: The cadastral map

53. This section provides detail on the content of the cadastral map. The cadastral map is a map of registered land rights in Scotland. Its constituent parts are cadastral units (see section 12).

54. Subsection (1) of section 11 provides that the entry on the cadastral map for a cadastral unit is a data set that will show the boundaries of the cadastral unit. The description of the property as set out in the property section of the title sheet will make reference to the cadastral unit number.

55. Subsection (3) permits, but does not compel, three-dimensional mapping.

56. Subsections (5) and (6) make provision for the base map, on which the cadastral map is to be based. The default base map is to be the Ordnance Map maintained by the Ordnance Survey. The Keeper may use a different system of mapping the base map if appropriate in the future (it may be appropriate to do so for areas of the seabed where there is no entry on the Ordnance Map).

57. Subsection (7) allows the Keeper to make consequential changes to the Land Register when the base map is updated. In practice, this means that where the Ordnance Map is improved, the boundaries of cadastral units can be adjusted as long as the adjustment falls within the tolerances of the base map.

58. Subsection (9) is a marker to note that there is an exception to the general rules on mapping in the cadastral map in section 16 for tenements and other flatted buildings.

Section 12: Cadastral units

59. This section provides that each numbered cadastral unit represents a registered plot of land.

60. Subsection (3) provides for an exception that a pertinent can be included in the same cadastral unit as the land to which it pertains.

61. The consequence of subsection (2) is that entries on the cadastral map, other than entries for separate tenements, and in transitional cases, cannot overlap.

Section 13: The cadastral map: further provision

62. Section 11(6) allows the Keeper to use a different system of mapping as the base map (or for part of the base map) for the cadastral map if appropriate. Section 13(1) recognises that the
Ordnance Map does not extend to the seabed. The combination of section 11(6) and subsection (1) allows the Keeper to map seabed titles (such as long leases for renewable energy projects) as the Keeper thinks fit. In practice, this will allow seabed titles to be represented on the cadastral map either by a dataset of co-ordinates or by mapping on a system of mapping other than the Ordnance Map.

63. Subsections (2) to (4) contain important powers for the Keeper to manage the cadastral map by dividing, removing and combining cadastral units. On doing so, the Keeper would be required by the combination of sections 3 and 12 to rationalise the title sheets that correspond to the cadastral units, and subject to transitional arrangements.

The archive record

Section 14: The archive record

64. This section provides for the archive record to be the repository of documents supporting the accuracy of the Land Register.

65. Under subsection (3), the archive record need not include copies of legislation (which is otherwise publicly available), documents contained in other registers that are controlled by the Keeper of the Registers of Scotland, or documents stored by the Keeper of the Records of Scotland.

66. Subsection (4) ensures that although the archive record becomes a constituent part of the register, parties relying on the title sheet record are not considered to have constructive knowledge of its content. This preserves the so-called "curtain principle" of not having to look behind the face of the register.

The application record

Section 15: The application record

67. This section makes provision about the application record. The application record is essentially the Keeper’s "in tray" of pending applications the Keeper is to consider. Advance notices (see Part 4) for registered plots of land will be entered in the application record.

Tenements etc.

Section 16: Tenements and other flatted buildings

68. Titles to tenement flats are particularly difficult to map. Typically, tenement properties are conveyed by reference to a verbal description of the individual flat. They are seldom mapped. Subsection (1) allows the Keeper to continue to use the approach of depicting a tenement as a site of single extent on the cadastral map. The power is also extended to single-storey building with internal divisions, where the same issue applies. In practice, this means the cadastral unit for each plot of land in the tenement is the whole tenement (although each flat will have its own title sheet).

69. Subsection (2)(b) makes provision for how pertinents of the flats in tenements are to be treated.
70. Subsection (3) creates a rule that disapplies subsections (1) and (2) in respect of land pertaining to the tenement or flatted building that is further than 25 metres from the "flatted building" as defined in subsection (4). Where a shared pertinent is not further than 25 metres from the tenement building, the Keeper is allowed to include the pertinent in the site of single extent. Where a shared pertinent extends further than 25 metres from the tenement building, a shared plot title sheet will require to be created for the pertinent (see section 17). Where a pertinent is an exclusive pertinent to one flat in the tenement, that pertinent will be able to be included as a discontiguous site on the cadastral map with the same cadastral unit as the tenement building whether or not it extends beyond 25 metres from the building.

**Shared plots**

**Section 17: Shared plots**

71. This section and the following three sections provide for a scheme to define common areas and give them standalone title sheets. These common areas, such as driveways, shared gardens, amenity areas and bin stores often currently appear in more than one title sheet, meaning that when viewing the cadastral map it is unclear who the owners of the area of land are.

72. Subsection (2) gives a power to the Keeper to make up a shared plot title sheet. There is no duty to do so.

73. Subsection (3) provides for the relationship between a “shared plot” and a “sharing plot”.

74. Subsection (5) makes special provision that, unless the deed provides otherwise, a deed affecting a sharing plot will similarly affect the relevant share in the shared plot. Subsection (4) makes this reference apply to all other documents (the most important of which is missives).

**Section 18: Shared plot and sharing plot title sheets**

75. Subsections (1) to (3) set out what is to be included and what is not to be included in a shared plot title sheet and a sharing plot title sheet. Subsection (1) in particular shows the biggest difference between a shared and sharing plot title sheet and an ordinary title sheet. It provides that the sharing plot title sheet will include the title number of the shared plot title sheet in the property section and that the title number of the sharing plot title sheet will appear in the proprietorship section of the shared plot title sheet. This means that where a sharing plot is sold, no change is required to the shared plot title sheet. This is because the sale of the sharing plot will result in a change to the property section of that title sheet but its title number will remain the same.

**Section 19: Conversion of shared plot title sheet to ordinary title sheet**

76. This section provides that a shared plot title sheet can be converted into an ordinary title sheet. This might happen if one of the sharing plot owners buys up the other owners’ interests in the shared plot.
Section 20: Shared plot title sheets in relation to registered leases

77. This section introduces schedule 1 to the Bill, which makes equivalent provision for shared lease area title sheets. These title sheets correspond to shared plot title sheets but relate to shared lease interests rather than shared ownership interests.

PART 2: REGISTRATION

Overview of Part 2

78. Part 2 of the Bill provides for the process of registration in the Land Register.

79. This Part also makes provision for the three elements that will ensure the eventual realisation of a completed Land Register. These are the additional “triggers” for first registration of titles, voluntary registration and Keeper-induced registration. A “first registration” is the processing of an application relating to land which is not already on the Land Register, the completion of which results in a land registered title.

80. There is no explicit reference in the Bill to the additional triggers for first registration. Instead, the effect comes from the general effect of the Bill and the closure of the General Register of Sasines to the recording of various deeds as provided for in section 47. The first closure step provided for in section 47 is the closure of the General Register of Sasines to transfer deeds. The consequence is that if someone wishes to transact with property registered in the General Register of Sasines and therefore to transfer ownership rights, the only way this can be done is by registering the disposition transferring ownership in the Land Register.

Applications for registration

Section 21: Application for registration of deed

81. This section provides the basic assumptions about applications for registration in the Land Register: that a person can apply for registration of a registrable deed; and that if the application complies with the applicable conditions, the Keeper must accept the application. Provision is also made that if the application does not comply with the applicable conditions, the Keeper has to reject the application.

82. Subsection (4) provides that where an owner of land objects under section 44(5) to their land being subject to a prescriptive claim (see sections 42 to 44 for prescriptive claimants, who do not own the property they are seeking to register), and who does so within 60 days of notice of the prescriptive claim, the application by the prescriptive claimant falls to be rejected.

Section 22: General application conditions

83. This section sets out the general conditions with which all applications have to comply. Section 4 of the Land Registration (Scotland) Act 1979 made only minimal provision for applications for registration.

84. Subsection (1)(a) is a requirement that the application allows the Keeper to comply with the Keeper’s duties under Part 1. The main duties in question are:
the duties under sections 6 to 9 to enter what those sections provide for into the relevant sections of a title sheet; and

- the duty in section 14(1) to include copies of relevant documents in the archive record in relation to the application.

85. Subsections (1)(b) and (2) prevent any application that relates to a so-called “souvenir plot” (that is, a plot that is very small and of no practical use to anyone) from being accepted.

86. The effect of subsection (1)(c) is that where subordinate legislation (made under section 9G of the Requirements of Writing (Scotland) Act 1995 as inserted by section 93) sets out requirements as to the type of document and level of authentication required for registration of an electronic document, an application for registration has to comply with the terms of the relevant subordinate legislation to be accepted. Traditional documents are required to comply with the rules already in section 6 of the 1995 Act.

87. Subsection (1)(d) provides that an application must comply with requirements as to form that are specified in the Land Register rules (see section 111).

Section 23: Conditions of registration: transfer of unregistered plot

88. This section provides the special conditions for what is known as an application for “first registration”. A first registration is where an unregistered property is taken into the Land Register for the first time. By virtue of the closure of the General Register of Sasines to the recording of deeds relating to registered land under section 47(1) and the closure of the Register of Sasines to dispositions under 47(2), first registration will be induced not only when there is a transaction for value (which is the existing law, replaced by the Bill), but for all transfers.

89. Subsection (1) provides for the additional conditions that apply to a first registration. Subsection (1)(c) requires the application to include information to enable the Keeper make an accurate entry on the cadastral map in relation to the cadastral unit created as a consequence of an accepted application.

90. Subsection (2) provides an exception to these conditions for flats in tenements where the Keeper chooses, under section 16, to represent the tenement as a site of single extent.

91. Subsection (3) is an exception to the exception in subsection (2) and requires any exclusive pertinent of the plot of land, such as a coal cellar or parking space pertaining to one of the flats, to be sufficiently described (because the pertinent would still need to be mapped by the Keeper).

92. Subsection (4) clarifies that the applicant is not required to provide a plan or description of certain servitutes affecting the plot such as pipeline servitutes (subsection (4)(a)) or servitutes created other than by registration, e.g. by prescription (subsection 4(b)).
Sections 24 and 25: Conditions of registration: certain deeds relating to unregistered plots

93. These sections make provision for the circumstances in which, as a consequence of an application for registration of a subordinate real right (such as an assignation of an unregistered lease), a first registration of the underlying land must take place. There will be additional applications of these types by virtue of the closure of the General Register of Sasines under section 47.

94. Section 24 sets out the type of applications in relation to which the conditions in section 25 apply on first registration of the underlying unregistered land. They are:

- on an application for registration of a lease over the land;
- on an application for registration of an assignation of a lease over the land;
- on an application for registration of a sublease over the land;
- on an application for registration of a standard security over the land;
- on an application for registration of a notice of title to a subordinate real right in relation to the land; and
- on an application for registration of a standard security over an unregistered, subordinate real right in relation to the land.

95. Section 25 sets out the additional conditions for the registration of the deeds referred to in section 24.

Section 26: Conditions of registration: deeds relating to registered plots

96. This section provides special provisions for applications relating to plots of land already registered in the Land Register. The main types of such application are a transfer of the whole of a plot (commonly known as a “dealing with whole”), a transfer of part of a plot (known as a “transfer of part”) and the registration of a standard security (usually a mortgage). Transfers of part are most commonly associated with new-build developments. This section applies to all deeds that relate to registered plots of land.

97. Subsection (1)(d) provides a special rule for transfers of part, that the part of the plot which is being transferred has to be sufficiently described to allow the Keeper to accurately map the boundaries of the new plot in the cadastral map. Subsection (3) provides that this mapping rule does not apply to tenements mapped as a site of single extent under section 16. Subsection (4) provides however that exclusive pertinents of plots do still need to be mapped. This is the same arrangement as in section 23 for first registration.

Registration without deed

Section 27: Application for voluntary registration

98. This section provides the scheme for applications for voluntary registration of plots of land or parts of plots to be registered. This is a form of first registration. However, since the applicant will already own the land, there will be no transfer of rights as a result of an accepted application.
99. Subsection (3)(b) gives the Keeper a power to decline to accept an application on the ground of expediency. This broadly replicates the provision in section 2(1)(b) of the Land Registration (Scotland) Act 1979. Subsection (6) allows Scottish Ministers to remove that power by order.

Section 28: Conditions of registration: voluntary registration

100. This section provides the special provisions for voluntary registration applications. These are similar to the conditions in section 25.

Section 29: Keeper-induced registration

101. This section gives the Keeper the ability to register land without application and without the consent of the owner of that land. Registration under this section would not affect the property title of the owner of the property but the Keeper can grant warranty over the land under section 71.

Completion of registration

Section 30: Completion of registration of plot

102. This section draws together the duties of the Keeper in relation to registration on acceptance of an application for first registration, voluntary registration or in relation to a Keeper-induced registration. Subsection (2) lists the practical duties the Keeper must perform to complete registration of a plot of land in the Land Register for the first time.

Section 31: Completion of registration of deed

103. This section provides the duties of the Keeper on acceptance of an application for registration of a deed by virtue of section 26. These provisions are not applicable to cases in which the plot of land has to be registered too. The most common instances of registrations under this section will be transfers of the whole of a plot, a transfer of part of a plot and registrations of a standard security.

Section 31A: References to certain entries in Register of Inhibition

104. This section makes provision for what the Keeper must do when an application to register a deed has been accepted but the validity of the deed may be affected by an entry in the Register of Inhibitions. In these circumstances, after the Keeper has accepted the application, a reference to the entry in the Registers of Inhibitions must be entered in the title sheet. Subsection (3) provides two exceptions: (a) for notices of land attachments and (b) for notices of actions of reduction (used to enforce inhibitions). This is because other enactments already provide for these notices to enter the Land Register by registration.
General provision about applications

Section 32: Recording in application record

105. Subsection (1) recognises that the Land Register closes at the end of each business day and that where applications for registration are made after the register has closed for the day, the effective date of application will be the next day that the application record opens.

Section 33: Withdrawal and amendments etc. of application

106. This section provides for the so-called “one-shot principle”, that an application cannot be supplemented or substituted after the date of application unless the Keeper consents. Detailed provision can be made in the Land Register rules for that consent.

Section 34: Period within which decision must be made

107. This section allows Scottish Ministers to set turn-around times for the Keeper to deal with applications in the Land Register rules.

Date of application and registration etc.

Section 35: Date of application

108. This section provides that the formal date of application is always the date of the entry in the application record in respect of the application (whether or not the application was made earlier). This section ties in with section 32.

Section 36: Date and time of registration

109. This section provides that the formal date of registration is always backdated to the end of the date of application under section 35. The Scottish Ministers can make different provision by order.

Section 37: Power to amend section 6 of the Land Registers (Scotland) Act 1868

110. This section is self-explanatory.

Applications in relation to the same land

Section 38: Order in which applications are to be dealt with

111. This section is self-explanatory and makes detailed provision for the scenario in which competing applications are received by the Keeper. Subsection (2) clarifies that the order of receipt is to be taken to be the order details of the applications are entered in the application record. The provisions in sections 57 (Period of effect of advance notice) and section 58 (Effect of advance notice) are also relevant to this section.
Notification

Section 39: Notification of acceptance, rejection or withdrawal of application

112. Subsection (1) requires the Keeper, on acceptance or rejection of an application, to notify at least the applicant and any grantor of a deed to be registered.

113. Subsection (2) requires the Keeper, on an application for registration being withdrawn, to notify certain parties.

114. Subsection (3) provides that the duty on the Keeper in subsections (1) and (2) does not need to be carried out when it is not reasonably practicable to do so.

Section 40: Notification to proprietor

115. This section provides for notification to the proprietor in two cases. First, where there is an application for a first registration of a plot of land under sections 21 and 25 as a result of an application for registration of a subordinate real right on the land. The second case is where the Keeper has performed a Keeper-induced registration under section 29. In both cases, the owner of the land may be unaware that the plot of land has been registered in the Land Register.

116. Subsection (3) provides that the duty on the Keeper in subsections (1) and (2) does not need to be carried out when it is not reasonably practicable to do so.

Section 41: Notification to Scottish Ministers of certain applications

117. This section requires the Keeper to notify the Scottish Ministers when an application for registration is rejected on the grounds that it relates to a transfer that is prohibited by the Land Reform (Scotland) Act 2003 in relation to community interests in land.

Prescriptive claimants etc.

Overview of sections 42 to 44: prescriptive claimants

118. Sections 42 to 44 provide for the process whereby a person can apply for title to land to be constituted by prescription. The process for this is for an application to be made for registration of what is known as an *a non domino* disposition in relation to the area of land. The sections provide for the process by which a “prescriptive claimant” can apply to the Keeper to obtain a provisional title in the Land Register. The 10-year prescriptive period provided for by section 1(1) of the Prescription and Limitation (Scotland) Act 1973 can begin to run. If the 10-year period elapses without interruption (for example, such interruption could be by virtue of a challenge from the true owner of the land), the Keeper is to remove the provisional marking from the relevant entry in the title sheet.

Section 42: Prescriptive claimants

119. Subsection (1) provides that for the purposes of becoming a prescriptive claimant, the disposition granted in favour of the prescriptive claimant can be treated as valid so that the conditions of registration in sections 23 and 26 can be met.
120. Subsection (2) clarifies that this section is applicable to a disposition that is not granted by the person with the title to the subjects being granted.

121. Subsection (3) provides the first limb of the requirements for a person to become a prescriptive claimant. The applicant must satisfy the Keeper that the land that is sought to be acquired has been possessed by the disposer or the prescriptive claimant for one year immediately preceding the date of application. The prescriptive claimant will require to submit relevant evidence to the Keeper to satisfy this requirement. Subsection (8) allows Scottish Ministers to substitute a different time period for that provided for in subsection (3).

122. Subsection (4) provides the second limb of the requirements. To make a valid application, the applicant must satisfy the Keeper that they have taken reasonable steps to trace the true owner of the land, or any party able to complete title as true owner and that they have been notified. Where no-one appears to own the land, sub-paragraph (c) requires the applicant to notify the Crown as it is the ultimate heir to land in Scotland and abandoned property and the assets of a dissolved juristic person may also fall to the Crown as a matter of law. Subsection (7) contains a power to make further provision in Land Register rules regarding notification to various parties. This will allow the Land Register rules to make further provision with regards to the detail of the notification, how it is to be done and the information it should contain.

123. Subsection (5) is relevant to a title that has been provisionally registered in favour of a prescriptive claimant. It clarifies that a prescriptive claimant is able to dispone such a title.

Section 43: Provisional entries on title sheet

124. This section provides that while a person is a prescriptive claimant, entries relating to the rights they would acquire were the prescriptive period to run successfully are to be marked as provisional. This section deals with both first registrations and dealings with whole of registered plots where there is already a prescriptive claimant.

125. Subsection (2) provides that when the requirements in section 1 of Prescription and Limitation (Scotland) Act 1973 have been met, the person’s title is no longer provisional as they have become the true owner of the land in question. Accordingly, the Keeper is to remove the provisional marking.

126. Subsection (3) ensures that provisional markings on title sheets confer no real property rights.

127. Where a prescriptive claimant’s name is entered on the proprietorship section of a title sheet and the Keeper knows who the underlying owner of the land is, the Keeper can, by virtue of section 10(2)(e), enter the underlying owner’s name as well as the prescriptive claimant’s.

Section 44: Notification of prescriptive applications

128. This section provides for further notification to the underlying true owner of property in advance of the acceptance of an application to become a prescriptive claimant. This extends the procedure in section 14 of the Land Registration (Scotland) Act 1979 that provided for the Keeper to notify the Crown Estate Commissioners of applications of foreshore subjects.
Subsection (1) requires the underlying owner (who may be the Crown) to be notified by the Keeper. Such notification only requires to be done in the instance when there is not already a prescriptive claim to the title in question.

129. Subsection (2) provides that the duty on the Keeper in subsection (1) does not need to be carried out when it is not reasonably practicable to do so.

130. Subsections (4) and (5) ensure the underlying owner is given 60 days to veto an application for a person to become a prescriptive claimant over their land.

Further provision

Section 45: Applications relating to compulsory acquisition

131. This section makes provision for conveyances as provided for by enactment, notarial instruments and general vesting declarations to be treated as dispositions for the purposes of sections 21, 23, 30 and 47.

Section 46: Effect of death or dissolution

132. This section provides that an application falls to be rejected if the applicant dies (or if a legal person such as a company is dissolved) before the application date under section 35, but can be accepted if the applicant dies or is dissolved while the Keeper’s decision as to whether to accept or reject the application is pending.

Section 47: Closure of Register of Sasines etc.

133. This section provides for the phased closure of the General Register of Sasines.

134. Subsection (1)(a) provides that the recording of a disposition in the General Register of Sasines will cease to be effective. In practice, this will mean that in order for ownership to transfer, the disposition will require to be registered in the Land Register. Subsection (1)(a) is subject to the special case of title conditions. It may be necessary to record a disposition in the General Register of Sasines to meet the requirement of "dual registration" as provided for in section 4 of the Title Conditions (Scotland) Act 2003 (the 2003 Act) in respect of real burdens or in section 75 of the 2003 Act in respect of servitudes. This special case is set out in subsection (6). Subsection (1)(d) provides that once a plot of land is registered in the Land Register, nothing in relation to that land can be recorded in the General Register of Sasines.

135. Subsections 1(b) and (c) provide that leases, ("lease" is defined as including sub-lease in section 109(1)) and assignations of leases cannot be recorded in the General Register of Sasines. This will induce first registration in the Land Register of the underlying plot of land.

136. Subsection (2) provides a power for the Scottish Ministers by order to close the General Register of Sasines to standard securities. This would mean a property would need to be registered in the Land Register before a new standard security could be registered, allowing the creditor to obtain a real right.
137. Subsections (3) and (4) provide a similar power to close the General Register of Sasines completely and a corresponding power to register any deeds that could be recorded in that register in the Land Register instead.

138. Subsection (9) allows an order closing the General Register of Sasines under subsections (2) or (3) to apply on an area-by-area basis.

139. Subsection (10) provides that, before an order is made under subsection (2) or (3), the Scottish Ministers must consult the Keeper and any other persons that appear to have an interest in the closure of the Register of Sasines to the recording of deeds.

PART 3: COMPETENCE AND EFFECT OF REGISTRATION

Overview of Part 3

140. Part 3 of the Bill provides for which documents can be registered in the Land Register and what the effect of such registration will be.

Registrable deeds

Section 48: Registrable deeds

141. Subsection (1) provides for what documents can be registered in the Land Register. These are documents which any Act provides can be registered. The most common types of registrable documents are:

- dispositions (see section 49);
- standard securities (under section 9 of the Conveyancing and Feudal Reform (Scotland) Act 1970);
- long leases (under section 1 and 20A of the Registration of Leases (Scotland) Act 1857 – section 20A as inserted by section 51);
- notices of title (under section 4A of the Conveyancing (Scotland) Act 1924 (as inserted by section 52(3));
- decree of reduction (under section 46A(1) of the Conveyancing (Scotland) Act 1924 as inserted by section 53);
- an arbitral award which orders the reduction of a deed (under section 46A of the Conveyancing (Scotland) Act 1924 as inserted by section 53);
- an order for rectification of a document (under section 8A of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 as inserted by section 54(3));
- a standard security ranking agreement (under section 13(4) of the Conveyancing and Feudal Reform (Scotland) Act 1970 as inserted by paragraph 17(7)(c) of schedule 5);
- a deed creating a proper liferent (see section 50); and
- deeds registrable in the Land Register under section 47(7) following the closure of the General Register of Sasines under section 47(6).
Specific provisions on competence and effect of registration

Section 49: Transfer by disposition

142. Subsection (2) continues the important principle that a real right in ownership can only transfer when a valid disposition is registered.

143. Subsection (4)(a) makes subsections (1) to (3) subject to provisions in the Bill on prescriptive claimants and persons acquiring in good faith from a person with invalid title. Subsection (4)(b) makes subsections (1) to (3) subject to any other enactment or rule of law under which ownership may pass. The most significant of these is transfer of ownership by operation of a survivorship destination contained in a disposition.

144. Subsection (5) makes it clear that this section covers udal land (which exists in Orkney and Shetland).

Section 50: Proper liferents

145. This section continues the principle that proper liferents (which allow a person to live in a property until their death) must be registered in either the Land Register or the General Register of Sasines to have real effect as a matter of property law.

Section 51: Registration of, and of transactions and events affecting, leases

146. This section inserts two sections into the Registration of Leases (Scotland) Act 1857. Inserted section 20A allows deeds affecting existing long leases to be registered in the Land Register (new long leases are registrable under section 1 of that Act). Inserted section 20B provides that the registered deed has real effect. Schedule 2 makes further related amendments.

Section 52: Completion of title

147. This section amends the Conveyancing (Scotland) Act 1924 to allow people to use a notice of title to complete an uncompleted title. Under current law, the use of a notice of title is only permitted in the General Register of Sasines.

148. Subsections (2) and (3) provide that an unregistered proprietor of an unregistered property has a choice of methods of completing title. That person is either to record a notice of title in the General Register of Sasines or register a notice of title in the Land Register. The exception to this rule is that where the last recorded title is not in the General Register of Sasines (for example if the property is in a Burgh Register of Sasines or is a pre-1617 title), the effect of subsection (2)(a) is that the option of recording a notice of title in the General Register of Sasines does not apply and the notice must be registered in the Land Register.

149. Subsection (4) is a power to prescribe the forms in relation to completion of title by order. Subsection (5) provides, for Land Register cases, a simplified style of notice (the statutory styles for use in the General Register of Sasines are not altered).
Section 53: Registration of decree of reduction

150. This section inserts a new section 46A into the Conveyancing (Scotland) Act 1924, the effect of which will be that where a voidable deed is reduced, the decree does not immediately change real rights that have been entered in the Land Register. Instead, section 46A(1)(b) provides that the decree has effect on those rights when it is registered in the Land Register. The real rights of the parties concerned thus only change as of the date of the registration of the decree.

151. Subsection (3) ensures that an arbitral award ordering reduction of a deed and made under the Arbitration (Scotland) Act 2010 can where appropriate have equivalent effect as is provided for a decree of reduction under subsection (1).

Section 54: Registration of order for rectification of document etc.

152. Judicial rectification of a document under section 8 of the Law Reform (Miscellaneous Provisions) Scotland Act 1985 operates retrospectively where a court is satisfied that a document failed to give effect to the common intention of the parties. Section 3 of the 1985 Act allows the court to rectify any subsequent document that is defectively expressed by virtue of the defect in the original document. Subsection (2)(a) inserts a new subsection (3A) into section 8 to provide that, where any such subsequent document is registered in the Land Register in favour of a third party who is in good faith, judicial rectification of that document can only happen where the third party consents to the rectification.

153. Subsection (3) inserts a new section 8A which provides that an order for rectification under section 8 of a document registered in the Land Register will have no real effect until the order itself is registered. When it is so registered, it has effect at that point, rather than applying retrospectively to, for example, the date of the making of the order.

PART 4: ADVANCE NOTICES

Overview of Advance notices

154. The first sections in Part 4 provide for a system of advance notices that protects the grantee of a deed during the time between taking delivery of the deed (in exchange for the money) and the registration of that deed. This period is known as the "gap risk" as the grantee is vulnerable in this period to the registration of competing deeds or sequestration of the granter of the deed. The entry of an advance notice referring to a registrable deed ensures that during the next 35 days no disposition or competing advance notice can beat that deed in any race to the register.

155. The following examples of the way in which advance notices are intended to operate in the case of registered titles draw on the examples in schedule 3 to the draft Bill in volume 2 of the final SLC Report. They are provided for illustrative purposes and are no substitute for full consideration of the Bill:
Example 1:

Circumstances:
- X, who is the owner of Blackmains, grants an advance notice in favour of Y in respect of a prospective disposition of that property.
- The advance notice is entered in the application record of the Land Register on 1st May.
- X delivers a disposition of the property to Y but also a disposition of it to Z.
- On 8th May, Z’s disposition is registered in the Land Register.
- On 15th May, Y applies for registration in the Land Register.

Consequences:
- The Keeper accepts Y’s application and on registering Y’s disposition replaces Z’s name by Y’s in the Land Register. Y becomes registered proprietor of the property with effect from 15th May.

Example 2:

Circumstances:
- The same as in example 1 except that Y does not apply for registration in the Land Register while the protected period is running.

Consequence:
- Y’s application is rejected.

Example 3:

Circumstances:
- X, who is the owner of Scarletmains, grants on 1st May an advance notice in favour of Y in respect of a prospective disposition to Y of that property and on 2nd May an advance notice in favour of Z in respect of a prospective disposition to Z of that property.
- Z’s advance notice is entered in the application record of the Land Register on 8th May.
- Y’s advance notice is so entered on 9th May.
- X delivers a disposition of the property to Y but also a disposition of it to Z.
- On 15th May, Y’s disposition is registered in the Land Register.
- On 16th May, Z applies for registration in the Land Register.
Consequences:
- The Keeper accepts Z’s application and on registering Z’s disposition replaces Y’s name by Z’s in the Land Register. Z becomes registered proprietor of the property with effect from 16th May.

Example 4:

Circumstances:
- X, who is the owner of Whitemains, grants an advance notice in favour of Y in respect of a prospective disposition of that property.
- The advance notice is entered in the application record of the Land Register on 1st May.
- X delivers a disposition of the property to Y but also a deed of servitude over it to Z.
- On 8th May, the deed of servitude is registered in the Land Register.
- On 15th May, the disposition is registered in the Land Register.

Consequences:
- The Keeper removes the servitude from the Land Register.

Example 5:

Circumstances:
- X, who is the owner of Greymains, grants an advance notice in favour of Y in respect of a prospective standard security over the property.
- The advance notice is entered in the application record of the Land Register on 1st May.
- X delivers a standard security over the property to Y but also a standard security over it to Z.
- On 8th May, Z’s standard security is registered in the Land Register.
- On 15th May, Y’s standard security is registered in the Land Register.

Consequence:
- From 15th May, Y’s standard security ranks ahead of Z’s standard security.

Example 6:

Circumstances:
- X, who is the owner of Purplemains, grants an advance notice in favour of Y in respect of a prospective standard security over the property.
The advance notice is entered in the application record of the Land Register on 1st May.

X delivers a standard security over the property to Y but also a disposition of it to Z.

On 8th May, Z’s disposition is registered in the Land Register.

On 15th May, Y applies for registration of the standard security in the Land Register.

**Consequences:**

- The Keeper accepts Y’s application and Z’s land is encumbered with the standard security as from 15th May.

**Example 7:**

**Circumstances:**

- X, who is the owner of Greenmains, grants an advance notice in favour of Y in respect of a prospective servitude over the property.
- The advance notice is entered in the application record of the Land Register on 1st May.
- X delivers a deed of servitude over the property to Y but also a disposition of it to Z.
- On 8th May, the disposition is registered in the Land Register.
- On 15th May, Y applies for registration of the deed of servitude in the Land Register.

**Consequences:**

- The Keeper accepts Y’s application and Z’s land is encumbered with the servitude as from 15th May.

**Example 8:**

**Circumstances:**

- X, who holds a registered lease over Yellowmains, grants an advance notice in favour of Y in respect of a prospective assignation of the lease.
- The advance notice is entered in the application record of the Land Register on 1st May.
- X delivers an assignation of the lease to Y but also a standard security over the lease to Z.
- On 8th May, the standard security is registered in the Land Register.
- On 15th May, the assignation is registered in the Land Register.
Consequences:

- The Keeper removes the standard security from the Land Register.

Example 9:

Circumstances:

- X, who is the owner of Bluemains, grants an advance notice in favour of Y in respect of a prospective disposition of that property.
- The advance notice is entered in the application record of the Land Register on 1st May.
- X delivers a disposition of the property to Y.
- On 8th May, X grants a short lease over the property to Z who enters immediately into possession.
- On 15th May, the disposition is registered in the Land Register.

Consequence:

- The lease is not, by virtue of the registration, avoided.

Example 10:

Circumstances:

- X, who is the owner of Redmains, grants an advance notice in favour of Y in respect of a prospective disposition of that property.
- The advance notice is entered in the application record of the Land Register on 1st May.
- On 2nd May, X is inhibited.
- On 3rd May, missives of sale between X and Y are concluded. Thereafter X delivers a disposition of the property to Y and the disposition is registered in the Land Register.

Consequence:

- The disposition, if so registered while the protected period is running, is not affected by the inhibition.

Section 55: Advance notices

156. This section sets out the criteria for an advance notice. Paragraphs (a) to (c) of subsection (1) set out the requirements for advance notices generally. Paragraph (d) applies just to advance notices where the property is on the Land Register. Paragraph (e) applies for property that is not in the Land Register, most of which will be recorded in the General Register of Sasines. The difference in requirements relates to how the property must be identified.
157. Subsection (2) means mapping is not required for an advance notice relating to a flat in a tenement or in a flatted building when the building is mapped as a single cadastral unit. That is subject to similar exceptions for pertinents as for registration under Part 2 of the Bill.

Section 56: Application for advance notice

158. This section sets out the application process for an advance notice. Subsection (2) provides that such an advance notice may be applied for by the person who may grant the protected deed or any person with their consent. In a house sale, this would allow the owner of the house to apply for an advance notice operating in favour of the prospective purchaser. The purchaser would be able, with the consent of the owner, to apply for an advance notice in favour of the lender who will be providing the standard security (mortgage) for the purchase.

Section 57: Period of effect of advance notices

159. This section provides that the protected period of an advance notice will be 35 days. This period can be shortened if the advance notice is discharged under section 60.

Section 58: Effect of advance notice: registered deed

160. This section sets out the effect of an advance notice on deeds registered in the Land Register. Subsections (2) and (3) give the principal effect. Where a deed, Y, is registered after another deed, Z, and deed Y is protected by an advance notice, registration of deed Y is to be completed as if deed Z did not exist. When deed Y has been duly registered, deed Z should then be “re-registered” for any effect it may have. In many circumstances Deed Z will be rejected as the person granting it is no longer entitled to do so. However if, for example, deeds Y and Z were both standard securities, deed Z could still be registered but would simply rank lower than deed Y. In the circumstances where deed Y is not, in fact, registered within the protected period, deed Z will be registered normally and have its full effect.

161. The section therefore prioritises deed Y over deed Z. The grantee of deed Z is not disadvantaged as the grantee will know of the existence and potential effect of the advance notice in favour of deed Y as it is on the Register.

Section 58A: Effect of advance notice: recorded deed

162. This section sets out the effect of an advance notice where there has been a deed recorded in the Register of Sasines ("deed Z") prior to a protected deed ("deed Y") being registered in the Land Register. Subsection (2) provides that when a decision is being made by the Keeper to register deed Y in the Land Register, that registration is to take effect as if deed Z had not been recorded. Subsection (3)(a) further clarifies that if deed Y has been registered, the registration has the same affect as if deed Z had not been recorded. Subsection (3)(b) provides that when the Keeper is making up the title sheet for the plot, if after the registration of deed Y deed Z has any effect on the plot, this must be shown on the title sheet.
Section 58B: Effect of advance notice: further provision

163. This section sets out the secondary effect of an advance notice. In general, an entry in the Register of Inhibitions means a person cannot sell their property free of the inhibition. Where an entry is added to the Register of Inhibitions during the protected period of an advance notice, the grantee of the protected deed will be able to purchase the property free of any effect of the inhibition.

Section 59: Removal of advance notice etc.

164. This section instructs the Keeper to remove an advance notice from the application record and add it to the archive record where the protected period has ended. Subsection (2) allows Scottish Ministers to make rules relaxing this obligation in certain circumstances. This covers the situation where the advance notice has resulted in the Keeper mapping a new property but the notice has lapsed before the deed is registered. It means the Keeper need not delete the mapping work while there is the possibility it will still be required in the near future.

Section 60: Discharge of advance notice

165. This section provides for the possibility that an advance notice may be discharged by the proposed grantee of the protected deed if the potential grantee consents. While advance notices do not freeze the Land Register, they may make a property effectively unmarketable to anyone other than the grantee of the deed referred to in the advance notice. The section allows (where, for example, the sale has fallen through) for the parties to bring the advance notice to an end before the 35-day period has elapsed. Subsections (4)(b) and (5) extend the same rule to the Sasine Register.

Section 61: Application of part to specific deeds

166. This section allows Scottish Ministers to make provision modifying this Part in relation to particular types of deeds which may be protected by advance notices.

PART 5: INACCURACIES IN THE REGISTER

Section 62: Meaning of “inaccuracy”

167. This section creates a new definition of inaccuracy in relation to the entries on the Land Register. Subsection (1) sets out when a title sheet is inaccurate. It may be inaccurate in two broad ways, because it says something that is wrong, or it does not say something when it should.

168. Subsection (2) sets out when the cadastral map is inaccurate. This broadly mirrors subsection (1). The effect of subsection (3) is that the cadastral map is considered accurate as long as the depictions in it are within the tolerances of the base map. The Ordnance Map, by virtue of section 11(6), is the default base map. Currently it has three general tolerances: 0.5 metres for urban areas, 1 metre for rural areas and 4 metres for moorland or mountain areas. These tolerances derive from the three different mapping scales used by the Ordnance Map in these areas.
169. The effect of subsection (4)(a) is that where an entry in the Land Register proceeds from a deed that was voidable and has since been reduced, the decree of reduction is to be given effect to by registration of the decree, and not by rectification. In other words, there is no inaccuracy; there is simply a later registration that changes the Register. This applies only to voidable deeds. Where an entry in the Land Register proceeds from a void deed, the register is to that extent inaccurate from the outset, and should be rectified.

170. The effect of subsection (4)(b) is that where an entry in the Land Register proceeds from a deed that has been rectified under the 1985 Act, the Register does not thereby become inaccurate, but instead the rectified deed is to be given effect to by registration.

Section 63: Shifting boundaries

171. This section provides that adjacent proprietors bounded by a natural water feature may, by registered agreement, provide that subsequent change to the physical boundary by the process of alluvion (i.e. gradual, imperceptible and non-temporary change to the water feature over time) should have no effect on their title boundary. In such circumstances, alluvion will not make the register inaccurate. Subsection (3) makes this clear.

PART 6: CAVEAT

Overview of Part 6

172. Part 6 provides for a new statutory system of caveats that regulate how litigation affecting titles in the Land Register is brought to the attention of third parties. In essence, a caveat is the publication of a title dispute on a title sheet. The purpose of a caveat is to warn of the ongoing dispute and the effect it might have on the title. A caveat does not prevent parties transacting with land that is subject to litigation, though it does have certain effects on registration as provided elsewhere in the Bill. Therefore, a third party is free to act despite the existence of the caveat. However, for instance, if the Keeper later adversely rectifies a title sheet as a result of the court action, the person would be unable to claim that they were not aware of the litigation and therefore compensation may be less than would be payable had there been no caveat. Caveats are intended to be time-limited but flexible and sections 67 to 70 make provision for their renewal, restriction, recall or discharge.

Section 65: Warrant to place a caveat

173. This section introduces caveats. Subsection (1) sets out the types of court action where caveats may be used. In such cases, one of the parties may apply to the court under subsection (2) for warrant to place a caveat on the title sheet of the plot of land to which the dispute relates. Subsection (3) sets out the court that may grant caveats. Subsection (4) sets out that the court must be satisfied that there is a prima facie case, a risk of the applicant being prejudiced by the other party dealing with the property and in all the circumstances it is reasonable to do so when deciding whether to grant a warrant for a caveat under subsection (3). See section 73(2) for the effect of caveats on warranty of title, and Part 9 for their other effects.
Section 66: Duration of caveat

174. Caveats are not open-ended. In the absence of further action, they expire 12 months after being placed on the title sheet.

Section 67: Renewal of caveat

175. A person who has placed a caveat on the Land Register may apply under this section to the court for its renewal. There is no maximum number of renewals the court may make.

Section 68: Restriction of caveat

176. This section makes provision for any person with an interest being able to apply to the court for a restriction of the effect of a caveat.

Section 69: Recall of caveat

177. This section makes provision that any person with an interest may apply to the court for the caveat to be recalled.

Section 70: Discharge of caveat

178. This section is self-explanatory.

PART 7: KEEPER’S WARRANTY

Keeper’s warranty

Section 71: Keeper’s warranty

179. This section continues the scheme of the state guarantee of title by Keeper’s warranty.

180. Subsection (1) provides for the default position, that when an application is accepted, the Keeper’s warranty applies to the title sheet to which the application relates. Subsection (2) lists the things that the Keeper’s default warranty does not ordinarily cover. Subsection (2)(d) provides that even though a pertinent is registered, if by law it is not a pertinent, the act of registration does not make it so. Subsection (2)(h) ensures that the warranty does not cover the case where by administrative error on the Keeper’s part, the terms of the registration are more favourable to the applicant than justified by the deed inducing registration or by what is sought to be registered in an application for voluntary registration. Subsection (2)(i) means the warranty does not cover the case where a title boundary is tied to a water boundary that has shifted.

181. The effect of subsection (3) is that where a person is given warranty in respect of an application, their successors in title can receive the benefit of that warranty.

182. Subsection (5) ensures there is no warranty in relation to an entry in favour of a prescriptive claimant.
Section 72: Keeper’s warranty on registration under sections 25 and 29

183. This section provides for warranty to be granted to a person where their land has been registered in consequence of an application for registration of a subordinate real right under section 25 or by Keeper-induced registration under section 29. Subsection (3) makes modifications to ensure that the rules excluding a more extensive warranty on an administrative error by the Keeper apply to registrations under sections 25 and 29 as they do to registration under other sections. Subsection (4) provides that this section is subject to sections 73 and 74.

Section 73: Extension, limitation or exclusion of warranty

184. Subsection (1) allows the Keeper to give any level of warranty to an applicant. The effect of subsection (2) is that the Keeper might exclude warranty for the next owner of property if there is a caveat on the title sheet. Subsection (4) allows warranty to be given to a prescriptive claimant when they have perfected their title by virtue of section 1(1) of the Prescription and Limitation (Scotland) Act 1973.

Section 74: Variation of warranty

185. This section allows the Keeper in certain restricted circumstances to vary the level of warranty that an owner of a registered title has after the registration process has been completed.

Claims under warranty

Section 75: Claims under Keeper’s warranty: general

186. This section provides the basis for the payment of compensation for loss incurred as a result of a breach of warranty. Subsection (2) continues the important principle that liability only arises when the register is rectified.

Section 76: Claim under warranty: circumstances where liability excluded

187. This section lists various important limitations to the Keeper’s liability. Paragraph (a) means that where the rectification arises from reasonable reliance on the base map (the default map being the Ordnance Map), the Keeper need not pay compensation. Paragraph (b) means that an applicant cannot rely on the warranty where the inaccuracy was known or ought to have been known of by the applicant at the time of registration. The effect of paragraph (c) is that where the rectification arises from a breach of the duty of care to the Keeper by the applicant or the applicant’s solicitor, the Keeper need not pay compensation.

Section 77: Claims under warranty: quantification of compensation

188. This section is self-explanatory.
PART 8: RECTIFICATION OF THE REGISTER

Rectification

Section 78: Rectification of the register

189. This section imposes a duty on the Keeper to rectify the Land Register when it contains an inaccuracy. The term "inaccuracy" appeared in section 9(1) of the Land Registration (Scotland) Act 1979, however it was not defined. The meaning of “inaccuracy” is provided for in section 62 of the Bill.

190. Subsection (1) is an important provision that sets a high evidential standard for rectification - that the inaccuracy is “manifest”. This means that the position must be beyond dispute, in effect that it is more than simply probable that there is an inaccuracy. It is for the Keeper to determine when an inaccuracy is manifest or not.

191. Subsection (2) maintains the approach, providing that the Keeper must only rectify the register if what is needed to rectify the register is manifest. It is likely that an inaccuracy, and what is needed for rectification of an inaccuracy, will be manifest only where either there is no room for doubt or where the matter has been judicially determined. In the absence of a judicial determination, it is anticipated that the Keeper’s awareness of an inaccuracy as manifest occurs on the date of rectification.

Section 79: Rectification where registration provisional etc.

192. This section is a limited qualification to the Keeper’s duty to rectify under section 78. Where rectification would interrupt a period of positive prescription (including in the case of a prescriptive claimant under section 42), the Keeper may only rectify the Register where those who are affected consent or where the fact of the inaccuracy has been judicially determined.

Section 79A: Referral to the Lands Tribunal for Scotland

193. This section will allow anyone with an interest to refer questions relating to the accuracy of the register and what may need to be done to rectify the register to the Lands Tribunal for Scotland. The power mirrors the two limbs for the rectification of inaccuracies contained in section 78. It allows the Lands Tribunal discretion to determine whether a question is one which has a connection with the accuracy of the Land Register, e.g. to resolve a dispute over a boundary between properties or the existence of a servitude. Giving the Tribunal this jurisdiction provides parties with an alternative to the ordinary courts to have questions regarding the accuracy of the register determined. Subsection (2) provides for notice by the Lands Tribunal once a question has been determined, to the applicant, the Keeper and any other interested parties. Otherwise the processes will be regulated by the Lands Tribunal rules and the discretion of the Tribunal. It will remain for the Keeper to decide under section 78 how to reflect the Lands Tribunal’s determination (subject to appeal).

Section 64: Proceedings involving the accuracy of the register

194. This section is self-explanatory.
Compensation in consequence of rectification

Section 80: Rectification: compensation for certain expenses and losses

195. This section is self-explanatory.

Section 81: Rectification: circumstances where liability excluded

196. This section provides for the limitations to the Keeper’s liability to pay compensation under section 80 in respect of rectification of an inaccuracy. Paragraph (a) excludes liability, for example, where rights have been changed by an off-register event such as long negative prescription (for example where a servitude right of access is dissolved where it is not used over 20 years).

197. Paragraph (c) provides that the Keeper has no liability in relation to rectifications of inaccuracies caused by the fact the title is in favour of a prescriptive claimant. This means, for example, that the removal of a provisional marking would not result in liability.

PART 9: RIGHTS OF PERSONS ACQUIRING ETC. IN GOOD FAITH

Overview of Part 9

198. This part provides for the circumstances in which the Land Register is inaccurate in law or fact, but is not to be rectified. In these cases, the Part provides for the underlying property rights to be transferred to the person in whose name title to land is currently registered. Put another way, instead of the register being changed, property rights are changed.

199. The circumstances where the Bill provides for this transfer of rights are limited and are most likely to operate in the cases of error or fraudulent sale and subsequent registration. Where a property is fraudulently registered or registered in error, the true owner can seek a reversal of that registration in their favour, as long as the property has not been openly possessed since the registration for 10 years, or registered in favour of an innocent third party more than one year after the original registration. However, where the property has been so possessed by a person, or registered in favour of such an innocent third party, the registration cannot be reversed. In such cases, the original owner would be compensated by the Keeper.

Ownership

Section 82: Acquisition from disponer without valid title

200. The effect of subsections (1) to (3) is that if the register shows someone as proprietor, but that person’s title is in fact void, then when that person disposes the title to another (and that second person is duly registered as owner), if the requirements in subsection (3) (including regarding good faith and possession for one year) are met, then that second person acquires ownership. In the absence of evidence to the contrary, the awareness of the Keeper referred to in subsection (3)(b) can be deduced from the information on the register.

201. Subsections (4) to (6) provide for the date when ownership is acquired under subsection (2). It is the later of the date of registration and the expiry of the one-year period of peaceful possession.
Section 83: Acquisition from representative of disponer without valid title

202. This section provides that section 82 also applies where the disposition in favour of a good faith acquirer is delivered by a representative of the registered proprietor (for example a trustee or executor).

Leases

Section 84: Acquisition from assigner without valid title

203. This section is the equivalent section to section 82, but for assignation of leases. It applies only to cases where there exists a valid lease but the person who assigns it does not have a title to it.

Section 85: Acquisition from representative of assigner without valid title

204. This section is the equivalent section to section 83 on representatives, but for assignation of leases.

Servitudes

Section 86: Grant of servitude by person not proprietor

205. This section is the equivalent section to section 82, but for servitudes. It provides that in certain cases a servitude granted by someone with a bad title is valid. Like section 82, it requires the proprietor of the benefited property to be in good faith. This section applies only to the grant of a new servitude. It does not cover the case where land is disposed and from the register it appears that there is a servitude benefiting the property (i.e. as a pertinent), but in fact the servitude is invalid. In such a case, the servitude remains invalid notwithstanding the transfer to a good faith acquirer.

Extinction of encumbrances etc

Section 87: Extinction of encumbrance when land disposed

206. Subsections (1) and (2) provide that where an encumbrance (such as a standard security) has been omitted from the register and there is no relevant caveat on the title sheet, a good faith acquirer acquires the land free from that encumbrance. However, where, for example, a property is subject to a standard security and the owner forges and registers a discharge (and the standard security is deleted from the title sheet) the property is still encumbered by the security because the discharge is a forgery. Nevertheless, if in the example the owner disposed the title to another person and that person was in good faith, the security would be extinguished on the day when the second person is registered as proprietor.

207. Subsection (4) lists the types of encumbrances that are not subject to the rule in subsections (1) and (2). Subsections (1) and (2) only have effect where the Keeper should have entered a burden in the burdens section of a title sheet, but has failed to do so. Consequently, subsections (1) and (2) do not apply to any encumbrance which need not be entered in the Land Register either because:

- it cannot be registered (such as in the case of a short lease);
This document relates to the Land Registration etc. (Scotland) Bill as amended at Stage 2 (SP Bill 6A)

- it relates to an off-register event (such as a servitude acquired by prescription); or
- it relates to an overriding interest (such as a public right of way).

Section 88: Extinction of encumbrance when lease assigned

208. This section is the equivalent of section 87, but for assignation of leases.

Section 89: Extinction of floating charge when land dispensed

209. This section protects a good faith acquirer from the risk of an attached floating charge crystallising over their property where the floating charge was granted by a predecessor in title of the person who sold them the property.

Compensation in consequence of this Part

Section 90: Compensation for loss incurred in consequence of this part

210. Where this Part transfers a right to someone (an innocent third party), the original owner of the right will inevitably be deprived of the right. This section makes provision for compensation of such persons.

Section 91: Quantification of compensation etc.

211. This section makes provision about how much compensation is payable under section 90. It is otherwise self-explanatory.

PART 10: ELECTRONIC DOCUMENTS, ELECTRONIC CONVEYANCING AND ELECTRONIC REGISTRATION

Overview of Part 10

212. This part of the Bill amends the Requirements of Writing (Scotland) Act 1995, updating it to allow for electronic documents to have the equivalent status and standards of validity and authenticity as paper documents have now.

Electronic documents

Section 92: Where requirement for writing satisfied by electronic document

213. This section makes changes to section 1 of the Requirements of Writing (Scotland) Act 1995 (the 1995 Act). Subsection (2) makes textual adjustments to section 1 of the 1995 Act to ensure that where a document is required to be in writing (and many documents do not require to be in writing), the form of that document can be either as a traditional document (for example on paper) or an electronic document (as long as it is a document capable of being electronic and is in the form specified in regulations).

214. Subsection (2)(a)(iv) provides that agreements under section 63 of the Bill (about shifting boundaries of subjects bounded by a water boundary) must be in writing.
Section 93: Electronic documents

215. This section inserts a new Part 3 into the Requirements of Writing (Scotland) Act 1995 (the 1995 Act) comprising seven new sections on electronic documents.

216. The new Part contains powers for Scottish Ministers to carry out two major reforms by subordinate legislation. First, it permits Scottish Ministers to make regulations making documents electronically valid. This will allow, for example, regulations to make contracts relating to transactions over land, known as missives, electronically valid. This will lead to solicitors not needing to exchange paper documents. Second, it permits Scottish Ministers to make regulations allowing electronic registration of electronically valid documents in the Keeper’s registers.

217. Consequential amendments to the 1995 Act (particularly to ensure law on paper documents continues to operate) are provided for in schedule 3.

218. Inserted section 9A defines electronic documents.

219. Inserted section 9B allows Scottish Ministers to make regulations in respect of the types of documents under section 1(2) of the 1995 Act capable of being electronically formally valid. Subsection 1 makes provision that in order for an electronic document to reach the threshold of being formally valid, the document needs to be authenticated by the granter or granters. Subsection (2) provides that an electronic document is authenticated if it bears an electronic signature. In this way, authentication can be said to be akin to the wet signature applied to a traditional document. The conditions that the electronic signature must comply with are stipulated in subsection 2(a) to (c). A document must be of a type authorised to be a valid electronic document under subsection (1)(b) and are authenticated in accordance with regulations under subsection (2)(c). Subsection (3) allows a contract mentioned in section 1(2)(a) of the 1995 Act to be constituted by a mix of electronic and traditional documents.

220. Inserted section 9C gives Scottish Ministers a power to specify in regulations what level of authentication and certification is necessary to ensure the document can be presumed to be authenticated. On being authenticated alone, the document can be valid under section 9B. However, in order for an electronic document to have probative status, certain documents may have to have third party certification. Traditional documents receive self-proving status by witnessing. Once electronically signed in accordance with regulations made under section 9C(2), an electronic document is capable of being automatically valid without witnessing (as the equivalent evidence of who signed the electronic document (and when) is securely encrypted into the constituent data of the document).

221. Inserted section 9D makes provision allowing courts to grant decree that an electronic document is self-proving even if there is no presumption in respect of the document under section 9C.

222. Inserted section 9E allows the regulations to make provision in relation to alteration and annexations of electronically valid documents.
223. Inserted section 9F allows electronic documents to be delivered electronically (such as through the internet) or by other reasonable means (such as physical delivery of a DVD or USB memory stick). Subsection (2) is self-explanatory.

224. Inserted section 9G (1) to (3) allows Scottish Ministers to make regulations allowing for electronic registration of electronically valid documents in any of the Keeper of the Registers of Scotland’s registers. Such a document must be of a type specified in regulations under subsection (3) and be electronically authenticated under section 9C, 9D or 9E(1). Subsection (6) list the documents to which the regulations need not apply.

Section 94: Amendment of Requirements of Writing (Scotland) Act 1995

225. This section is self-explanatory. See below on schedule 3.

Electronic conveyancing

Section 95: Automated registration

226. This section provides for the Keeper to run a computer system for electronic registration in the Land Register. Currently the Keeper runs an Automated Registration of Title to Land “ARTL” system for generating electronic conveyancing deeds and electronically submitting such deeds to the Keeper. This system was provided for by the Automated Registration of Title to Land (Electronic Communications) (Scotland) Order 2006 and its successors. The 2006 Order was made under the Electronic Communications Act 2000.

227. Subsection (3) allows Scottish Ministers to make various provisions in regulations regarding automated registration. This will allow provision to be made for ARTL or any successor system.

Electronic recording and registration

Section 96: Power to enable electronic registration

228. This section makes provision for Scottish Ministers to make provision in regulations for electronic registration in any of the Keeper’s registers (including the General Register of Sasines, the Register of Inhibitions and the Books of Council and Session). Section 95 only makes provision for the Land Register. Subsection (3) allows the regulations to modify enactments in consequence of the power in subsection (1).

PART 11: MISCELLANEOUS AND GENERAL

Deduction of title

Section 97: Deduction of title

229. This section is about uncompleted titles. It continues the rule that clauses of deduction of title are not necessary for deeds relating to property in the Land Register. It extends the current practice to provide that, where a disposition inducing first registration is granted by an unrecorded holder (uninfeft proprietor), such a clause is no longer required. However, deeds recorded in the General Register of Sasines will still need such clauses (where appropriate). In
order to demonstrate to the Keeper that the deed has been validly granted it will continue to be necessary to submit all links in title even if no clause of deduction of title is required.

Notes on register

Section 98: Note of date on which entry in register is made

230. This section is self-explanatory

Appeals

Section 99: Appeals

231. This section is self-explanatory.

Extracts and certified copies

Section 100: Extracts and certified copies: general

232. Subsection (1) provides for the issuing of extracts of registered documents. Subsection (2) provides for the issuing of certified copies of pending documents. Subsection (7) allows the extract of a certified copy to be sent by e-mail if the person requests that the document be received in that form.

Section 101: Evidential status of extract or certified copy

233. This section ensures that extracts and certified copies can be accepted as sufficient evidence in court.

Section 102: Liability of Keeper in respect of extracts, information and lost documents etc.

234. This section means that the Keeper is taken to warrant extracts, certified copies and certain other information. This ensures that people can be confident about the accuracy of the documents when relying on them in the course of commercial business.

Information and access

Section 103: Information and access

235. This section is self-explanatory.

Keeper’s functions

Section 104: Provisions of services by the Keeper

236. This section is largely self-explanatory and places on a statutory footing the Keeper’s power to provide services such as the existing pre-registration enquiry service and title examination service.
Section 105: Performance of Keeper’s functions during vacancy in office etc.

237. This section ensures that were the office of the Keeper to be vacant or the Keeper be incapable for the time being of acting, the validity of decisions made after that time on the Keeper’s behalf by a member of the Keeper’s staff are not deemed invalid.

Fees

Section 106: Fees

238. This section provides the fee power under which Scottish Ministers may authorise the Keeper of the Registers to charge fees for services provided in connection with the functions conferred on the Keeper in the Bill.

239. Subsection (1)(a) allows Scottish Ministers to provide for what fees may be charged for. Subparagraph (i) allows for the setting of fees for registration services in relation to any of the Keeper’s registers (of which there are 16, including the Land Register, the General Register of Sasines, the Register of Inhibitions and the Books of Council and Session). This power includes power to set the rate at which fees are payable for certain services as well as to set the amount that can be charged for the registration of any particular type of application.

240. Subparagraphs (ii) and (iii) of subsection (1)(a) also apply to all of the Keeper’s registers. In the case of sub-paragraph (iii) (the provision of information by the Keeper), subsection (4) makes clear that the fee power can cover extracts and copy certificates provided under section 99.

241. Subsection (1)(b) allows Scottish Ministers to provide for the method of payment of fees. For example, this may be used to facilitate direct debit.

242. Subsection (1)(c) allows Scottish Ministers to delegate the setting of fees to the Keeper within defined parameters. If used, this will allow fees to be increased or reduced between fee orders. This could allow, for example, the Keeper to reduce the fee for a type of application for a period of time.

243. Subsection (2) allows different fees to be set for types of application. It would allow, for example, for the fee for the processing of electronic applications to be set at a lower level than for paper applications or for the fee for voluntary registrations to be different to that for first registrations.

244. Subsection (3) ensures the Keeper is consulted about the Keeper’s expenses (which the proceeds of the fees will meet) in advance of making an order under this section.

245. Subsection (4)(b) ensures that the power to provide consultancy services under section 104 is not affected by this section.
Duty to take reasonable care

Section 107: Duties of certain persons

246. This section creates a statutory duty of care on applicants, granters of deeds to be registered and the solicitors of both, in favour of the Keeper. The duty is to ensure that the documentation or evidence submitted with an application or otherwise supplied in the course of an application does not induce the Keeper to make the register inaccurate. The duty extends until the Keeper has made the registration decision.

Offence

Section 108: Offence relating to applications for registration

247. Subsection (1) provides that it is an offence for any party submitting an application to the Keeper to knowingly or recklessly include materially false or misleading statements or to fail to disclose material information in such an application. The offence does not strike at an error in an application for registration that is genuine and not knowing or reckless. Subsection (2) makes it clear that the offence can apply to both applicants for registration and their solicitors.

248. The effect of the defence in subsections (3) and (4) is that a person will not commit an offence under this section if they give the Keeper information in good faith having taken all reasonable precautions.

249. Subsections (6) to (7A) mean a person may only rely on the defence in subsection (2) if they have given the prosecutor prior notice or if the court grants leave.

General provisions

Section 109: Interpretation

250. This section is self-explanatory.

Section 110: References to “registering” etc. in the Land Register of Scotland

251. This section is self-explanatory.

Section 111: Land register rules

252. This section gives the Scottish Ministers power, in consultation with the Keeper to make rules in relation to the Land Register. The rules are to be made by regulations and subsection (1) sets out the range of matters that the rules may cover.

Section 112: Subordinate legislation

253. This section outlines the parliamentary procedures to which the powers for making subordinate legislation by order, regulations or rules under the Bill are to be subject.
Section 113: Ancillary provision
254. This section is self-explanatory.

Section 114: Transitional provisions
255. This section is self-explanatory.

Section 115: Minor and consequential modifications
256. This section is self-explanatory.

Section 116: Saving provisions
257. This section contains savings provisions. Subsection (1) clarifies that the amendments made to the Prescription and Limitation (Scotland) Act 1973 as stated in the subsection do not strike at any a title acquired by prescription prior to the designated day.

258. Subsection (2) clarifies that section 28(1) of the Land Registration (Scotland) Act 1979 ("the 1979 Act"), is still applicable to the sections of the 1979 Act listed in the subsection. See paragraph 19 of Schedule 5 for minor and consequential amendments to the 1979 Act.

Section 117: Crown application
259. This section is self-explanatory.

Section 118: The designated day
260. This section gives the Scottish Ministers power by order to provide for the “designated day”. That day is to fall not less than 6 months after the order is made. The designated day is the day on which the main provisions of the Bill, listed in section 119(2), will come into force.

Sections 119: Commencement
261. This section is self-explanatory.

Sections 120: Short title
262. This section is self-explanatory.

SCHEDULES
Schedule 1: Registered leases tenanted in common
263. As explained in relation to sections 17 to 20 on shared plots, this schedule makes equivalent provision to shared plots for shared lease areas. The shared lease area title sheets provided for correspond to shared plot title sheets but relate to shared lease interests rather than shared ownership interests.
Schedule 2: Amendment of Registration of Leases (Scotland) Act 1857

264. This schedule makes consequential changes to the changes made by section 51.

Schedule 3: Amendment of Requirements of Writing (Scotland) Act 1995

Overview of schedule 3

265. This schedule makes changes consequential on the changes in Part 10 of the Bill to the Requirements of Writing (Scotland) Act 1995.

266. Paragraphs 2 to 17 provide for a new Part 2 of the 1995 Act. The new Part 2 makes provision for the formal validity of traditional documents, which are those documents written on paper (as opposed to being electronic). Most of the paragraphs make consequential amendment on the change of label from “document” to “traditional document”. In particular, sub-paragraphs 11(ca) and (cb) and 19A apply the same rules for probativity for the recording of traditional documents in the Sasine Register to registration in the Land Register, including an exclusion from these rules when the registration or recording of a document is required or expressly permitted by an enactment.

267. Paragraph 13 repeals section 6A of the 1995 Act. That section was inserted into the 1995 Act by section 222 of the Bankruptcy and Diligence etc (Scotland) Act 2007 to provide, in the short term, a mechanism by which a creditor could proceed with summary diligence upon a personal bond contained with a standard security created in electronic form within the Keeper’s Automated Registration of Title to Land system, given that the Books of Council and Session were open only to traditional documents. Under new section 9G of the 1995 Act, all types of electronic document become directly registrable in the Books of Council and Session provided that they meet prescribed standards, and so the provision is no longer necessary.

268. Paragraph 19 makes amendments to section 12 of the 1995 Act (the interpretation section). In paragraph (b), inserted subsection (4) provides explanation as to the meaning of certification in relation to electronic documents.

Schedule 4: Transitional provisions

269. This schedule deals with the transition from registration in the Land Register under the 1979 Act to registration under the Bill. Reference in this note to the designated day is to the day that the new scheme comes into force.

Paragraphs 1 to 6

270. Paragraphs 1 to 6 contain provisions about the treatment of existing title sheets. They become part of the Title Sheet Record and as such, title sheets for plots of land, or lease title sheets. The Keeper is given the power to make existing title sheets conform to the new scheme but is generally not obliged to do so. The C section on new title sheets will be called the “securities section”. The Keeper will have the power to change the name of the C section (currently called the “charges” section) to the securities section and the B section (proprietorship section) of lease title sheets to the tenancy section.
Paragraphs 7 to 11

271. Paragraphs 7 to 11 contain provisions about common areas that are at present included in the title sheet of each of the sharing properties. The new scheme requires that when such areas are created in future they are to have their own title sheet. Paragraphs 7 and 8 allow, but do not oblige, the Keeper to create a separate title sheet for common areas that already exist. Paragraph 9 deals with developments that are part-completed on the designated day. It allows the present practice of including common areas in the title sheets of the sharing properties to continue in respect of the remainder of the development.

Paragraph 12

272. This paragraph provides for the migration of existing documents into the archive record.

Paragraphs 13 and 14

273. Paragraph 13 makes clear that applications for registration that are pending at the designated day will be dealt with as applications under the 1979 Act.

274. Paragraph 14 provides that an application for rectification under section 9 of the 1979 Act, which has not been determined by the Keeper by the designated day, will fall. However, that does not affect the applicant’s rights as the Keeper is under a positive duty to rectify inaccuracies.

Paragraphs 15 and 16

275. Paragraphs 15 and 16 make clear that any claims for indemnity, or for reimbursement of expenses under the 1979 Act that have already vested are not affected by the new scheme.

Paragraphs 17 to 24

276. Paragraphs 17 to 24 deal with what are known bijural inaccuracies. For the concept of bijural inaccuracy, see Part 17 of the Scottish Law Commission Report (Scot Law Com No. 222). In the new scheme, there will be no bijural inaccuracies so provision requires to be made for inaccuracies of that kind that exist immediately prior to the designated day. They must either (i) cease to be an inaccuracy (in which case the rights of the parties are realigned to follow what the Land Register says they are), or (ii) be re-conceptualised as an actual inaccuracy.

277. The test adopted as to whether (i) or (ii) occurs is whether a particular inaccuracy could have been rectified under the rules in section 9 of the 1979 Act. If so, paragraphs 17 to 21 convert the bijural inaccuracy into an actual inaccuracy and make provision for compensation to be paid to a person losing a right if the register is then rectified save where a right to indemnity would not have arisen under the 1979 Act. If, however, the bijural inaccuracy could not be rectified under section 9 of the 1979 Act, paragraphs 22 to 24 make provision for the inaccuracy to cease to be an inaccuracy (i.e. for the rights of the parties concerned to be realigned so as to conform to what the Land Register says they are). Provision is also made for the payment of compensation to a person suffering loss as a result of such realignment where a right to indemnity would have arisen under the 1979 Act if rectification under section 9 was not possible.
278. In both cases, the practical result is the same as it is under the 1979 Act. A title that was vulnerable to rectification remains vulnerable, while one that was invulnerable (usually due to the protection given to a proprietor in possession) becomes free from the possibility of rectification. As possession is important under the current law, and in order to minimise problems of evidence, paragraph 18 provides that the person registered as proprietor of the land is presumed to be in possession for the purposes of determining whether the Keeper had power to rectify.

Paragraph 25

279. Paragraph 25 applies where the title to a flat in a tenement is already recorded in the General Register of Sasines or registered in the Land Register. In such cases, following present practice the Keeper will be able to continue to depict land further than 25 metres from the tenement building as part of the steading and, where such land is a common area, the Keeper will not be required to quantify the pro indiviso shares of the flats in such land in the proprietorship section of the title sheets of the individual flats.

Paragraph 26

280. Paragraph 26 is self-explanatory.

Schedule 5: Minor and consequential modifications

Overview

281. This schedule makes minor and consequential changes. Most of the changes are either consequential on the repeal of parts of the Land Registration (Scotland) Act 1979 and its replacement with the Bill or consequential on the amendments to the Requirements of Writing (Scotland) Act 1995 and the extension of the means of documents being self-proving from requiring to be “subscribed” (which is a paper only process) to also being capable of being “authenticated” (that is, authenticated as valid electronic documents in accordance with regulations made under the 1995 Act).

Paragraph 1 - Lands Clauses Consolidation (Scotland) Act 1845

282. This amends the note about mode of execution under the Requirements of Writing (Scotland) Act 1995 to take account of documents in electronic form.

Paragraph 2 - Commissioners Clauses Act 1847

283. Subparagraph (2) amends the 1847 Act to take account of the extension of the Requirements of Writing (Scotland) Act 1995 to documents in electronic form. Subparagraph (3) replaces the specific reference to the Requirements of Writing (Scotland) Act 1995 with a more general reference to the Act.

Paragraph 3 - Ordnance Board Transfer Act 1855

284. This paragraph amends section 5(2) of the 1855 Act to take account of the extension of the Requirements of Writing (Scotland) Act 1995 to documents in electronic form.
Paragraph 4 - Transmission of Moveable Property (Scotland) Act 1862

285. This amends the Schedules to the 1862 Act to take account of documents in electronic form under the Requirements of Writing (Scotland) Act 1995.

Paragraph 5 - Land Registers (Scotland) Act 1868 (c.64)

286. The effect of this amendment is to make clear that the provisions of the 1868 Act which are referred to do not apply to the Land Register.

Paragraph 6 - Titles to Land Consolidation (Scotland) Act 1868

287. Subparagraphs (2) and (3), which are about litigiosity, are disapplied in relation to the Land Register. The reason is that the situations they deal with will be dealt with by caveats.

288. Subparagraph (4) amends the form in Schedule B to the 1868 Act to take account of documents in electronic form under the Requirements of Writing (Scotland) Act 1995.

Paragraph 7 - Conveyancing (Scotland) Act 1874

289. Subparagraph (2) amends the note about mode of execution in Schedule M to the 1874 Act to take account of documents in electronic form under the Requirements of Writing (Scotland) Act 1995.

Paragraph 8 - Trusts (Scotland) Act 1921

290. Subparagraphs (2) and (3) amend the notes about mode of execution in the Schedules to the 1921 Act to take account of documents in electronic form under the Requirements of Writing (Scotland) Act 1995.

Paragraph 9 - Conveyancing (Scotland) Act 1924

291. Subparagraph (2) adds a reference to the Land Register of Scotland to section 2(5).

292. Subparagraph (3) is consequential on the repeal of schedule K by the Abolition of Feudal Tenure etc. (Scotland) Act 2000 schedule 13(1) paragraph 1.

293. Subparagraph (4) is similar to the provisions in paragraph 6(2) and (3) above concerning the Titles to Land Consolidation (Scotland) Act 1868. It disapplies the provisions of the 1924 Act in relation to the Land Register, because the matters in question will be dealt with by the caveat procedure.

294. Subparagraph (5) amends schedule B to take account of documents in electronic form under the Requirements of Writing (Scotland) Act 1995.

Paragraph 10 - Burgh Registers (Scotland) Act 1926

295. This paragraph is self-explanatory.
Paragraph 11 - Public Registers and Records (Scotland) Act 1948
296. This paragraph repeals a power to prescribe the forms of documents in the Sasines register made redundant by the Bill.

Paragraph 12 - Land Drainage (Scotland) Act 1958
297. This paragraph amends the definition of long lease by adding a reference to the Land Register.

Paragraph 13 - Harbours Act 1964
298. This paragraph amends the definition of long lease by adding a reference to the Land Register.

Paragraph 14 - Succession (Scotland) Act 1964
299. This amendment is consequential on the changes made to the Requirements of Writing (Scotland) Act 1995. The reference to section 4 is replaced by a reference to the equivalent provision in the 1995 Act as amended.

Paragraph 15 - Industrial and Provident Societies Act 1965
300. Subparagraphs (2) and (3) amend the sections mentioned to take account of the extension of the Requirements of Writing (Scotland) Act 1995 to documents in electronic form.

301. Subparagraphs (4) and (5) amend the notes about mode of execution under the Requirements of Writing (Scotland) Act 1995 to take account of documents in electronic form.

Paragraph 16 - Gas Act 1965
302. This paragraph amends the definition of long lease by adding a reference to the Land Register.

Paragraph 17 - Conveyancing and Feudal Reform (Scotland) Act 1970
303. The 1970 Act was not amended by the 1979 Act so as to take account of the introduction of the Land Register. The 1970 Act was instead subject to the "translation" provision in section 29(2) of the 1979 Act under which references to the Register of Sasines and the recording of deeds in that register were deemed to be references to the Land Register or registration. This approach has not made the 1970 Act easy to understand. The majority of amendments in this paragraph are designed to add references (where appropriate) to the Land Register.

304. The amendment to section 28(5) updates the means of describing the security subjects in a decree of foreclosure following the partial repeal of the 1979 Act.

305. The notes that are found in various schedules about mode of execution under the Requirements of Writing (Scotland) Act 1995 are amended to take account of documents in electronic form.
Paragraph 18 - Prescription and Limitation (Scotland) Act 1973
306. Subparagraph (2) saves and consequently amends section 1 of the 1973 Act.

307. Subparagraph (3)(a) and (b) amend section 2 of the 1973 Act by adding references to registration in the Land Register.

308. Subparagraph (3)(c) updates the references in section 2 to section 3(3) of the 1979 Act. The new sections 20B and 20C of the 1857 Act replace section 3(3) in relation to leases.

309. Subparagraph (4) inserts a new section 1A into the 1973 Act.

310. Subparagraph (5) adds a reference to registration in the Land Register to the end of section 15(1) of the 1973 Act.

311. Subparagraphs (6) and (7) make changes to schedule 1 of the 1973 Act to implement the policy that the period of negative prescription should be five years for claims against the Keeper where the Register has been rectified in favour of the claimant and twenty years for claims against the Keeper arising out of breach of warranty or from the operation of the realignment principle.

312. Subparagraph (8) amends schedule 3 to the 1973 Act by adding the obligation of the Keeper to rectify an inaccuracy to the list of imprescriptible rights and obligations.

Paragraph 19 - Land Registration (Scotland) Act 1979
313. This paragraph specifies the technical changes that constitute the partial repeal of the 1979 Act.

Paragraph 20 - Education (Scotland) Act 1980
314. This paragraph amends section 16(2) of the Education (Scotland) Act 1980 to take account of the fact that as from the designated day it will not be possible to record a disposition in the Register of Sasines.

Paragraph 21 - Water (Scotland) Act 1980
315. Subparagraphs (2), (3) and (4) amend the provisions referred to by adding a reference to registration in the Land Register.

316. Subparagraph (5) is self-explanatory.

Paragraph 22 - Matrimonial Homes (Family Protection) (Scotland) Act 1981
317. This paragraph replaces the reference to the 1979 Act with a reference to the equivalent provision in the Bill.
Paragraph 23 - Civil Aviation Act 1982
318. This paragraph simplifies and updates the provisions referred to following the partial repeal of the 1979 Act.

Paragraph 24 - Litter Act 1983
319. This paragraph simplifies and updates section 8 of the 1983 Act following the partial repeal of the 1979 Act.

Paragraph 25 - Health and Social Services and Social Security Adjudications Act 1983
320. This paragraph replaces the reference to the 1979 Act with a reference to the Bill.

Paragraph 26 - Telecommunications Act 1984
321. This paragraph, which amended the 1979 Act, is to be repealed following the partial repeal of that Act.

Paragraph 27 - Matrimonial and Family Proceedings Act 1984
322. This paragraph, which amended the 1979 Act, can be repealed following the partial repeal of that Act.

Paragraph 28 - Bankruptcy (Scotland) Act 1985
323. Subparagraph (2) replaces a reference to the 1979 Act with a reference to the equivalent provisions in the Bill.

Paragraph 29 - Housing Associations Act 1985
324. This paragraph adds a reference to registration in the Land Register into the 1985 Act.

Paragraph 30 - Law Reform (Miscellaneous Provisions) (Scotland) Act 1985
325. This paragraph disapplies section 8(7) of the 1985 Act to the Land Register. The reason is that the matter will be covered by the caveat procedure in relation to property in the Land Register.

Paragraph 31 - Electricity Act 1989
326. This paragraph is self-explanatory.

Paragraph 32 - Property Misdescriptions Act 1991
327. This paragraph replaces the reference to interest in land, which is the language of the 1979 Act, with a reference to right in land, which is the language of the Bill.

Paragraph 33 - Agricultural Holdings (Scotland) Act 1991
328. This amendment adds a reference to registration following the amendment of the 1857 Act to include references to registration in the Land Register.
Paragraph 34 - Coal Industry Act 1994

329. This repeals paragraph 20 of the 1994 Act, which inserted an overriding interest relating to the Coal Authority into the Land Registration (Scotland) Act 1979.

Paragraph 35 - Land Registers (Scotland) Act 1995

330. This paragraph amends the 1995 Act to reference the new fee power contained within the Bill.

Paragraph 36 - Petroleum Act 1998

331. This paragraph amends section 5(9) to take account of the extension of the Requirements of Writing (Scotland) Act 1995 to documents in electronic form.

Paragraph 37 - Public Finance and Accountability (Scotland) Act 2000

332. Section 25 of the 1868 Act is repealed and replaced by section 104 of the Bill. This paragraph makes the necessary consequential change to the 2000 Act.

Paragraph 38 - Adults with Incapacity (Scotland) Act 2000

333. Under the new scheme, there will be no land certificates or office copies but there will be extracts. Subparagraphs (2) and (3) make the necessary changes to the sections mentioned.

334. Subparagraph (4) amends the provisions mentioned to take account of the partial repeal of the 1979 Act. In future, it will not be possible to register an event or death directly in the Land Register. Registration will have to proceed on the basis of a deed such as an interlocutor.

Paragraph 39 - Abolition of Feudal Tenure etc. (Scotland) Act 2000

335. Subparagraph (3) replaces the reference to the 1979 Act with a reference to the equivalent provision in the Bill.

336. Subparagraph (5) replaces the reference to interest in land with a reference to right in land. The amendment also reflects the fact that under the new scheme registration requires to proceed on the basis of a deed.

337. Subparagraph (8) amends section 73 so as to apply the translation provisions to extracts and certified copies issued under the Bill.

Paragraph 40 - Standards in Scotland’s Schools etc. Act 2000

338. This paragraph replaces the reference to interests in land, which is the language of the 1979 Act, with a reference to rights in land, which is the language of the Bill.

Paragraph 41 - National Parks (Scotland) Act 2000

339. This paragraph replaces the references to interest in land, which is the language of the 1979 Act, with a reference to right in land, which is the language of the Bill.
This document relates to the Land Registration etc. (Scotland) Bill as amended at Stage 2
(SP Bill 6A)

**Paragraph 42 - Housing (Scotland) Act 2001**

340. This paragraph amends the two sections mentioned to take account of the extension of the 1995 Act to documents in electronic form.

**Paragraph 43 - Title Conditions (Scotland) Act 2003**

341. Subparagraphs (3) and (5) replace the reference to the 1979 Act with a reference to the equivalent provision of the Bill. Subparagraph (3) also makes a consequential amendment to section 60 following the repeal of section 15(3) of the 1979 Act.

342. Subparagraph (9) amends section 84(2) to take account of the extension of the 1995 Act to documents in electronic form.

343. Subparagraph (11) makes clear that in the case of a notice of title if a title condition is set out in a midcouple then the midcouple and the notice of title together are to be treated as the constitutive deed.

344. Subparagraph (11) also makes a consequential change to take account of the new title of section 3 of the 1857 Act.

**Paragraph 44 - Civil Partnership Act 2004**

345. This paragraph replaces the references to the 1979 Act with references to the equivalent provisions in the Bill.

**Paragraph 45 - Stirling-Alloa-Kincardine Railway and Linked Improvements Act 2004**

346. This paragraph removes the references to the 1979 Act and clarifies the meaning of subsection (3).

**Paragraph 46 - Tenements (Scotland) Act 2004**

347. The 1979 Act referred to interests in land. The Bill does not use that concept. Subparagraphs (2) and (3) make the necessary consequential changes.

**Paragraph 47 - Edinburgh Tram (Line Two) Act 2006**

348. This paragraph removes the references to the 1979 Act and clarifies the meaning of subsection (5).

**Paragraph 48 - Edinburgh Tram (Line One) Act 2006**

349. This paragraph removes the references to the 1979 Act and clarifies the meaning of subsection (5).

**Paragraph 49 - Waverley Railway (Scotland) Act 2006**

350. This paragraph removes the references to the 1979 Act and clarifies the meaning of subsection (3).
Paragraph 50 - Companies Act 2006
351. Subparagraphs (2) and (3) amend the provisions mentioned to take account of the extension of the 1995 Act to documents in electronic form.

352. Subparagraph (4) substitutes a reference to the 1979 Act with a reference to the Bill.

Paragraph 51 - Glasgow Airport Rail Link Act 2007
353. This paragraph removes the references to the 1979 Act and clarifies the meaning of subsection (3).

Paragraph 52 - Bankruptcy and Diligence etc. (Scotland) Act 2007
354. Subparagraph (2) amends the new section 13A of the 1970 Act.

355. Subparagraph (3) replaces the reference to the 1979 Act with a reference to the equivalent provision in the Bill.

Paragraph 53 - Edinburgh Airport Rail Link Act 2007
356. Subparagraph (2) replaces a reference to the 1979 Act with a reference to the equivalent provision in the Bill.

357. Subparagraph (3) removes a reference to the 1979 Act and clarifies the meaning of subsection (6).

Paragraph 54 - Airdrie-Bathgate Railway and Linked Improvements Act 2007
358. Subparagraph (2) replaces a reference to the 1979 Act with a reference to the equivalent provision in the Bill.

359. Subparagraph (3) removes a reference to the 1979 Act and clarifies the meaning of subsection (6).

Paragraph 55 - Energy Act 2008
360. This paragraph amends section 77(7) to take account of the extension of the Requirements of Writing (Scotland) Act 1995 to documents in electronic form.
LAND REGISTRATION ETC. (SCOTLAND) BILL

SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

Purpose

1. This Memorandum has been prepared by the Scottish Executive to assist the Subordinate Legislation Committee in its consideration, of the Land Registration etc. (Scotland) Bill. This Memorandum describes provisions in the Bill conferring power to make subordinate legislation which were either introduced to the Bill or amended at Stage 2. The Memorandum supplements the Delegated Powers Memorandum on the Bill as introduced.

PROVISIONS CONFERRING POWER TO MAKE SUBORDINATE LEGISLATION INTRODUCED OR AMENDED AT STAGE 2

Section 42(8) - Power to amend relevant time periods for prescriptive claimant applications

Power conferred on: the Scottish Ministers
Power exercisable by: order made by Scottish statutory instrument
Parliamentary procedure: affirmative procedure

Provision

2. Section 42 sets out the criteria to be satisfied for the Keeper to accept an application from a prescriptive claimant. Section 42(3)(a) of the Bill as introduced set out that the true owner must not have been in possession of the land for a period of seven years preceding the application and section 42(3)(b) set out that the applicant must have been in possession for one year. Section 42(8) of the Bill as introduced allowed the Scottish Ministers to substitute different time periods for those in subsection (3)(a) and (b) as introduced.

3. Section 42 was amended at Stage 2 in order to remove the requirement that the true owner must not have possessed the land for seven years. Accordingly the delegated power to substitute a different time period has been restricted and now only applies to the one year period of possession by the prescriptive claimant in section 42(3) of the Bill as amended at Stage 2.

Reason for taking power

4. The reason remains striking the balance between allowing prescriptive claims to be registered to bring into use abandoned land and protecting the rights of any underlying owner, with power to amend the one year time period if experience shows it is not achieving the correct balance.
Choice of procedure

5. The power continues to include the power to amend primary legislation, is of significance to stakeholders and important for the operation of the system of prescriptive claimants. The affirmative procedure is therefore still considered appropriate.

Section 47(2) and 47(3) - power to prescribe days, on or after which recording of certain deeds in the Register of Sasines will have no effect

Power conferred on: the Scottish Ministers
Power exercisable by: order made by Scottish statutory instrument
Parliamentary procedure: negative procedure

Provision

6. Section 47(2) allows the Scottish Ministers to prescribe the day on or after which the recording of a standard security in the Register of Sasines will have no effect. Section 47(3) allows the Scottish Ministers to prescribe the day on or after which the recording of any deed in the Register of Sasines will have no effect. Any day so prescribed is to be no earlier than the day the Keeper's discretion relating to voluntary registrations under section 27(3)(b) is removed.

7. Section 47(9) allows different provision for different areas.

8. Section 47(10) was amended at Stage 2 to provide that before making an order under section 47(2) or (3) the Scottish Ministers, as well as consulting the Keeper of the Registers of Scotland, must consult such other persons appearing to have an interest in the closure of the Register of Sasines to the recording of deeds as the Scottish Ministers consider appropriate.

9. The Subordinate Legislation Committee in correspondence with the Scottish Government and in its Stage 1 Report noted the significance to stakeholders of closure of the Register of Sasines to new deeds. The Committee asked the Government to consider whether the interests of stakeholders would be better served by a requirement to consult stakeholders. The Government always planned to consult stakeholders before taking these steps, and in light of all of these factors agreed to adding an express duty to consult.

Reason for taking power

10. As noted in the Delegated Powers Memorandum, the reasons for taking the power relate to the objective of completion of the Land Register. It allows the Scottish Ministers some control over the rate of first registration of titles in the Land Register.

Choice of procedure

11. Section 112 of the Bill was also amended at Stage 2 to change the procedure for this power from affirmative to negative, also in line with the suggestion of the Subordinate Legislation Committee if consultation was required.

12. Closure of the Register of Sasines to new deeds is a significant step, however, as the Committee reported, the principle of closure is set out in the Bill and the scope of the power is
This document relates to the Land Registration etc. (Scotland) Bill as amended at Stage 2 (SP Bill 6A)

limited to prescribing dates. The interests of stakeholders will be served by the duty to consult inserted at Stage 2. As such, the negative procedure is considered appropriate.

Section 55(4) - Power to make provision about the description of subjects in an advance notice

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: negative procedure

Provision

13. This section allows the Scottish Ministers to make provision concerning the description of subjects in advance notices in relation to unregistered leases or plots. Section 112 of the Bill was amended at Stage 2 to change the procedure for this power from affirmative to negative.

Reason for taking power

14. As noted in the Delegated Powers Memorandum, advance notices for registered subjects will be described by reference to the title number or a plan. This power allows the Scottish Ministers to make provision about the standard of description required for notices going into the Register of Sasines (which is not a map-based register).

15. Additionally, the description required for Sasine advance notices is likely to change in light of changing circumstances and technology. For example, if it becomes practical to identify a tenement flat by exact co-ordinates rather than general description it may be appropriate to include this information in a Sasine advance notice. For this reason it is preferable to have flexibility in relation to the standard of description for a Sasine advance notice.

Choice of procedure

16. This power was subject to the affirmative procedure in the Bill as introduced. The Bill was amended at Stage 2 to change the procedure to the negative procedure in line with the Subordinate Legislation Committee Stage 1 Report. In light of the Committee's view the Government considers this allows for the best use of Parliamentary time especially as the power will be used to specify technical matters.

Section 58B(3)(b) - Power to provide certain documents are unaffected by advance notices

Power conferred on: the Scottish Ministers
Power exercisable by: order made by Scottish statutory instrument
Parliamentary procedure: affirmative procedure

Provision

17. Section 58(6)(b) of the Bill as introduced contained the power to specify types of deeds unaffected by advance notices. That power was moved into a new section 58B which was inserted into the Bill at Stage 2 by amendment to ensure that advance notices for deeds triggering first registration offer the same protection as advance notices for deeds over registered plots.
18. Section 58B(3)(a) provides that the effect of an advance notice does not apply to specific documents registered under certain specified enactments. Section 58B(3)(b) allows the Scottish Ministers to specify other types of deeds to be similarly unaffected. The scope of the delegated power was not otherwise amended at Stage 2.

Reason for taking power

19. The reason for taking the power was noted in the Delegated Powers Memorandum in relation to section 58(6) of the Bill as introduced.

Choice of procedure

20. The Scottish Government considers that the use of this power is unlikely to be controversial. However, in light of the Subordinate Legislation Committee's view that the use of this power is potentially significant, the Government considers that, on balance, affirmative procedure is appropriate. The Bill was amended at Stage 2 to change the procedure from negative to affirmative.

Section 61(1) - Power to amend application of advance notices scheme in relation to certain deeds

Power conferred on: the Scottish Ministers
Power exercisable by: order made by Scottish statutory instrument
Parliamentary procedure: affirmative procedure

Provision

21. Section 61(1) provides that the Scottish Ministers may modify the application of Part 4 of the Bill in relation to certain deeds (e.g. to enable a particular type of deed to be capable of being protected by an advance notice where that otherwise would not be possible by virtue of the provisions in Part 4).

Reason for taking power

22. The power now in section 58B envisages that certain deeds may be exempted from the effect of an advance notice. Similarly, certain registrable deeds (such as unilateral deeds granted by local authorities under statute) may have to be capable of being protected by an advance notice. It is therefore considered necessary for the Scottish Ministers to be able to tailor the provision to provide specifically for such deeds. Advance notices are also a new concept in Scotland and inevitably there may be changes required to the procedure relating to advanced notices in light of experience.

23. The Subordinate Legislation Committee expressed the view that the power should not be drawn more widely than appropriate to deliver the intended policy. The Scottish Government considers that there is a significant benefit to all involved in having the flexibility to make technical amendments where required, as well as being able to extend the operation of the scheme to other types of deed in due course. The Government also notes that this power can only alter the advance notice system in relation to deeds, rather than alter the effect of registration of
This document relates to the Land Registration etc. (Scotland) Bill as amended at Stage 2 (SP Bill 6A)

deeds more generally. The Government therefore considers the scope of the power to be appropriately drawn.

Choice of procedure

24. In light of the Committee's view on the significance of the power allowing modification of Part 4 of the Bill the Government has agreed to the use of the affirmative procedure. The Bill was amended to this effect at Stage 2.

Section 77(4) - the rate of interest payable on claims under warranty

**Power conferred on:** the Scottish Ministers  
**Power exercisable by:** regulations made by Scottish statutory instrument  
**Parliamentary procedure:** affirmative procedure

Provision

25. Section 77 is about quantification of compensation for loss incurred as a result of a breach of Keeper's warranty. Section 77(2) makes provides about when interest is payable on the compensation. Section 77(4) allows the Scottish Ministers to provide for the rate of interest payable by virtue of section 77(2).

26. The Bill was amended at Stage 2 to amend the procedure from the negative to the affirmative procedure and as a consequence to remove the power from the land register rules and make it exercisable by regulations made by Scottish statutory instrument. The scope of the power was not altered.

Reason for taking power

27. The power does not extend to altering the principle of warranty or calculating the compensation itself. Interest rates can fluctuate and it is desirable for the Scottish Ministers to have power to amend the interest rates from time to time to fit with the market. As the power is limited only to interest rates rather than the compensation itself, it is considered appropriate for this to be dealt with by delegated power.

28. The Subordinate Legislation Committee noted that this power should not be drawn more widely than is appropriate to give effect to the intended policy. The Government will set interest rates in light of market conditions, which will require a view to be taken as to the market conditions at that time. The Government considers that the flexibility to set interest rates is important to the intended policy, and drawing the power more narrowly may undermine this flexibility, especially in light of the difficulty of determining market conditions at any given time. As seen recently, for instance, bank base rates may not always give a reliable indication of the level of interest bank accounts will pay.

Choice of procedure

29. The power in the Bill as introduced was subject to the negative procedure. This was amended at Stage 2 to the affirmative procedure. The change in procedure will allow Parliament to scrutinise the Government's proposed rates fully.
Section 80(7) - the rate of interest payable on claims for compensation as a result of rectification of the register

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: affirmative procedure

Provision

30. Section 80 is about compensation for loss in consequence of rectification. Section 80(5) provides that interest is payable on the compensation. Section 80(7) allows the Scottish Ministers to provide the rate of interest payable by virtue of section 80(5).

31. The Bill was amended at Stage 2 to amend the procedure from the negative to the affirmative procedure and as a consequence to remove the power from the land register rules and make it exercisable by regulations made by Scottish statutory instrument. The scope of the power was not altered.

Reason for taking power

32. The power does not alter the principle of rectification or affect the calculation of the compensation itself. Interest rates can fluctuate and it is desirable for the Scottish Ministers to have power to amend the interest rates from time to time to fit with the market. As the power is limited only to interest rates rather than the compensation itself, it is considered appropriate for this to be dealt with by delegated power.

33. The Subordinate Legislation Committee noted that this power should not be drawn more widely than is appropriate to give effect to the intended policy. The Government will set interest rates in light of market conditions, which will require a view to be taken as to the market conditions at that time. The Government considers that the flexibility to set interest rates is important to the intended policy, and drawing the power more narrowly may undermine this flexibility, especially in light of the difficulty of determining market conditions at any given time. As seen recently, for instance, bank base rates may not always give a reliable indication of the level of interest bank accounts will pay.

Choice of procedure

34. The power in the Bill as introduced was subject to the negative procedure. This was amended at Stage 2 to the affirmative procedure. The change in procedure will allow Parliament to scrutinise the Government's proposed rates fully.
Section 91(4) - the rate of interest on compensation for realignment of rights

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: affirmative procedure

Provision

35. Section 91 is about quantification of compensation for loss incurred as a result of the operation of realignment of rights. Section 91(2) provides that interest is payable on the compensation. Section 91(4) allows the Scottish Ministers to provide for the rate of interest payable by virtue of section 91(2).

36. The Bill was amended at Stage 2 to amend the procedure from the negative to the affirmative procedure and as a consequence to remove the power from the land register rules and make it exercisable by regulations made by Scottish statutory instrument. The scope of the power was not altered.

Reason for taking power

37. As with powers related to rates of interest in other sections of the Bill, this power does not extend to altering the principle of compensation for realignment losses. Clearly, interest rates can fluctuate and it is desirable for the Scottish Ministers to have power to amend the interest rates from time to time to fit with the market. As the power is limited only to interest rates rather than the compensation itself, it is considered appropriate for this to be dealt with in the land register rules.

Choice of procedure

38. The Subordinate Legislation Committee noted that this power should not be drawn more widely than is appropriate to give effect to the intended policy. The Government will set interest rates in light of market conditions, which will require a view to be taken as to the market conditions at that time. The Government considers that the flexibility to set interest rates is important to the intended policy, and drawing the power more narrowly may undermine this flexibility, especially in light of the difficulty of determining market conditions at any given time. As seen recently, for instance, bank base rates may not always give a reliable indication of the level of interest bank accounts will pay.
Section 93(2) - inserted section 9E(1) of the Requirements of Writing (Scotland) Act 1995 - Further powers related to electronic documents

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: negative procedure, but affirmative procedure where regulations amend or repeal any enactment or provision under subsection (1)(b).

Provision

39. Section 93(2) of the Bill as introduced inserts a new section 9E into the Requirements of Writing (Scotland) Act 1995. Inserted section 9E(1) provides that the Scottish Ministers may make provision in regulations as to the effectiveness or formal validity of, or presumptions to be applied to:

- alterations made before or after execution to an electronic document;
- authentication, by or on behalf of the granter, of such a document;
- authentication, by or on behalf of a person with a disability, of such a document; and
- any annexation to such a document.

40. Inserted section 9E(2) provides that regulations under section 9E(1) may make incidental, supplemental, consequential, transitional, transitory or saving provisions considered necessary in light of regulations made under 9E(1).

Reason for taking power

41. The presumptions and rules on alterations etc. of traditional documents already exist. The provision allows the Scottish Ministers, in light of experience and technology, to make suitable corresponding regulations for electronic documents.

Choice of procedure

42. These regulations are, in the main, about process and procedure and so negative procedure is thought appropriate. However, where regulations under 9E(1) amend or repeal any enactment, affirmative procedure is required. This is normal for amendment or repeal of enactments.

43. The Subordinate Legislation Committee noted that it appears that the power contained in new section 9E(1)(b) of the Requirements of Writing (Scotland) Act 1995 could be used to prescribe significant matters – for example requirements for the validity of electronic wills or electronic contracts for land transactions.

44. In light of the Committee's view noted above and the fact that the power in 9E(1)(b) could potentially be used for more than technical matters the Government agrees the power in 9E(1)(b) should also be subject to the affirmative procedure. This Bill was amended at Stage 2 to change the procedure for provisions of the kind made under 9E(1)(b) from negative to affirmative procedure.
Subordinate Legislation Committee

Land Registration etc. (Scotland) Bill

Response from the Scottish Government to the Subordinate Legislation Committee’s Stage 1 Report

General

1. This response relates to the points raised by the Subordinate Legislation Committee and follows the ordering of the Bill provisions discussed in the Committee’s Stage 1 Report.

Issues raised

The Committee considers the powers to set interest rates in sections 77(4), 80(7) and 91(4) should not be drawn more widely than is appropriate to give effect to the intended policy. The Committee also considers that these powers have significant enough effects that the affirmative procedure would be a suitable level of scrutiny.

2. The Scottish Government notes the Committee’s comments on the potential impact on individuals’ compensation. While the Government feels these powers are limited in scope, in this instance, taking account of the Committee’s views, the Government intends to bring forward amendments at Stage 2 to alter the procedure from the negative to the affirmative procedure.

3. The Government has indicated it will set interest rates in light of market conditions, which will require a view to be taken as to the market conditions at that time. The change in procedure will allow Parliament to scrutinise the Government’s proposed rates fully. The Government considers, however, that the flexibility to set interest rates is important to the intended policy, and drawing the power more narrowly may undermine this flexibility, especially in light of the difficulty of determining market conditions at any given time. As seen recently, for instance, bank base rates may not always give a reliable indication of the level of interest bank accounts will pay. In view of the change in procedure, the Government does not consider narrowing the scope of the powers is necessary.

The Committee reports the Scottish Government has undertaken to consider whether it is appropriate to add a requirement to consult relevant persons with an interest in the Register of Sasines, in relation to the powers in section 47(5) and (6), and in light of that consideration whether affirmative or negative procedure is the most appropriate level of scrutiny for the exercise of these powers.

4. The Scottish Government recognises the significance of closing the General Register of Sasines, be that to standard securities or to all deeds. It
will be an important step for stakeholders and the Government's intention is to consult widely before taking such a step. The Government is therefore happy to bring forward a Stage 2 amendment with a requirement to consult.

5. In light of this, following the Committee’s recommendation, the Government considers the negative procedure is appropriate and proposes to amend the procedure from affirmative to negative.

The Committee reports in relation to the power in section 55(4) that the negative procedure would be an appropriate level of scrutiny for the exercise of this power and the Scottish Government have indicated their agreement.

6. The Scottish Government confirms it will take this forward by a suitable amendment at Stage 2.

The Committee reports in relation to the power in section 58(6)(b) that the affirmative procedure would be an appropriate level of scrutiny for the exercise of this power and the Scottish Government have indicated their agreement.

7. The Scottish Government confirms it will take this forward by a suitable amendment at Stage 2.

The Committee considers the power in section 61(1) to modify the application of Part 4 of the Bill should not be drawn more widely than is appropriate to give effect to the intended policy. The Committee also considers that these powers have significant enough effects that the affirmative procedure would be a suitable level of scrutiny.

8. The Scottish Government notes the Committee's concerns in this area. However, the Government notes that the advance notice scheme is new to Scotland. It is considered that there is a significant benefit to all involved in having the flexibility to make technical amendments where required, as well as being able to extend the operation of the scheme to other types of deed in due course. The Government also notes that this power can only alter the advance notice system in relation to deeds, rather than alter the effect of registration of deeds more generally. The Government therefore considers the power to be appropriately drawn and proposes to retain the power with its current scope.

9. However, in light of the concerns raised by the Committee, the Government will bring forward a suitable amendment at Stage 2 to change the procedure to the affirmative procedure.

The Committee considers the power in section 93(2) in so far as it inserts new section 9E(1)(b) of the Requirements of Writing (Scotland) Act 1995, is a potentially significant power going beyond mere technical matters in relation to authentication and alteration of electronic documents. The Committee considers the power to be significant
enough that the affirmative procedure would be a suitable level of scrutiny.

10. The Scottish Government notes the Committee's point and confirms it will take this forward by a suitable amendment at Stage 2.

The Committee has concerns as to the general scope of the power in section 103(1) in relation to information to be made available by the Keeper and recommends the Scottish Government consider this further.

11. The Scottish Government has given careful consideration to the Committee's concerns in this area but remains of the view that the power is appropriately drawn. The Government considers that flexibility is paramount in this area to allow information from and access to the Keeper's registers to be provided in a manner that best suits the Keeper, stakeholders and members of the public in light of developing technology. The Government considers that drawing the power more narrowly would risk the legislation rapidly falling behind technology and losing the ability to modernise to meet the requirements of stakeholders.

12. The Government notes that this power and the power in section 113(1) are both subject to the affirmative procedure, which will allow Parliament to scrutinise fully any Government proposals in this area.
Subordinate Legislation Committee

27th Report, 2012 (Session 4)

Land Registration etc. (Scotland) Bill as amended at Stage 2

Published by the Scottish Parliament on 23 May 2012
Subordinate Legislation Committee

Remit and membership

Remit:

The remit of the Subordinate Legislation Committee is to consider and report on—

(a) any—

(i) subordinate legislation laid before the Parliament;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1;

and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act; and

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject.

(Standing Orders of the Scottish Parliament, Rule 6.11)

Membership:

Chic Brodie
Nigel Don (Convener)
James Dornan (Deputy Convener)
Mike MacKenzie
Michael McMahon
John Pentland
John Scott

**Committee Clerking Team:**

Clerk to the Committee
Irene Fleming

Assistant Clerk
Rob Littlejohn

Support Manager
Daren Pratt
Subordinate Legislation Committee

27th Report, 2012 (Session 4)

Land Registration etc. (Scotland) Bill as amended at Stage 2

The Committee reports to the Parliament as follows—

1. At its meeting on 22 May 2012, the Subordinate Legislation Committee considered the delegated powers provisions in the Land Registration etc. (Scotland) Bill, as amended at Stage 2. The Committee submits this report to the Parliament under Rule 9.7.9 of Standing Orders.

2. The Scottish Government provided the Parliament with a supplementary delegated powers memorandum on the new provisions in the Bill (“the supplementary DPM”).

Delegated Powers Provisions

3. At Stage 1 of the Bill, the Committee reported that it did not need to draw the attention of the Parliament to the powers in sections: 111(1), 14(1)(b), 22(1)(d), 33(2), 34(1), 39(5), 40(5), 42(7), 44(6), 59(2), 78(5), 11(6)(b), 27(6), 36(3) and 37, 42(8), 44(7), 52(4), 57(6), 66(3), 93(2) (inserting sections 9B(1)(b), 9B(2)(c), 9C(2) and 9G(3) of the Requirements of Writing (Scotland) Act 1995), 95(3), 96(1) and (2), 106(1), 109(4), 113(1), 118 and 119(3).

4. After Stage 2, the Committee reports that it does not need to draw the attention of the Parliament to the new or substantially amended powers in sections: 42(8); 47(10) and 112(2)(ca); 55(4) and 112(2)(cb); 58B(3)(b) and 112(3)(ea); 61(1) and 112(3)(eb); 77(4), 80(7), 91(4), and 112(3)(fa), (fb) and (fc); and 93(2), inserting section 9E(4).

5. The Committee also welcomes that the amendments lodged at Stage 2 have, in general, catered for the recommendations of the Committee in its report at Stage 1.

1 Land Registration etc. (Scotland) Bill. Supplementary Delegated Powers Memorandum.
**Land Registration etc. (Scotland) Bill**

**Marshalled List of Amendments selected for Stage 3**

The Bill will be considered in the following order—

Sections 1 to 120  
Schedules 1 to 5  
Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

**Section 31A**

**Murdo Fraser**

6  
In section 31A, page 15, line 36, at end insert <, or

( ) dated later than the date of conclusion of missives in the dealing to which the application for registration relates.>

**Section 111**

**Rhoda Grant**

1  
In section 111, page 60, line 25, at end insert—

<(1A) The Scottish Ministers must make regulations under subsection (1)(e) requiring the Keeper, on the application of such description of person as is specified in the rules, to enter in the proprietorship section of the title sheet such additional information in relation to the proprietor as is so specified.

(1B) The regulations mentioned in subsection (1A) may—

(a) specify descriptions of proprietors in relation to which—

(i) an application for the entry of additional information in the proprietorship section of the title sheet may not be made,

(ii) specified parts of the additional information normally required to be entered in the proprietorship section of the title sheet may be omitted,

(b) provide for the additional information to be entered in the proprietorship section of the title sheet only if such fee as is payable for entering it is paid (or arrangements satisfactory to the Keeper are made for payment of that fee),

(c) require proprietors to provide the Keeper (within such reasonable time and in such manner as may be specified by the Keeper) with such information as the Keeper considers is reasonably required to enable the Keeper to comply with the requirement imposed by the regulations.>
Section 119

Fergus Ewing
2 In section 119, page 62, line 22, leave out <110> and insert <110(1)>

Fergus Ewing
3 In section 119, page 62, line 29, after <9> insert <(other than sections 52(4) and 61)>

Fergus Ewing
4 In section 119, page 62, line 30, leave out <103> and insert <102>

Fergus Ewing
5 In section 119, page 62, line 32, at end insert—
   <( ) section 110(2),>

Schedule 5

Murdo Fraser
7 In schedule 5, page 83, line 3, at end insert—
   <( ) after fourth “security” insert “notwithstanding any error, defect or irregularity relating to the sale or in any preliminary procedure thereto”,”>
Land Registration etc. (Scotland) Bill

Groupings of Amendments for Stage 3

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. In this case, the information provided consists solely of the list of groupings (that is, the order in which the amendments will be debated). The text of the amendments set out in the order in which they will be debated is not attached on this occasion as the debating order is the same as the order in which the amendments appear in the Marshalled List.

Groupings of amendments

Note: The time limit indicated is that set out in the timetabling motion to be considered by the Parliament before the Stage 3 proceedings begin. If that motion is agreed to, debate on the groups must be concluded by the time indicated, although the amendments in those groups may still be moved formally and disposed of later in the proceedings.

Group 1: Effect of registration of inhibitions
6

Group 2: Proprietorship section of title sheet: additional information
1

Group 3: Commencement: miscellaneous
2, 3, 4, 5

Group 4: Registration of disposition: effect on securities
7

Debate to end no later than 1 hour after proceedings begin
Note: (DT) signifies a decision taken at Decision Time.

**Business Motion:** Bruce Crawford, on behalf of the Parliamentary Bureau, moved S4M-03112—That the Parliament agrees that, during stage 3 of the Land Registration etc. (Scotland) Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limit indicated, that time limit being calculated from when the stage begins and excluding any periods when other business is under consideration or when a meeting of the Parliament is suspended (other than a suspension following the first division in the stage being called) or otherwise not in progress:

Groups 1 to 4: 1 hour.

The motion was agreed to.

**Land Registration etc. (Scotland) Bill - Stage 3:** The Bill was considered at Stage 3.

The following amendments were agreed to (without division): 2, 3, 4 and 5.

Amendment 1 was disagreed to (by division: For 37, Against 73, Abstentions 0)

The following amendments were moved and, with the agreement of the Parliament, withdrawn: 6 and 7.

**Land Registration etc. (Scotland) Bill - Stage 3:** The Minister for Energy, Enterprise and Tourism (Fergus Ewing) moved S4M-03070—That the Parliament agrees that the Land Registration etc. (Scotland) Bill be passed.

After debate, the motion was agreed to (DT).
Land Registration etc (Scotland)
Bill: Stage 3

09:40

The Presiding Officer (Tricia Marwick): The next item of business is stage 3 proceedings on the Land Registration etc (Scotland) Bill. In dealing with the amendments, members should have before them the bill as amended at stage 2, which is SP bill 6A, the marshalled list, which is SP bill 6A-ML, and the groupings, which is SP bill 6A-G.

The division bell will sound and proceedings will be suspended for five minutes for the first division of the morning. The period of voting for the first division will be 30 seconds. Thereafter, I will allow a voting period of one minute for the first division after a debate.

Members who wish to speak in the debate on any group of amendments should press their request-to-speak button as soon as possible after I call the group.

Members should now refer to the marshalled list of amendments.

Section 31A—References to certain entries in the Register of Inhibitions

The Presiding Officer: Group 1 is on effective registration. Amendment 6, in the name of Murdo Fraser, is the only amendment in the group.

Murdo Fraser (Mid Scotland and Fife) (Con): I start by declaring my interest as a member of the Law Society of Scotland. Amendment 6 and amendment 7, which is also in my name, originate with the Law Society. They do not make any political points but rather seek to address a problem that has arisen because the practice of the keeper of the registers of Scotland is out of step with the established understanding of Scots property law.

As members will be aware, an inhibition is a charge that is registered against a property that means that it cannot be sold without the creditor being repaid. It has always been understood in Scots property law that an inhibition would not be effective if it was registered after the date of completion of missives for the sale. That is because the conclusion of missives is in effect the creation of a contract. The subsequent grant of a disposition of the property by the seller is therefore, in effect, an involuntary act. That understanding of the law is confirmed by Professor George Gretton in his seminal text book, “The Law of Inhibition and Adjudication”.

Unfortunately, some confusion was caused by section 160 of the Bankruptcy and Diligence etc
(Scotland) Act 2007, which has led the keeper to have a policy of excluding indemnity in land certificates that have been issued to a purchaser where an inhibition has been registered against the seller after missives have been concluded. That has caused problems for purchasers in that situation and their lenders.

Amendment 6 seeks to clarify that section 160 of the 2007 act does not alter the common-law position. Accordingly, inhibitions registered against the seller after missives are concluded remain ineffective, as the seller is already contractually bound to dispose of the property. That will allow the keeper to change the current policy, which is causing difficulties for purchasers and inaccuracies in the land register.

It is important to stress that no one will lose if amendment 6 is agreed to, as the holders of inhibitions would be in no worse a position than they were previously. However, the purchaser will get a clear land certificate, instead of potentially having to face an application to the Lands Tribunal for Scotland to achieve that result, which is the remedy that is currently available. As well as the support of the Law Society of Scotland, the amendment has the support of the Council of Mortgage Lenders in Scotland.

I have pleasure in moving amendment 6.

09:45

The Minister for Energy, Enterprise and Tourism (Fergus Ewing): I, too, am a member of the Law Society of Scotland, albeit as a non-practising solicitor.

Amendment 6 would have the effect of barring the keeper from reflecting in the title sheet, when registering a disposition, an inhibition dated later than the date on which the missives were concluded.

Murdo Fraser said that the amendment is necessary because of the problem created by section 160 of the 2007 act. The issue is whether section 160 replaces the common-law rule that an inhibition strikes only at voluntary dealings with the inhibited land by a debtor. A sale by a debtor under missives that were concluded before an inhibition was registered is not a voluntary dealing and so is not affected by the inhibition. To be fair, I think that Mr Fraser made that point. However, the amendment does not affect or clarify whether such an inhibition is effective against the disposition. It simply instructs the keeper to act in a certain way, regardless of the underlying legal position.

One of the purposes of the bill is to bring registration law into line with property law by, for example, removing the complex structure of bijuralism created by the Land Registration (Scotland) Act 1979. Bijuralism is the term used by the Scottish Law Commission to describe the simultaneous application of two different systems of law: the special rules of registration of title and the ordinary rules of property law. Instead, the bill tries to simplify the position by requiring the land register, where possible, to reflect the property law position. Requiring the keeper to ignore certain inhibitions is undesirable, as it risks reintroducing the confusing principles of bijuralism that the bill seeks to eliminate.

In addition, I do not believe that amendment 6 will help conveyancers or those who use the land register for other purposes. Indeed, it may well hinder the conveyancing process. An inhibition or other entry in the register of inhibitions will be effective, or ineffective, as a matter of law, whether or not the keeper notes its existence on the title sheet. To make that change would go some way towards undermining one of the main purposes of the land register: that of keeping relevant information about the title on the title sheet where necessary. The place to deal with section 160 of the 2007 act is in a bill about diligence, not this bill.

Part 4 of the bill, on advance notices, already provides a practical solution to the issue that Murdo Fraser raises. As a result of section 58B, an advance notice will protect a named deed from, among other things, inhibitions entered in the register of inhibitions during the protected period. An advance notice granted on the conclusion of missives, or a day or two before, will protect the grantee from an inhibition registered before registration of the disposition for 35 days. A further advance notice may be used if the protected period is coming to an end. As such, the grantee of such a disposition will be protected by the advance notice without the uncertainty introduced by amendment 6.

However, I say to Mr Fraser that the Government will continue to monitor the issue. I respect the fact that the Law Society has raised the issue. I have given the technical arguments for why we do not think that amendment 6 is the correct way to deal with it and outlined how we believe that it can be dealt with through another route.

Annabel Goldie (West Scotland) (Con): I would like to put the issue beyond doubt. Is the minister confirming that, in the absence of amendment 6 being agreed to, innocent purchasers will continue to be in doubt—even after the conclusion of their missives—about whether and when they can get a clear title?

Fergus Ewing: I think that Annabel Goldie is asking me to speculate on what is in the mind of purchasers. I am not sure how I can answer that question. However, I can say that the law, as I
have set out, is fairly clear that an inhibition after the conclusion of missives would not vitiate the transaction, because inhibitions affect only voluntary grants, and therefore an inhibition after the conclusion of missives would not be effective. However, I cannot be expected to know what is in the mind of purchasers.

We will continue to work with the Law Society of Scotland. If it becomes clear that there is a continuing problem and that advance notices have not in practice removed any difficulties in this area, the Scottish Government will, as is appropriate, look for an opportunity to consider making appropriate provision in the law in this area in other legislation. Amending the bill is not the appropriate means of so doing.

For the reasons that I have outlined, I cannot support amendment 6 and ask Mr Fraser to withdraw it.

Murdo Fraser: I am grateful to the minister for his detailed response. He rather argued against himself, because he accepted and, I think, understood the point in law that I made about inhibitions being ineffective after the date of conclusion of missives, but he did not justify why the keeper’s practice does not reflect that understanding of Scots law.

Having said that, I welcome the minister’s assurance that he will work with the Law Society of Scotland to try to find a solution to the problems. In drafting the amendment, the Law Society took academic opinion from Professor Robert Rennie, who I am sure the minister will know is an expert on such matters.

In view of the minister’s assurance that he will try to find a way forward, and given that the amendment does not have the Government’s support, I ask to withdraw my amendment.

Amendment 6, by agreement, withdrawn.

Section 111—Land register rules

The Presiding Officer: Group 2 is on proprietorship section of title sheet: additional information. Amendment 1, in the name of Rhoda Grant, is the only amendment in the group.

Rhoda Grant (Highlands and Islands) (Lab): In speaking to my amendment, I make it clear that I believe that all land ownership in Scotland should be open and transparent. Knowledge of land ownership and beneficial ownership should be in the public domain.

I heard with interest what the Government said about my stage 2 amendments on the issue. The Government did not agree with those amendments because it was concerned about bureaucracy and increased staffing and cost requirements. Rather than amend the bill in the way that I previously proposed, I now seek to amend it in a practical way that I hope would deal with the problems that the lack of transparency causes.

Land in Scotland can be owned by offshore companies or trusts. That in itself does not cause a problem, unless such a landowner acts irresponsibly and refuses to enter into discussion with tenants and crofters. I have dealt with cases in which crofters and tenants wished to develop projects that would lead to jobs and an economic boost in their areas, but such projects fell because permission could not be obtained from landowners.

My amendment 1 would allow the Government to make regulations that would permit tenants and crofters to discover the true identity of landowners. The amendment is narrowly drawn, as not all landowners would be required to provide the information that is referred to.

If a company were publicly floated, it would be impossible to identify every shareholder. However, the names of the organisation’s decision makers would be publicly available and the company would be required to hold an annual general meeting. Those are mechanisms that a tenant could use to make contact. It would be allowable and desirable not to require such companies to give the information mentioned in the amendment.

The beneficial owners that I wish to be identified are those who abuse their position and hide behind offshore companies. The amendment is so narrowly drawn that it does not include all offshore companies and the like; it would cover only those in relation to which someone with an interest, such as a tenant, had applied to the keeper for information.

Amendment 1 is a simple amendment that would solve the problem, although it is a long way short of the amendment that I would have wished to lodge.

I move amendment 1.

Roderick Campbell (North East Fife) (SNP): I refer to my registered interest as a member of the Faculty of Advocates.

I have the disadvantage of not being a member of the Economy, Energy and Tourism Committee and not having heard the evidence, but I thought that the bill’s primary aim related to registering title and completing the existing land register. It is, of course, about title to land, not who might have a beneficial or financial interest, which is a much wider issue.

Amendment 1 seeks to amend section 111. I accept that the minister directed members to that section at stage 2, which might be considered a bit of an own goal. I am not convinced that we should tag on to that section something that is a great
deal more complicated than Rhoda Grant gives it credit for being.

In the case of a publicly owned company, interests would be likely to change frequently. Foreign companies might have diverse ownership structures, which would raise issues of property taxation and company law that are outwith conveyancing practice. I am not sure what evidence the committee has taken on the issues. Any such regulations may have an impact on the market for land, and proper expert evidence in that respect should be considered.

To my knowledge, there are no such requirements for land registration elsewhere in the United Kingdom, although Andy Wightman made certain critical comments to the committee in that regard.

There may also be unspecified costs on and expense for the keeper. I therefore strongly suggest that much more thought and consideration is required before we agree to such regulations being made, and that provision for themought not to be part and parcel of the bill at this time. I recommend that we reject amendment 1.

**Patrick Harvie (Glasgow) (Green):** The committee took evidence on the issue at stage 1 and considered a number of different options for addressing it at stage 2. Although there is something in what Roderick Campbell says, the recurring theme is that the criticisms of the bill are not so much about what is in it as what is not. The Government has made a policy decision not to address certain wider issues, which is part of the problem that the bill’s critics have with it.

I endorse some of Rhoda Grant’s comments and her amendment, and point out once more that paragraph 219 of the committee’s stage 1 report, which we agreed unanimously, states:

“We consider that the Scottish Government should reflect further on options for ensuring that the land registration system reduces the scope for tax evasion, tax avoidance and the use of tax havens, and that the Government should explain prior to Stage 2 what additional provisions can be included, whether in the Bill or otherwise, to achieve this objective.”

I am not sure that the Government has properly considered those options, and I am concerned that it seems to continue to consider the use of tax havens in particular as unproblematic and as something that it has no responsibility to address. I accept that we cannot control the tax system and define what tax havens are, but we can use other means to create barriers to the exploitation of those immoral loopholes, and I regret that we are not taking the opportunity to do so in the bill.

**Ken Macintosh (Eastwood) (Lab):** I support amendment 1 in the name of my colleague Rhoda Grant, and echo the sentiments that Patrick Harvie expressed. There is no point in pretending that the bill has created widespread excitement among the general public, but the issue of beneficial ownership of land and the concerns about greater transparency around who owns land and property in Scotland have engaged slightly wider interest.

It is clear from the committee’s deliberations and findings in its stage 1 report that there was a lot of sympathy among committee members for the need for further measures to promote the accessibility and transparency of the register. I understand why the committee could not accept Andy Wightman’s suggestions at stage 2, but I believe that Rhoda Grant has come up with an alternative and fairly tightly drawn amendment that would provide further information on proprietors, which I hope the Scottish Government is minded to accept.

**Rob Gibson (Caithness, Sutherland and Ross) (SNP):** Amendment 1 aims to reveal the beneficial owners of land, which is a laudable aim if unforeseen consequences are avoided, and if it adds to the effective work of the keeper of the register in carrying out the duties that the bill delivers to him, at an acceptable cost to the country.

Members will be aware of the difficulties in the area of farming payments. The European Union has precluded ministers from revealing the names of individual recipients; only companies can be revealed. There is therefore a problem with revealing who gets such money.

We might want to address that question in another way, and members on all sides of the chamber might wish changes to be made in that regard. That is a fact. However, amendment 1 is more of the heart than the head. The case has not been made for the proposals—indeed, section 111(1) of the bill allows Scottish ministers to make specific land register rules. For example, section 111(1)(e) states that rules can be made

“requiring the Keeper to enter in the title sheet record such information as may be specified in the rules or authorising or requiring the Keeper to enter in that record such rights or obligations as may be so specified”.

Amendment 1 is therefore not necessary. I encourage Rhoda Grant to join us in deciding what the aims of land reform should be, rather than making imperfect amendments to a limited land registration bill that relate to beneficial ownership.

10:00

**Fergus Ewing:** I thank members for their contributions to this debate on an issue that was debated at great length during stage 2.
Rhoda Grant’s amendment 1 is similar to amendments that she lodged at stage 2, which the committee rejected. I understand the sentiments behind amendment 1, but it is as unworkable and undesirable as I suggested that her stage 2 amendments were. I will say why that is the case.

The land register is, of course, open and transparent and shows who owns land in Scotland, as does the register of sasines, albeit not in the same modernised, map-based form. The land register is for registering titles. It allows for the creation of real rights in land and publicises key information that allows the conveyancing process to operate. I reminded myself this morning that a body no less august than the United Nations commended the importance of countries having a land register for economic development purposes. Such a register is important so that trade can be conducted and securities over land can be created. I am sure that members will recall that that is stated in the bill’s policy memorandum. The purpose of the land register is not to allow every piece of information relating to an area of land or its owner to be public knowledge. Its primary purpose is to allow trade to be conducted, property rights to be acquired and economic development to be pursued.

I think that amendment 1 is intended to allow certain as yet unspecified extra information to be entered on a title sheet at the request of a third party with no interest at all in the land, but it does not specify in any way whatsoever what that information would be. As Rob Gibson correctly pointed out, section 111(1)(e) already provides for the keeper to require information to be provided on the title sheet.

The result of the amendment would be a disincentive to people buying and selling land in Scotland, and it could add quite considerable costs for people who use the land register. In other words, it would put up the costs of buying or selling property in Scotland. I respectfully submit that that is the very last thing that we would wish to do at a time when it is very difficult for first-time buyers to get into the property market.

During the previous stages of the bill, we debated the importance of the completion of the land register. In a later speech, I will outline the significant progress that we will make towards that end as a result of the bill. I mention that because, if the keeper were required to do all the extra work of an unspecified nature to enter on the title sheet details of the shareholdings of every property owned in Scotland and to keep track of that—I presume that that would be on a daily basis, as shareholdings are transacted on a daily basis—no matter how that was dealt with, there would be an additional burden. That burden would be imposed on the keeper’s staff at a time when the Parliament will, I hope, support the principle that we want the keeper to extend the land register to cover as many properties in Scotland as possible and to focus the resources of their excellent staff on that task rather than on unspecified tasks that would confer very little, if any, real benefit.

I understand and respect members’ sentiments and confirm that we looked carefully at options that were theoretically available to us. However, for the reasons that I have given, I cannot support amendment 1, and I respectfully ask Rhoda Grant to seek to withdraw it.

Rhoda Grant: I wind up with a degree of concern because my amendment has been misrepresented. The minister said that it would lead to higher costs. It would not, because it is narrowly drawn and it leaves many powers to the minister to use in coming forward with subordinate legislation on the practicalities of how the proposal would work.

Unlike the provision in section 111, which the minister says does the same thing, the amendment is not blanket legislation. It would require certain companies to give information at the request of certain interested parties. Those interested parties could be Her Majesty’s Revenue and Customs, in the case of tax evasion, or they could be tenants, crofters or neighbours. The provision could be so narrowly drawn that there would be perhaps one or two occurrences of its ever being used. It would not create a new bureaucracy or impose additional costs. Indeed, if HMRC made a request, it might save the public purse a huge amount of money.

Another misconception is that there would be a need to list the names and addresses of all shareholders. That would not be the case. When such information was publicly known and available, that type of company could be excluded. The amendment would not lead to huge bureaucracy and it would not be expensive.

Rob Gibson said that amendment 1 was more about heart than head. As I said, if this was about heart I would be taking forward a totally different amendment. This is about head—it is about having a practical solution to a difficult problem that occurs every day. We need to ensure that loopholes are closed and that is what amendment 1 does.

The amendment does not create a bureaucracy, unlike the provision in section 111. The minister argues that that provision does the same thing as amendment 1—I argue that it does not. The amendment says that ministers “must make regulations”; section 111 allows ministers to make regulations at their own behest if they so wish. Section 111 also ensures that every property will be subject to those regulations and that anyone
can request the information. The amendment narrows that down to cover only certain types of property ownership and certain types of interested people.

I press amendment 1.

**The Deputy Presiding Officer (John Scott):** The question is, that amendment 1 be agreed to. Are we all agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division. As this is the first division at stage 3, I suspend the meeting for five minutes.

10:07

**Meeting suspended.**

10:12

**On resuming—**

**The Deputy Presiding Officer:** We now proceed with the division on amendment 1.

This is a 30-second division, and members should cast their votes now. However, before they do, they should make sure that their cards are fully inserted into their consoles; we have noted that some are not fully pressed in.

**For**

Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Edie, Helen (Cowdenbeath) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Smith, Drew (Glasgow) (Lab)

**Against**

Smith, Elaine (Coatbridge and Chryston) (Lab)
Stewart, David (Highlands and Islands) (Lab)

Adam, Brian (Aberdeen Donside) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadin, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derick (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (North East Scotland) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Amendment 1 disagreed to.

Section 119—Commencement

The Deputy Presiding Officer: Amendment 2, in the name of the minister, is grouped with amendments 3 to 5.

Fergus Ewing: These minor and technical amendments are all related to commencement. Amendments 2 and 5 form a pair and seek to split the commencement of section 110’s subsections (1) and (2). Currently, all of section 110 will come into force on the day after royal assent. That is usual practice for definitions of the type that is contained in section 110(1), and amendment 2 seeks to ensure that that subsection can be commenced on that day.

However, as section 110(2) is not merely a definition, but a gloss for construing references to “registering” elsewhere on the statute book, it might have an effect if commenced on the day after royal assent. Accordingly, amendment 5 seeks to ensure that that subsection can be commenced on that day.

Amendments 3 and 4 seek to ensure that certain delegated powers in the bill can be commenced by order so as to be exercised before the bill’s main provisions come into force on the designated day. It is important that ministers have that ability to ensure that the necessary implementation work can be undertaken ahead of the main parts of the bill coming into force.

I move amendment 2.

Amendment 2 agreed to.

Amendments 3 to 5 moved—[Fergus Ewing]—and agreed to.

Schedule 5—Minor and consequential modifications

The Deputy Presiding Officer: We move to group 4. Amendment 7, in the name of Murdo Fraser, is the only amendment in the group.

Murdo Fraser: Amendment 7 is another that has originated with the Law Society of Scotland and, like amendment 6, it seeks to clarify the law to deal with a situation in which the keeper’s policy causes purchasers undue problems. It seeks to provide clarification that section 26 of the Conveyancing and Feudal Reform (Scotland) Act 1970 will operate to remove from the title sheet any remaining prior ranking or pari passu securities following a sale of repossession, even if the calling-up procedure did not comply with the interpretation of the statutory requirements in the Supreme Court decision on RBS v Wilson.

In Scots property law, the established position has always been that where a standard security is called up and the property is repossessed, then subsequently sold by the first security holder, subsequent or pari passu securities are treated as having been automatically discharged.

However, the keeper’s current policy when processing applications for registration of a dealing that is affected by the decision in RBS v Wilson is not to remove from the relevant title sheet any additional securities on the property that rank as pari passu with, or postponed to, the security that has been called up, unless they have been formally discharged.

It is also the keeper’s policy to expressly exclude indemnity in respect of loss arising from rectification to delete such securities, or from the subjects being found not have been disburdened of them under section 26 of the 1970 act.

The consequence of that policy is that land and charge certificates that are issued to the purchasers in such circumstances indicate that the title is still subject to pari passu or postponed securities granted by the previous owner, and that such securities rank ahead of any new security that is granted by the purchaser, for example for a mortgage. That situation causes serious difficulty to purchasers, lenders and solicitors.

There is academic opinion that states that the keeper’s policy is incorrect, but if amendment 7 were to be agreed to, it would put the matter beyond doubt and would allow the keeper to change policy to ensure that the purchasers of repossessed properties are not put at a disadvantage.

Amendment 7 has the support not only of the Law Society of Scotland but of the Council of Mortgage Lenders, which is keen that the issue be resolved. I also record that if a property that has been repossessed is sold, any excess sum that is left over once the first security holder has been paid will be accounted for by the second, or subsequent, security holder. As a result of that, no individual or institution would suffer any loss.
Amendment 7 will represent a real benefit to many purchasers who are caught in this unfortunate situation as a result of the RBS v Wilson judgment, which suggests that the keeper’s practice is unfortunately out of step with general understanding of Scotland’s property law.

I have pleasure in moving amendment 7.

**Fergus Ewing:** I fully understand the difficulty that has arisen for conveyancers, lenders and home owners as a result of the clarification of the procedures in relation to power of sale by the Supreme Court in the case of RBS v Wilson.

However, I cannot see quite how amendment 7 would help to resolve the mischief that is at the root of the issue. Conveyancers and lenders are now fully aware of the decision in RBS v Wilson and have, I understand, amended their procedures accordingly; practitioners are to be praised for their swift action. As a result, amendment 7 is unnecessary because proper procedures are now clear and are being followed.

There remains a possible difficulty for a relatively small number of cases that were completed or were on-going at the time of RBS v Wilson. Technically, the change that amendment 7 proposes may not be a retrospective change to the law, but it is not clear how it would work. Crucially, it could remove the rights of those who might be adversely affected by the subsequent sale to seek redress in line with their rights as declared by the Supreme Court.

If amendment 7 is intended merely to clarify the law, it appears to the Government that it would go much further than is necessary. The difficulty in the existing cases is limited to the failure to issue a calling-up notice. Amendment 7 would operate on any and all failures by the creditor to follow the law on calling-up procedure. That would be a quite extraordinary result, and the potential for unintended consequences is considerable. In the Home Owner and Debtor Protection (Scotland) Act 2010, Parliament passed legislation that is designed to offer protection to home owners, which is absolutely crucial in the current climate. Therefore, I cannot support an amendment that risks cutting across such protection.

**Murdo Fraser:** The minister fairly identified that there is a problem that is a result of the keeper’s interpretation of the consequences of the RBS v Wilson case, which I believe affects the purchasers of several hundred properties. Can the minister assure me that he and his officials will work with the Law Society of Scotland and with the keeper’s office to find a resolution to the difficulties that have been presented to that group of individuals?

**Fergus Ewing:** Yes—I will be pleased to do that. Murdo Fraser has quite properly brought to Parliament a matter of particular significance and importance to a number of people in Scotland who may be affected by the RBS v Wilson case. I do not think that a legislative solution is appropriate, but I will take up Mr Fraser’s suggestion. In discussions with my officials yesterday evening, I was minded to act in such a way. I have instructed my officials to work closely and promptly with the Law Society and others, including the Council of Mortgage of Lenders, to see what assistance, if any, the Scottish Government can provide to progress the relatively small number of cases that are affected. I am happy to provide that assurance to Mr Fraser and Parliament.

I cannot support amendment 7 for the reasons that I have outlined and which I hope Murdo Fraser will accept, so I respectfully ask him to withdraw it.

**Murdo Fraser:** I very much welcome the assurance that the minister has given me. The purpose of amendment 7 was to resolve a difficulty that has arisen because of the keeper’s practice. The minister has fairly indicated that he and his officials will work with the keeper and the Law Society to find an alternative way of resolving the difficulty. In view of that, I do not intend to press amendment 7.

**Amendment 7, by agreement, withdrawn.**

**The Deputy Presiding Officer:** That ends consideration of amendments.
Land Registration etc (Scotland) Bill

The Deputy Presiding Officer (John Scott): The next item of business is a debate on motion S4M-03070, in the name of Fergus Ewing, on the Land Registration etc (Scotland) Bill.

As the bill contains provisions that require Crown consent, I call on John Swinney to signify consent under rule 9.11 of the standing orders.

The Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney): For the purposes of rule 9.11 of the standing orders, I advise Parliament that Her Majesty, having been informed of the purport of the Land Registration etc (Scotland) Bill, has consented to place her prerogative and interest, so far as they are affected by the bill, at the disposal of Parliament for the purposes of the bill.

The Deputy Presiding Officer: Thank you. We now move to the debate. I call Fergus Ewing to speak to and move the motion. You have a generous 10 minutes, minister.

10:25

The Minister for Energy, Enterprise and Tourism (Fergus Ewing): Thank you for your generosity, Presiding Officer.

I am pleased to open the stage 3 debate on the Land Registration etc (Scotland) Bill. First, I thank the members of the Economy, Energy and Tourism Committee, the Subordinate Legislation Committee, and the Finance Committee for their hard work and careful scrutiny of what is, in essence, a technical bill. I also thank all the organisations and individuals who provided oral and written evidence to the committee, and briefings for members on the bill’s provisions.

I also pay tribute to the Scottish Law Commission for the work that it has carried out since 2002 in developing most of the policies that appear in the bill. I particularly thank the officials, especially the keeper of the registers of Scotland and her staff—many of whom I had the pleasure of meeting earlier this week—for the hard work and dedication that has gone into the preparation of the bill.

The bill seeks to provide the people of Scotland with a land register that is fit for the 21st century. It will place on a statutory footing many of the sound policies and practices that have been developed by Registers of Scotland since the introduction of the land register in 1981. I remember that event because it occurred towards the end of my apprenticeship.

The bill will also provide for a fairer and more balanced system of land registration. It is recognised internationally that an efficient and secure system of land and property registration is fundamental to the operation of the economy. Registers of Scotland and the land register are a key part of that process and they support the Scottish economy by underpinning a property market that can be worth more than £24 billion each year. Registers of Scotland sets the standard in how information about land and property is captured, held, analysed and made available to the people of Scotland. I believe that emerging evidence shows that our system of land registration is increasingly of interest to other countries with whom—as I learned earlier this week—the keeper’s staff are regularly in contact. That is an accolade to the quality of our land register and our system.

Recent evidence of the importance of the role of the land register is shown by the purchase of Grangemouth oil refinery. The new owner, which is based outside Scotland, sought the surety of having title held on the land register. I am informed that, hitherto, the oil refinery’s title was based on a large number of farms that existed before the refinery was set up. The new owners sought a land-register based title and Registers of Scotland carried out that voluntary registration rapidly so that the transfer of ownership could be completed.

I mention that because it is the kind of act that one does not read about in the newspapers, but it plays an important part in helping to promote economic development in Scotland.

By bringing registration law more closely into line with general property law, the bill addresses legal tensions that have caused confusion and uncertainty for property owners since the introduction of the land register. The changes will ensure that the land register continues to underpin the Scottish economy.

The bill also provides the legal framework that will allow the land register to be completed. There has been much debate in Parliament on this topic, including in this morning’s proceedings. I note and understand the eagerness of members of all parties that the land register be completed as soon as possible. So far, about 55 per cent of titles and about 22 per cent of the land mass of Scotland have been registered. The keeper is keen to expand coverage of the land register and plans are being put in place to take advantage of the power that is contained in the bill for keeper-induced registration in order to expand the title coverage of the land register.

Research that has been carried out by the keeper indicates that some 700,000 properties, for which her staff have carried out some form of preliminary title examination, are not yet on the
Murdo Fraser (Mid Scotland and Fife) (Con) rose—

Patrick Harvie (Glasgow) (Green) rose—

Murdo Fraser: I may have beaten Mr Harvie to asking the same question.

The minister hopes that 80 per cent of properties will be registered by 2017. What proportion of the land mass of Scotland does that represent?

Fergus Ewing: I suspected that members might be interested in the answer to that question, so I consulted officials about it yesterday evening. Most of the 700,000 properties that we anticipate would be appropriate subjects of keeper-induced registrations are properties such as the last flat in a tenement block of six flats—in other words, the flat that is preventing the transfer of the whole block to the land register—or the last house in a modern housing estate of 30 or 40 houses. In such cases, completion of the land register requires removal of the whole estate or tenement from the register of sasines. They are the kinds of property, by and large, for which the keeper anticipates that keeper-induced registration will be used in transferring properties from the register of sasines to the land register.

Let us not forget—I know that Mr Fraser would never forget this—that transferring properties to the land register means that processes will be simpler, clearer and cheaper. Those are three pretty good benefits.

Patrick Harvie rose—

Fergus Ewing: I do not know whether Mr Fraser and Mr Harvie have the same question to ask; it would be a parliamentary first. Let me not be accused of dodging any question in this chamber. I will come to Mr Harvie in a moment: I have not quite finished with Mr Fraser.

We do not expect coverage by area to advance as significantly. The answer is that it is likely to increase by a few percentage points. Nonetheless, moving from 55 per cent to 80 per cent of properties would be fairly solid and impressive progress.

Patrick Harvie: My question is related. The minister is talking about moving from 55 per cent to 80 per cent of titles being covered but says that there is likely to be only a very small increase in the overall proportion of Scotland’s land that is included on the land register. He therefore has another question to answer. Under the voluntary approach that he is taking, when does he expect the principal policy objective of the bill, which is stated as being completion of the land register, to take place?

Fergus Ewing: We have made it clear that the process cannot happen overnight and will take many years to complete. Mr Harvie is entitled to suggest alternative approaches. Any alternative approach would involve compulsion and additional costs. We feel that that approach would not have been correct—especially in a recession, when the imposition of additional costs is not justifiable and would likely have caused considerable outcry, on the basis that the money might be used for better purposes, such as the creation of more employment.

We think that the voluntary approach is correct, and I inform Parliament that it is working. It is working in relation to the Forestry Commission, which has excellent plans to include much more of what it owns on the land register, which will, over time, be a significant step in respect of the proportion of land that is shown on the register. I encourage public sector bodies, including local authorities, to follow the Forestry Commission’s example. I am sure that many public bodies are considering that.

Jenny Marra (North East Scotland) (Lab): Given that our system of conveyancing is based on mutual trust and professional obligation, what consideration was given to safeguards against criminal and fraudulent activity? What guarantees, over and above the master policy, were considered?

Fergus Ewing: The point of land registration legislation is to provide a state guarantee to title; the bill extends that protection. The protection of the public is also secured by the Solicitors (Scotland) Act 1980 and by the requirement that every solicitor have professional indemnity and fidelity insurance. The protections are substantial.

To address Jenny Marra’s question directly, I will comment on the offence provision, which has caused controversy, but which we believe is absolutely essential. The level of fraud in Britain is extremely serious; it rose last year from £33,000 million to £73,000 million. In response to correspondence from me, the Law Society of
Scotland has indicated that, sadly, there have been instances of mortgage fraud. The Scottish Crime and Drug Enforcement Agency has identified no fewer than 291 individuals—including lawyers, financiers, security experts and accountants—who are professional facilitators and specialists who are providing advice and support to organised crime groups. The problem is serious, which is why the offence provision is in the bill.

I acknowledge that the Law Society of Scotland has concerns about the provision, but we addressed some of those concerns at stage 2. We believe that it is absolutely right that Parliament tackles fraud in every possible way. We are following the advice of the Lord Advocate—as given clearly to the Economy, Energy and Tourism Committee—and we believe that the measure will be effective.

There are matters that I have not covered, but with your forbearance Presiding Officer, I might have the opportunity to do so in my closing speech.

I move,

That the Parliament agrees that the Land Registration etc. (Scotland) Bill be passed.

10:38

Ken Macintosh (Eastwood) (Lab): As I suspect all members will do today, I begin by welcoming the reforms in the Land Registration etc (Scotland) Bill and the improvements that we hope the bill will introduce to the system of land registration in Scotland. Our country has one of the oldest public registers of property and land, which dates back almost exactly 400 years to 1617 and the establishment of the register of sasines, which is the original national register of property deeds. I was slightly worried when Mr Ewing seemed to suggest that he can remember the old system. A replacement for the register of sasines was introduced in 1979 to replace the register of sasines. It was gradually brought into operation and, since 2003, it has applied across the country. In fact, I note that Renfrewshire, in my constituency, was first to use the new register. Unlike the old register of sasines, which often only contained a written description of the legal boundaries to a property or a poor quality plan, the land register describes the property by reference to the relevant part of an Ordnance Survey map.

The land register is a register of title, not of deeds. For example, on the one hand, a person who buys land on a register of deed has to verify the seller’s legal title by examining the sequence of prior deeds, which is a complex task. On the other, if the land is on a register of title, it is only necessary to check that the seller is the person who is listed on the register as the owner. I note that the documentation accompanying the bill stated that that job could therefore be carried out by a paralegal, rather than by a trained lawyer, which means that the process should be much cheaper for all involved. I am not sure whether that saving has been necessarily passed on yet, but I look forward to that happening under the new system.

There have been big improvements, but until now a number of concerns have remained about operation of the new land register, which the bill will address. The main concern is that, despite the register’s having been operating for more than three decades, only 55 per cent of Scotland’s more than 2 million property titles have been switched to the new register. In terms of area, that represents only 21 per cent of the land mass of Scotland. As members know, that is because land belonging to the Crown, local authorities, the churches, and some of the larger estates is rarely sold.

The bill addresses that concern and the other key weaknesses with four specific measures that are designed to ensure the eventual transfer of all property in Scotland to the land register, and the subsequent closure of the register of sasines.

The bill improves the law relating to rectification of inaccuracies in the land register, and operation of the state guarantee of title, which was criticised for being legally complex. The bill rebalances the law towards the true owner of the affected property, rather than the person who acquires the property.

There are a number of reasons why the bill is necessary and welcome. An effective system of land registration is important to any modern economy. To give an idea of that importance, it is worth mentioning that the Scottish property market, including mortgages and remortgages, was worth more than £24 billion in 2009-10.

The new land register of Scotland was introduced in 1979 to replace the register of sasines. It was gradually brought into operation and, since 2003, it has applied across the country. In fact, I note that Renfrewshire, in my constituency, was first to use the new register. Unlike the old register of sasines, which often only contained a written description of the legal boundaries to a property or a poor quality plan, the land register describes the property by reference to the relevant part of an Ordnance Survey map.

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However, the bill does not do everything. There has been criticism of the mapping system that is operated by Registers of Scotland. That issue has not been addressed by the bill, although I note that Registers of Scotland has set up a mapping forum with the Law Society of Scotland and other interested bodies.

I confess that I found the bill—or, at least, the informed briefings that have accompanied its parliamentary passage—to be very educational. I admit that I was one of those who thought that, following the initial missives, the exchange of keys to a property, accompanying the settlement, marked the transfer of ownership. I am reliably informed that ownership transfers in law only when it is registered in the land register. Of course, there is typically a delay between receipt of an application and its registration. Part 4 of the bill introduces a new system of advance notices that are designed to protect the buyer of the property from the risks that he or she is exposed to in the short gap between handing over the purchase price and receiving legal title.

The only major disagreement or, rather, disappointment with the bill is that it misses the opportunity to move the land reform agenda on apace. The Minister for Energy, Enterprise and Tourism made the point at Stage 1 that the bill is not about reform of the law on property, but about reform of the law on registration of property. The trouble with that argument is that there are issues that are to do with registration alone and, in particular, to do with access to information and transparency, which would help communities across Scotland.

The minister, in rejecting Rhoda Grant’s amendment 1, suggested that the land register is sufficiently open and transparent. He argued that the point of the register is simply to establish or validate ownership. The argument that I and many others have is that the problem in wider land reform in Scotland share, is that there are still plenty of murky practices and a great deal of obscurity about who owns land and property. The best way for us to end that unwelcome state of affairs is simply to shine a light on the matter. People and companies who operate openly and are potentially subject to wider public scrutiny are far more likely to act in the wider public interest than in self-interest.

I believe that we have a choice: we can simply allow the land register to be used by any and all property owners to secure their own interests, or we can use the register as a tool of public policy that is designed to encourage beneficial ownership. I am disappointed that we have not taken the opportunity to pursue the latter option, and I hope that the Parliament will have the opportunity to come back to and address that issue.

As many others are, I am particularly anxious that people in urban areas and not just those who live in rural Scotland become more aware of their environment and exercise greater responsibility over that space. How many of us as constituency MSPs have been approached over the years about land ownership issues? Such issues include, for example, local eyesores or patches of ground for which no one seems to claim ownership and which become magnets for refuse and litter. Finding out who owns and is responsible for maintaining land in Scotland should be simpler and more straightforward. On that point, I am pleased to see the measures in part 10 of the bill that will make use of electronic documents easier.

Despite our achievements early on in this Parliament in abolishing feudal tenure, guaranteeing the right to roam and introducing the right for some communities to buy their land, Scotland still enjoys the most inequitable distribution of land ownership in Europe. I believe that there is a clear majority in the Scottish Parliament in support of further land reform, so I am anxious because today is a bit of a missed opportunity. Having said that, I am pleased to welcome the measures that the Land Registration etc (Scotland) Bill will introduce and I hope that they make a marked and welcome difference to our 400-year-old system of public land and property registration.

10:46

**Murdo Fraser (Mid Scotland and Fife) (Con):** I declare my interests as a member of the Law Society of Scotland and the convener of the Economy, Energy and Tourism Committee, which was responsible for stage 1 scrutiny of the bill.

I acknowledge that many of the issues that the bill deals with are highly technical. Even though I have a background in property law, on more than one occasion I struggled to grapple with some of what we had to deal with. I therefore pay tribute to all my fellow committee members, some of whom are in the chamber today and none of whom had, unlike me, a professional background in law. Nevertheless, they all did an excellent job in producing the stage 1 report and dealing with the bill at stage 2. I put on record my thanks to our team of clerks, to SPICe and to our committee adviser, Professor Kenneth Reid.

It is fair to say that this has not been the most exciting piece of legislation that we have ever dealt with, nor is it the most politically controversial. The bill represents a much-needed update to, and extension of, existing legislation. As
the minister pointed out, the bill will allow faster completion of a land register and eventually the closure of the register of sasines so that we will not have two parallel systems of title registration in Scotland, as we have had since 1979. As the minister pointed out, that should mean a simpler process for the conveyancing of property.

The minister also said that the legislation would lead to a cheaper system. I know from my experience of lawyers—I am sure that the minister would agree—that while that might be true in theory, it remains to be seen whether it will necessarily be the case in practice. As many people involved in the legal profession know, most of the costs that are involved in property transactions are around not the title transfer, but the conclusion of the missives and negotiating the terms of the sale. The transfer of the title represents a very small part of the work involved in a property transaction. However, I share the minister’s high hopes that the bill will lead in due course to a reduction in costs for the consumer.

The bill permits modernisation of procedure, such as an acceleration of the move to e-documents. Ken Macintosh made a fair point about the increasing use of new technology. It is something of an irony that we can now go on the internet and look up Google Earth or similar websites and see an excellent aerial view of virtually any property in Scotland. We have not really kept up with that technology when it comes to producing title documents.

The committee was concerned about a number of issues, which it addressed in its stage 1 report. Probably the most controversial of those was around section 108, which is intended to tackle mortgage fraud. The Law Society of Scotland was extremely concerned that the section was too broad in its scope. I lodged a number of amendments at stage 2 to try to address that but, unfortunately, I was unable to attract much support for them from my committee members. Despite that, there are still concerns about how the provisions in section 108 will operate in practice. I hope that the minister will ensure that there is very close engagement with the Law Society on how the provisions will be implemented. It is important that the new offence will not mean that those who simply make a genuine mistake will find themselves on the wrong side of the law.

Another issue that was dealt with at stage 2 was the settlement of boundary disputes. From their casework and surgeries, all members will be familiar with disputes over property boundaries, in which just a few feet or inches can cause a great deal of heat between the parties involved. At present, the only way in which to resolve such issues is through the courts, which is a very expensive way of addressing the matter. At stage 1, the committee recommended that the Lands Tribunal for Scotland should have a greater role in resolving such disputes, in an effort to reduce costs to the parties involved. Mike MacKenzie lodged an amendment at stage 2 to that effect, which was agreed unanimously. That is a great improvement to the bill and will mean that, in the future, we will have greater scope for using the Lands Tribunal to settle such matters. There will, however, be a resourcing issue for the Lands Tribunal, and I hope that the Scottish Government will consider that.

Earlier this morning, I spoke to two amendments originating from the Law Society, which tried to deal with situations in which the keeper’s practice has become out of step with the established understanding of property law. Although I did not press those amendments to a vote, they deal with issues of serious concern and I welcome the minister’s assurance in both cases that he and his officials will consider how those matters might be resolved. There is also concern among some in the legal profession about the keeper’s approach to a number of similar issues. There is a perception that she is a law unto herself in the way in which she interprets the law and devises her practice accordingly. The keeper will obtain her own legal opinion on matters and refuses to share that with others. I understand that that is the policy across the Government as a whole. Nevertheless, when legal opinion from learned professors of conveyancing takes a different view it is disappointing that the keeper appears to be digging herself in on issues. I hope that we will see a more open approach in the future.

The bill will be welcomed not just by property lawyers, but by all those who have an interest in the ownership of Scotland’s land. With a complete land register, eventually, it will be far easier to identify who owns Scotland, which will no doubt make my good friend Andy Wightman very happy. However, the committee was not able to support at stage 2 amendments to change substantially the law on prescription, in which I know that he has a particular interest, so perhaps his joy will be a little muted.

Despite our minor misgivings, this is an important, welcome and necessary piece of law reform, and the Scottish Conservatives will be pleased to support the bill at stage 3 at decision time.

10:53

John Wilson (Central Scotland) (SNP): As deputy convener of the Economy, Energy and Tourism Committee, I sat through a number of evidence-gathering sessions and read a number of the written submissions that were made to the committee in its examination of the bill. The bill
builds on the previous legislation, which dates back to 1979. It attempts to bring a degree of modernity to the law and restates the law on the registration of rights in the land register.

It was clear to me and probably to other committee members that, since the introduction of the Land Registration (Scotland) Act 1979, progress on land registration has been uncomfortably slow. I welcome the minister’s statement today that the keeper hopes to have around 80 per cent of property titles registered by 2017. Nevertheless, there are still concerns regarding land registration and when we will see a complete land register of Scotland, which committee members made known at the committee. We attempted to get some dates or timetables into the bill towards which the keeper could work, and I am glad to hear from the minister that the keeper hopes to have the registration of land ownership and title up to 80 per cent by 2017. I welcome that advance.

One of the bill’s key objectives is to create the fastest possible method of efficiently completing land registration for the whole of Scotland, with sufficient safeguards being built in, in order to strengthen the overall process. There has been concern that the current procedure is overly bureaucratic and it has been argued that confidence needs to be developed, so the introduction of electronic conveyancing is a welcome move in developing new processes.

There is a human cost to these matters that needs to be reflected upon. I hope that the bill will go some way towards tackling disputes about land ownership and registration. As Murdo Fraser intimated, examples of disputes about land ownership and boundaries were brought to the committee during our evidence sessions, and members were able to give examples from their postbags of constituency inquiries that they have received regarding title and ownership of land and property. In some cases, new owners have found that they do not actually own the property that they thought they owned.

As I stated when the bill was debated in the chamber at stage 1, a key aspect of the proposals is the creation of a statutory offence of making a materially false or misleading statement to the keeper. I know that the minister and the Solicitor General for Scotland believe that that measure is a vital part of the bill as it will give them legal powers to deal with organised crime. The committee received a written submission from the Association of Chief Police Officers in Scotland that supports section 108 of the bill.

I recognise that there is a significant problem, and the bill attempts to address some of the concerns about the process that have been identified, particularly in relation to the tackling of fraud. The oral evidence that the Solicitor General, Lesley Thomson, gave to the committee, which was reflected in its stage 1 report, highlighted the importance of the creation of an offence to deal with organised crime.

I am aware that officials from the Crown Office and Procurator Fiscal Service and the Scottish Government met the Law Society of Scotland to discuss the scope of the offence in section 108. It is desirable that the Solicitor General ensures that there is regular dialogue with the Law Society on what further guidance and advice can be provided to solicitors once the bill has become law.

I welcome the stage 3 debate and the wide-ranging principles that are contained in the bill. I was glad to hear that the committee convener found our consideration of the bill an education. I think that all members of the committee found it an education, either as home owners or landowners. I thank all those who provided oral or written evidence to the committee. In particular, I thank Andy Wightman for his insight into the land ownership issues that arose in the debate. I also thank the committee clerks and SPICe for their support and assistance, as well as my colleagues on the committee for their work in enabling the bill to reach this stage of the legislative process.

10:58

John Park (Mid Scotland and Fife) (Lab): I echo the sentiments and words of John Wilson on the work that the committee clerks and other parliamentary staff did on the bill. The bill is technical in nature and a considerable amount of work went on behind the scenes to enable committee members to draw up our stage 1 report and scrutinise the bill as effectively as we could. I think that we did that.

Murdo Fraser said that the bill is not the most exciting piece of legislation that he has been involved in, but I actually found it quite exciting. That might be a reflection of how dull my life is, but I found it very interesting. We moved from debating the policy issues to coming up with proposals that will make a difference, and consideration of the bill was a worthwhile process for everyone who was involved.

I had not intended to say anything about section 108, but I note John Wilson’s suggestion that we should consider the concerns that were highlighted to the committee and ensure that the policy decisions that are taken address the practicalities and the concerns that people have. That suggestion is important, because we need to build confidence. Certainly, as someone without a legal background, I understand some of the commonsense concerns about section 108. John Wilson’s suggestions are valid and very important...
to help ensure that we get something that delivers what it was designed to do.

The minister said that the bill is about developing a land register that is fit for the 21st century. That is why the e-conveyancing and e-documents that we discussed are important. They will ensure that the land register reflects how people live their lives these days—how they perform various financial transactions and how they gather information predominantly from the internet. In that regard, there is a bit of catching up to do on how the bill may work. However, the provisions in the bill will ensure that there is confidence to develop electronic services such as e-conveyancing, to ensure that the bill makes a difference in that area.

Consumers, individuals and communities will be able to engage with the system in the same way that they can with many other organisations, for example in the financial services area. That is important. I have worked with community groups that try to identify people who own land, get involved in proposals and work to develop proposals in their areas that will make a difference to their communities. Such groups are hindered by the inability to access the information that they need, and it is important that the committee considered that in its scrutiny of the bill.

I hope that the Lands Tribunal proposal, which was agreed to at stage 2, will make a fundamental difference. With that in place, some of the issues that we read about daily or which, as Murdo Fraser said, we deal with in our constituency casework, will be able to be tackled in a way that is cost effective for people who may previously have been excluded. I have a concern on one issue, or rather a request for some clarity from the minister when he winds up. Obviously, some people are already in the dispute system, while others are on the cusp of that system. Regarding the policy development that will flow from the bill, it would be helpful to know the Scottish Government’s view on how to deal with those who may have problems retrospectively. I have a constituent in Newburgh with an on-going case who would find that helpful.

There is expertise out there, which helped the committee to form opinions. That expertise deserves some policy development, going forward from the bill, which reflects our aspirations and concerns. I hope that the process will deliver that.

11:03

Mike MacKenzie (Highlands and Islands) (SNP): I compliment my fellow members of the Economy, Energy and Tourism Committee for their considered and intelligent scrutiny of the bill, and the clerks, who provided their usual high standard of support. Most of all, I want to record a personal thanks to Professor Kenneth Reid, who provided us with specialist legal advice. It is a great tribute to him that he did so in a way that facilitated our understanding, as lay people, of some fairly technical issues with both humour and patience. I also thank the many witnesses who gave evidence, and the people who wrote to me and took an interest in the committee’s work.

We all agree that the bill’s general thrust and focus is to be welcomed. Completion of the land register is itself a worthy goal. Smoothing and rendering more efficient the processes that pertain to property transactions are equally worthy objectives. However, my concern throughout has been that, in our bid to complete the land register, we do not sacrifice quality for speed and that we recognise some of the problems of the system and attempt to deal with them, so far as we reasonably can.

I am therefore glad that Mr Ewing, the minister, engaged constructively with the committee and with the various stakeholders. He listened carefully and responded to suggestions for improvements to the bill when it was wise to do so. For example, in section 42, on prescriptive acquisitions, he reduced the period of abandonment of land from the originally proposed seven years. That is only one example of a practical and wise judgment being made when it had to be made.

A certain amount of idealism was displayed in the amendments that were lodged by some of my colleagues on the committee. Idealism, of course, is a fine thing and I am glad that the spirit of idealism is alive and well in the Parliament. However, we must never enforce our idealism when it will cause harm and difficulty, when ordinary people going about their business will be victims of that idealism, or when the practical difficulties far outweigh any benefits that the idealism might bring. I therefore hope that Mr Harvie and Ms Grant will understand why I felt unable to support their amendments.

However, even the best of systems can never be perfect. Despite the keeper’s reassurances that all was well, I felt that it was important that a more efficient and perhaps more cost-effective mechanism than the courts ought to be available for resolving mistakes or disputes. I was therefore glad to be able to lodge an amendment at stage 2 that will have the effect of allowing the Lands Tribunal to provide such a mechanism. The unanimous support that the amendment achieved in committee was due much more to the common sense of my colleagues and the compelling evidence that we had heard than to any persuasive ability on my part.

The bill has been much improved in its course through the Parliament. I have been pleased to
play my own small part in the process and I hope that members throughout the chamber will support the bill.

11:07

Patrick Harvie (Glasgow) (Green): I echo the thanks that have been expressed to my fellow members of the Economy, Energy and Tourism Committee, to our clerking team, to the officials who supported the process, to our adviser and to all our witnesses.

Murdo Fraser reminded us that he was the only lawyer on the committee and that gave him a perspective that, perhaps, a few of the rest of us found difficult to keep up with. He seems to have been on the receiving end of some rather cutting remarks about lawyers during recent committee meetings, so perhaps the rest of us should be grateful that we have been protected from those.

Whatever approach the Government took to the bill, there was bound to be a lot of technical content and a lot of expectation on members to deal with that. My regret, which I spoke about during the debate on Rhoda Grant’s amendment 1, is that the minister seems to regard this purely as a technical bill. Its weakness is in the policy content that is not there, rather than in what the Government has chosen to do.

Members may know that I drew most heavily on one witness in particular and I will cite him again. Andy Wightman’s written evidence to the committee pointed out that “This is the first time in the history of Scotland that a democratically-elected Scottish Parliament has considered the statutory basis for sanctioning who owns land in Scotland and providing the benefits that accrue to landowners with a recorded title. It is therefore vital that Parliament consider some wider questions of public interest that accompany the bill, its principal purpose is stated clearly: “Completion of the Land Register”.

However, to listen to the minister’s remarks, both in committee and today in the chamber, it would seem that the bill’s purpose is purely transactional and that it is, in fact, just about facilitating sales, protecting landowners’ interests and promoting economic development.

Questions about the wider public interest and about what the public gain from having an effective and modern land registration system have been missed. A number of those aspects were addressed in stage 1 discussions and in stage 2 amendments, and it became clear that the Government had decided that it was determined not to budge on those issues.

I will address the idea of including a target date for completing the land register. If we believe the assertion that the bill’s principal policy objective is completing the land register, it is odd that the bill does not include a target date—even an indicative target date—as is set for a host of other policies, such as the eradication of fuel poverty. In many areas, we set a target date and give ministers a duty to act in the way that is best calculated to achieve the aim by that date.

Mike MacKenzie: If a target such as the member describes was set, what mechanism could the Government use to ensure that it was achieved?

Patrick Harvie: That goes back to the minister’s response to my earlier comments. He said that an alternative to the purely voluntary approach, which we know will not achieve completion of the land register, would involve compulsion. The Government has set out the mechanism by which keeper-induced registrations can take place. The question is simply about the context in which we would choose to use that mechanism.

The minister talked about the costs that would be incurred. Let us remember that some of those who will dig their heels in most determinedly and who will not register will be the largest estates. We are talking about very wealthy people who can well afford to bear the costs. Why should those who choose to register or who comply with the expectation to register meet all the costs, while those who dig in their heels have the costs met by the taxpayer? I do not accept that.

As there is not a target date or even a prediction or expectation from the minister in the chamber about when the register will be complete, it is clear that he does not know when that policy objective of the bill will be met. I can conclude only that that is not the bill’s real policy intent and that the policy intent is to deal with the purely transactional issues that I mentioned.

Other specifics relate to the beneficial ownership arguments that Rhoda Grant expounded, prescriptive claims issues and community land questions. I regret that the Government decided not to give way to any amendments from Opposition parties throughout the bill’s passage. In reply to Mike MacKenzie, I suggest that the bill is the victim of a lack of idealism and that we could have done a great deal better.

11:13

Stuart McMillan (West Scotland) (SNP): As one of the Economy, Energy and Tourism
Committee members who scrutinised the bill, I am happy that it will provide an improved framework and experience for all stakeholders.

In the stage 1 debate on 14 March, I highlighted my “sense of trepidation” at the beginning of the bill’s progress through Parliament. However, the bill has been extremely interesting, in contrast to what Murdo Fraser said. I do not know whether he takes his view because he is a lawyer—the only lawyer on the committee. The bill has been extremely interesting and it is important, because it will bring an element of public and private life up to date.

A number of issues were raised during the bill process. I took a particular interest in the automated registration of title to land system and the use of information technology under part 10. In this day and age, there is absolutely no reason whatever why the use of electronic means—or, to coin a phrase, electronic wizardry—should not be increased.

In paragraph 103 of our stage 1 report, we suggested that the keeper should “consult and test widely” to get improved buy-in from the sector for e-registration. I am content that Registers of Scotland will undertake appropriate consultation and testing with stakeholders and end users in developing new or upgraded electronic registration systems. However, I reserve the right—I am sure that every member in the chamber would do the same—to challenge the Registers of Scotland if it does not undertake those actions.

We all understand that public consultations sometimes do not get full backing. In listening to some of the evidence throughout the bill process, it was clear that there was a level of scepticism towards the keeper, particularly with regard to consulting and listening to practitioners. I hope that the process of consultation and testing will continue once the bill is enacted. I am sure that an improved dialogue will take place, and I hope that the end user will obtain a better experience.

A key aim of the bill is to bring land registration into the 21st century. However, a further key aim is to use land registration as an economic driver, as the minister highlighted earlier. The SPICe briefing for today’s debate highlighted the challenge that we as a Parliament face in progressing registrations. There are 2.6 million units of property in Scotland, of which 55 per cent have switched to the land register, and 21 per cent of Scotland’s land mass is on the register. That has come about since the Land Registration (Scotland) Act 1979 was passed.

The bill will have a positive effect on the number of registrations, and on the percentage of land mass that is registered. However, I hope that the Parliament will return to various land registration issues in the future. Patrick Harvie mentioned compulsory registration, which the minister indicated that he does not wish to include in the bill.

I agree with the minister’s comments on the economic potential of the bill and the economic driver theory behind it. However, future Governments will need to continue to scrutinise the progress of land registration. If that happens, the land register will indeed be completed. The Parliament has not undertaken much post-legislative scrutiny since it came back into being because it has had so many other issues to deal with. However, regular scrutiny would allow future Governments the opportunity to act swiftly if the bill’s aims were not being achieved.

I will back the bill tonight, and I thank my colleagues on the Economy, Energy and Tourism Committee for the way in which they have scrutinised it. I also thank the clerking team, the SPICe team, the committee adviser and the witnesses who gave evidence to the committee.

I have enjoyed the bill process, and I have learned a tremendous amount. I am sure that when the bill is enacted, it will bring about an improved level of land registration. I am convinced that we will reach the 100 per cent registration target in future.

11:18

Annabel Goldie (West Scotland) (Con): As I mentioned at stage 1, I am now a retired solicitor, but when in practice I undertook conveyancing work over many years. As my colleague Murdo Fraser commented, the issue is extremely technical, and I realise that neither the subject matter nor myself is likely to set the minister’s heart a-beating. However, I hope that he may heed some of what I have to say in my subsequent observations.

Like other members, I thank Murdo Fraser and his fellow committee members for their thorough work in scrutinising the bill. That scrutiny, coupled with subsequent amendments, has ensured that the bill is in a better state now than it was at the beginning of the process.

The bill’s purpose is to ensure that the registration of title to land in Scotland is fit for 21st century purposes, and that the transition from sasine to land register title is accelerated so that, in the not-too-distant future, all titles will be registered. That is a sensible aspiration, and the bill maps out the route to achieve it.

However, under what may look like a calm surface, there are still some reefs in the water that require careful navigation. At stage 1, I expressed a slight misgiving about how rapidly voluntary
registrations would proceed without some encouragement to the landowner in the form of reduced fees. I see that the minister has been entirely unmoved by my entreaties, so, aside from a strong sense of personal slight, I will just have to endure his indifference.

On a serious note, as the whole purpose of the bill is to make sasine titles a thing of the past, will the minister at least instruct the keeper to monitor progress over the next five years? I was interested in the minister’s remarks in his speech about the target for 2017. If we do not see the necessary pace of change on the numbers of titles and the land mass being transferred to land registration, he needs actively to investigate some form of discounted fee to encourage action.

Stuart McMillan: Does Annabel Goldie agree that it should not be about just the next five years, but that there should be continual scrutiny by future ministers to ensure that we reach the 100 per cent target?

Annabel Goldie: Yes. My remarks were prompted by the minister’s specific comments about 2017 in the debate. The critical period of five years is significant.

I share the concerns that my colleague Murdo Fraser expressed in speaking to his amendment 6. The position in law to which the minister referred in respect of inhibitions striking only at voluntary disposals is correct, but apparently the keeper is not reflecting that position in current practice, and I think that that is causing delays and uncertainty. I urge the minister to engage in urgent discussions with both the Law Society of Scotland and the keeper to ensure that the keeper’s practice reflects current law.

Section 108 of the bill was the section that troubled me and others most. I voiced my concerns at stage 1, and wish to place them on the record today.

I am aware that, through lodging amendments at stage 2, my colleague Murdo Fraser endeavoured to give some sense of proportion to section 108, but those amendments were not agreed to. I note with some alarm that the Government amendment at stage 2 to remove section 108(4)(c) from the bill as introduced, which was agreed to, leaves the defined person under section 108 even more vulnerable. Currently, when legal experts and the keeper cannot agree on legal issues surrounding aspects of land registration, it is clear that what may be deemed to be materially misleading in the opinion of one lawyer may be deemed to be innocent representation in the opinion of another, and what may constitute reckless disregard for one lawyer may reflect due diligence and adequate professional service for another.

The difficulty is that, where a client or an adviser to the client other than the solicitor, or a third party who is dealing with or for the client gives erroneous information to the solicitor with malign intent and is determined to deceive the solicitor to induce a fraudulent land registration, the hapless solicitor is the easy target and could be subjected to the nightmare of a technical criminal prosecution that is made possible by the section. As I observed during stage 1, existing law covers such dishonest or fraudulent activity, and the Scottish Law Commission did not seek a new criminal provision in its original bill, the provision was not consulted on pre-legislation, and it did not find support from witnesses who gave oral evidence to the committee. The one exception was the Solicitor General; I might suggest that the Solicitor General’s office naturally relishes a growth industry in new criminal offences. I would have thought that all that would ring serious alarm bells for most people. I am sorry that the Scottish Government is not among them.

With those reservations, I accept that the bill makes good progress towards an objective that we all want to be reached and my party will support it.

11:23

Rhoda Grant (Highlands and Islands) (Lab): I, too, want to put on record my thanks to the committee clerks, our adviser Professor Kenneth Reid, SPICe, all the other officials who gave us advice and all those who responded to the consultation.

Unlike John Park and Stuart McMillan, I found the bill quite dry and complex. Perhaps they need to get out more if they found it exciting. Nonetheless, it is a good bill as far as it goes. It will streamline our processes and allow for mistakes to be corrected. Mike MacKenzie’s amendment will allow the Lands Tribunal for Scotland to adjudicate where there are concerns about mistakes that may have been made. Therefore, although it lacks policy, it will put in place some very good administrative practice.

There are issues missing from the bill that could have been addressed. One of those is the issue of prescriptive claims, when unscrupulous people acquire land—ransom strips—and hold back development. The aim of having a prescriptive claim in legislation is to do the opposite of that, but we need to look at the process again to ensure that it meets the public interest. The bill is a missed opportunity to rectify that problem. Patrick Harvie was right when he said that many aspects of the bill do not address the public interest.

Another issue that is missing from the bill is beneficial ownership. I tried to do something about
that earlier with my amendment, which would have allowed those who had real concerns about the ownership of land that they were interested in to have that beneficial ownership registered. That would have created transparency when there were problems. I am disappointed that the amendment was not supported. Organisations such as HMRC, as well as tenants, crofters and neighbours of unscrupulous landowners have been let down because that amendment was not agreed to.

Mike MacKenzie levelled the charge of idealism at me. If I were being idealistic, I would have moved a totally different amendment that would have made the whole process much more transparent and accessible. I did not—I moved an amendment that was a practical solution to a difficult problem. As Patrick Harvie said, the bill would benefit from a good dose of idealism—we have missed that opportunity.

The other issue that has not really been touched on is the need for the register to be open and available to members of the public. People need to be able to access the register without any great cost. Information about who owns land in Scotland needs to be open and transparent. I hope that the minister will keep an eye on that issue to ensure that that is the case in the future.

Many of the contributors talked about completion of the register, as is right and proper, because that is one of the main aims of the bill. The statement was made that keeper-induced registration will not be compulsory. That raises concerns. How will we get a transfer to the new register if much of the land in Scotland remains unregistered? A lot of the land may pass into new ownership, but because that land ownership is in a trust, it is the ownership of the trust that changes, not the ownership of the land itself.

There may be an inducement in the bill—if not in the bill itself, certainly in the policy behind the bill—to encourage large landowners to register their land, especially if the land title is complex, because the minister suggested to the committee that there may be a change to how fees for land registration are charged. It may become much more expensive to register complex land titles in the future. Owners of large and complex estates might do well to consider that and get in early with their registration.

Mike MacKenzie talked about quality being sacrificed for speed—he is right. There were complaints about inaccuracies in the register and concerns about errors that were made by the keeper. The bill allows for those errors to be rectified, but we need to be careful. Land registration is extremely important. If it goes wrong it leads to disputes that can be expensive and difficult to put right. I hope therefore that accuracy will be given a high priority.

Section 108 was mentioned by Murdo Fraser, John Wilson, John Park and Annabel Goldie. There is a real concern that in trying to ensure that the transfer of land and land purchase is not open to fraud, solicitors may end up being prosecuted for fraud when they acted in good faith on the information that they had. We need to look at the guidance that goes with that part of the bill, because even an investigation can cause huge problems. A solicitor acts on the basis of their good character and people trust them because of that good character. If there is any question about their reputation it could damage their business, so I urge the minister to look at that guidance closely and to make sure that that damage cannot happen.

As I said earlier, I am pleased that the Lands Tribunal is being used to settle disputes. Mike MacKenzie pushed that in the committee and lodged amendments on the issue, and I congratulate him on getting his proposal accepted. Accessing the Lands Tribunal does not mean that people do not need lawyers, but it should mean that the process will be much simpler.

I thought that I would struggle to fill the seven minutes that you generously gave me, Presiding Officer, but I see that I am getting close to the end of that time.

This is a good and useful bill, but it is a missed opportunity to make good progress on the land reform agenda that the Government says that it supports.

11:30

Fergus Ewing: This has been a useful and constructive debate. I thank all members for their contributions. The debate has demonstrated that members agree that this is an important bill. Any disagreement appeared to centre on how exciting it is. I am pleased that all speakers have acknowledged that it is a useful, solid piece of work that will allow us to make great progress with our land registration system.

As has been mentioned, the register of sasines was revolutionary. In 1617, it was the first national land registration system in the world. For its time, it was pioneering. However, as those of us who spent many years in private practice dealing with conveyancing know, the old system involves poring over deeds, which are mostly handwritten and sometimes include quite vague descriptions of land. I remember one description that simply said, “All and whole of that three merk land of old extent.” Goodness me. That conveyancing description must have been drafted after an extended lunch, because it did not provide much clarity about the boundaries of the land involved.
Equally, I am sure that Miss Goldie and Mr Fraser will remember spending far too many hours poring over handwritten documents such as contracts of excambion, charters of novodamus, feu contracts, feu dispositions, bonds and dispositions in security.

Of course, one of the great benefits of the land register is not that those deeds are somehow dispensed with and rendered no longer relevant, because, often, they may still be relevant, even if some of them have fallen into desuetude; it is that most of them will now be shown on the burden sheet, in typewritten form. That has the practical benefit for the people whom we represent that their lawyers are not spending hours—for which they are paying—poring over old handwritten deeds.

It has been said that the purpose of this bill is purely transactional. I think that it is a good thing that we are helping to aid the process of making the job of land registration one that can benefit the people whom we represent who want to own their house. I do not think that it does justice to the work of the keeper or the profession to say that that is purely transactional. This morning, we are doing something that will benefit a great many people in Scotland and, in a modest way, will make Scotland a better place.

The bill creates more triggers for registration, allowing the process to encompass more transaction. I inform the chamber that I am advised by the keeper that that is likely to result in 7,000 additional first registrations in the first year after the designated day.

Earlier, I mentioned the Forestry Commission. I praise it for carrying out a survey of its land holdings in Scotland. The Forestry Commission owns 1,969 parcels of land covering 650,000 hectares, which accounts for 7.5 per cent of Scotland’s land mass. That is a substantial proportion of our land mass, and I welcome the willingness of the Forestry Commission to engage in how we take the issue forward.

John Wilson: Will the minister give way?

Fergus Ewing: The member will have to excuse me, but I really want to give the chamber some more information that I did not have time to give earlier.

I understand from Registers of Scotland that, at a rough order of magnitude, the cost of the aspiration of undertaking the 700,000 keeper-induced registrations by 2017—I repeat, 700,000 registrations—is around £25 million. The keeper has set aside £10 million in the reserves in her trading fund, and the intention is to recoup the £15 million shortfall from the fee income over 10 financial years, which will have to be reflected in the biennial fee reviews.

Of course, all these things are kept under review; of course, they are studied; and, of course, ambitious, major and detailed plans have been put in place and will be enacted to extend the coverage of Scotland’s land register. This is not minor progress; it is major progress that will happen not simply because we pass the bill—which, after all, is only words on a page, important though they are—but because team Scotland is working together to achieve the bill’s aims and to ensure the gradual completion of the land register.

In fact, to pursue that aim, the keeper and I jointly wrote an article for The Journal of the Law Society of Scotland last year in which we encouraged landowners to get their titles registered. I take this opportunity to make the same encouragement to ensure that landowners receive the benefits of land registration. Indeed, plans are afoot to encourage landowners in this matter; for a start, Rhoda Grant was quite right to point out that because the fees have a maximum cap they represent an excellent deal. In some cases, the current fees do not reflect the total cost to the keeper of carrying out this work. I repeat my exhortation to landowners to seriously consider the offer. If they transfer their titles to the land register, they will find that the benefits can be considerable; for example, they might discover that they own land that they were not aware of and that it is easier to transact land for development. Those kinds of commercial benefits can be gleaned and I praise the keeper and her staff for their very detailed efforts in dealing with this matter.

The bill makes a number of very important changes to land registration practices and adopts many of the sound practices that have developed over the years. For a start, it makes provision for defining inaccuracy in the land register and, more important, when and how titles can be rectified. As a matter of registration practice, the keeper has been proactive in bringing new procedures in line with recognised international standards and the mapping working group that I believe Mr Macintosh mentioned in his remarks and which comprises members of the Ordnance Survey, the Royal Institution of Chartered Surveyors, the Law Society and Registers of Scotland has been established.

I must also thank Mike MacKenzie, who I think has been somewhat modest, because he did a power of work on this bill for the Economy, Energy and Tourism Committee and brought a lot of knowledge to its scrutiny. Assisted by committee members, he lodged an important stage 2 amendment that in effect allows a case to be referred to the Lands Tribunal for Scotland instead
of individuals having to go to the full expense and through the whole panoply of court action.

Mr Park asked me to respond to his important point. Although in many cases it might be possible to refer underlying legal issues to the Lands Tribunal, I must, as I have before, indicate that, as I think Mr Park is aware, the Parliament has certain restrictions on its freedom to make law that alters existing property rights in live cases.

Annabel Goldie accused me of indifference towards her, ignoring her entreaties and not taking seriously her inestimable contributions to this and previous debates on this matter—perish the thought. How could I now, in the past or in the future ever be indifferent to Miss Goldie’s entreaties? My difficulty is in preventing my beating heart from distracting me and in ensuring that my mind is engaged with her remarks. [Interruption.] I am told that I should move on, Presiding Officer.

The Presiding Officer (Tricia Marwick): You have 20 seconds, Mr Ewing.

Fergus Ewing: In all seriousness, we believe that the offence provision in the bill is necessary. As the overwhelming majority of solicitors are honest, they will be neither inconvenienced nor subject to any difficulty.

As someone who, as a solicitor with Leslie Wolfson 30 years ago, had experience of the previous Land Registration (Scotland) Bill, I am somewhat surprised but very pleased, proud and honoured to find myself playing a modest part in the updating, modernisation and improvement of the land registration system in this country.

The Presiding Officer: Minister, two weeks ago, you cast aspersions on my virtues when we were together in New York; now here you are, referring to Miss Goldie in such terms. One of these days, you will find yourself in a hole and stop digging.
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**Land Registration etc. (Scotland) Bill**

*[AS PASSED]*

An Act of the Scottish Parliament to reform and restate the law on the registration of rights to land in the land register; to enable electronic conveyancing and registration of electronic documents in the land register; to provide for the closure of the Register of Sasines in due course; to make provision about the functions of the Keeper of the Registers of Scotland; to allow electronic documents to be used for certain contracts, unilateral obligations and trusts that must be constituted by writing; to provide about the formal validity of electronic documents and for their registration; and for connected purposes.

**PART 1**

**THE LAND REGISTER**

**The Land Register of Scotland**

1. **The Land Register of Scotland**
   
   (1) There is to continue to be a public register of rights in land in Scotland (which is to continue to be known as the “Land Register of Scotland”).
   
   (2) The register is to continue to be under the management and control of the Keeper of the Registers of Scotland.
   
   (3) The register is to continue to have a seal.
   
   (4) Subject to the provisions of this Act, the register is to be in such form (which may be, or be in part, an electronic form) as the Keeper considers appropriate.
   
   (5) The Keeper must take such steps as appear reasonable to the Keeper to protect the register from—
   
   (a) interference,
   
   (b) unauthorised access, and
   
   (c) damage.

**Structure and contents of the register**

2. **The parts of the register**
   
   The Keeper must make up and maintain, as parts of the register—
   
   (a) the title sheet record,
(b) the cadastral map,
(c) the archive record, and
(d) the application record.

Title sheets and the title sheet record

3 Title sheets and the title sheet record
(1) The Keeper must make up and maintain a title sheet for each registered plot of land.
(2) The Keeper may make up and maintain a title sheet for a registered lease.
(3) The title sheet record is the totality of all such title sheets.
(4) A plot of land is an area or areas of land all of which are owned by one person, or one set of persons.
(5) A separate tenement constitutes a plot of land for the purposes of this Act.
(6) Subject to subsections (2) and (7), there is to be only one title sheet for each plot of land.
(7) The Keeper need not make up and maintain a title sheet for a plot of land which is a pertinent of another plot of land (or of two or more other plots of land) but may instead include it in the title sheet of the other plot or plots of land of which it is a pertinent.

4 Title and lease title numbers
(1) The Keeper must assign a title number to—
   (a) the title sheet of each registered plot of land, and
   (b) where a registered lease has a title sheet, to that title sheet.
(2) A title number is an unique identifier consisting of numerals or of letters and numerals.

5 Structure of title sheets
(1) A title sheet is to comprise—
   (a) a property section,
   (b) a proprietorship section,
   (c) a securities section, and
   (d) a burdens section.
(2) A section of a title sheet may be sub-divided if and as the Keeper considers appropriate.

6 The property section of the title sheet
(1) The Keeper must enter in the property section of the title sheet—
   (a) a description—
      (i) of the plot of land (being a description by reference to the cadastral map),
      (ii) of the nature of the proprietor’s right in the plot of land, and
      (iii) if the plot is a separate tenement, of the nature of the tenement,
Part 1—The Land Register

(b) the particulars of any incorporeal pertinents (including, if there is a burdened property, the particulars of that property in so far as known),

c) any agreement registered under section 63(2),

d) any entry required under section 18(2)(a) or paragraph 7(a) of schedule 1,

e) if the title sheet is a lease title sheet, the particulars of the lease, and

(f) where there is for the area of land another title sheet (as for example for a plot which is a separate tenement), the title number of that other title sheet.

(2) Paragraph (f) of subsection (1) does not apply where the other title sheet is the title sheet of a flat in a flatted building.

The proprietorship section of the title sheet

(1) The Keeper must enter in the proprietorship section of the title sheet—

(a) the name and designation of the proprietor, and

(b) in the case of ownership in common, the respective shares of the proprietors.

(2) Paragraph (a) of subsection (1) is subject to section 18(1)(b) and to paragraph 6(b) of schedule 1; and paragraph (b) of that subsection is subject to sections 16(2)(b) and 18(2)(b), to paragraph 7(b) of schedule 1 and to paragraphs 8(b) and 10 of schedule 4.

The securities section of the title sheet

(1) The Keeper must enter in the securities section of the title sheet particulars of any heritable security over the right in land to which the title sheet relates (including the name and designation of the creditor in the security).

(2) This section is subject to section 18(3)(b) and to paragraph 8(b) of schedule 1.

The burdens section of the title sheet

(1) The Keeper must enter in the burdens section of the title sheet—

(a) where the right in land to which the title sheet relates is encumbered with a title condition—

(i) the terms of the title condition,

(ii) a description of any benefited property (in so far as known to the Keeper), and

(iii) if the title condition is a personal real burden, the name and designation of the person who has title to enforce it,

(b) where there is a long lease, other than a long sub-lease, which has real effect, that fact,

(c) in a case where the title sheet is a lease title sheet, where there is a long sub-lease, other than a long sub-sub-lease, which has real effect, that fact,

(d) in so far as known to the Keeper, any public right of way (by whatever means) over or through the land,
(e) particulars of any path order made under section 22 of the Land Reform (Scotland) Act 2003 (asp 2) (compulsory powers to delineate paths in land in respect of which access rights are exercisable), and

(f) any other encumbrance the inclusion of which in the register is permitted or required, expressly or impliedly, by an enactment and the name and designation of the person who has title to enforce that encumbrance.

(2) In subsection (1)—

“encumbrance” does not include a heritable security,

“long lease” means—

(a) a lease exceeding 20 years, or

(b) a lease which includes provision (however expressed) requiring the landlord to renew the lease at the tenant’s request as a result of which (and without any subsequent agreement express or implied between the landlord and tenant) the total duration could exceed 20 years.

(3) This section is subject to section 18(4) and to paragraph 9 of schedule 1.

10 What is entered or incorporated by reference in a title sheet

(1) The Keeper must, in addition to what is to be entered under sections 6 to 9, enter the matters mentioned in subsection (2) in a title sheet.

(2) The matters are—

(a) any statement made by virtue of any of subsections (3) and (4)(b) of section 73 or subsection (5)(a) of section 74,

(b) particulars of any special destination,

(c) a reference to an entry in the Register of Inhibitions made under section 31A(2),

(d) the terms of any caveat warrant for which is granted under section 65(3), and

(e) such other information (if any) as the Keeper considers appropriate.

(3) The Keeper may incorporate by reference in a title sheet—

(a) a document in the archive record, or

(b) a deed in any other register under the management and control of the Keeper or of the Keeper of the Records of Scotland.

(4) The Keeper must not enter or incorporate by reference in a title sheet any rights or obligations except in so far as their entry is authorised by an enactment.

(5) The entry or incorporation by reference in a title sheet of any right or obligation, in so far as not so authorised—

(a) does not constitute notice of that right or obligation, and

(b) is without any other effect.

(6) Subsection (2)(b) is subject to section 18(3)(c) and to paragraph 8(c) of schedule 1.
The cadastral map

11 The cadastral map

(1) The cadastral map is a map—
   (a) showing the totality of registered geospatial data (other than supplementary data in individual title sheets),
   (b) showing for each cadastral unit—
      (i) the cadastral unit number,
      (ii) the boundaries of the unit, and
      (iii) the title number of any registered lease relating to the unit, and
   (c) otherwise depicting registered rights in such manner as the Keeper considers appropriate.

(2) A cadastral unit which represents a separate tenement must be shown on the map in such a way as will distinguish it as a cadastral unit from other units.

(3) The cadastral map may (but need not) show the boundaries of cadastral units on the vertical plane.

(4) The cadastral map may contain such other information as the Keeper considers appropriate.

(5) The cadastral map must be based upon the base map.

(6) The base map is—
   (a) the Ordnance Map,
   (b) another system of mapping, being a system which accords with such requirements as the Scottish Ministers may, by order, prescribe, or
   (c) a combination of the Ordnance map and such other system.

(7) On the base map being updated, the Keeper must make any changes to the register which are necessary in consequence of the updating.

(8) For the purposes of subsection (1)(a), the Keeper may determine what data is supplementary data.

(9) This section and sections 12 and 13 are without prejudice to section 16.

12 Cadastral units

(1) A cadastral unit is a unit which represents a single registered plot of land.

(2) Subject to subsection (3), the same area of land cannot be represented by more than one cadastral unit.

(3) The Keeper need not represent a plot of land such as is mentioned in section 3(7) as a separate cadastral unit but may instead include it in the cadastral unit representing the plot or plots of land of which it is a pertinent.

(4) The Keeper must assign a cadastral unit number to each cadastral unit.

(5) The cadastral unit number is to be the title number of the plot of land which that unit represents.
13 **The cadastral map: further provision**

(1) Where a plot of land—
   (a) lies wholly outwith the base map, or
   (b) extends partly outwith the base map,
the Keeper may adopt such means of representing the boundaries on the cadastral map as the Keeper considers appropriate.

(2) The Keeper may—
   (a) combine cadastral units,
   (b) remove a cadastral unit from the map, or
   (c) divide a cadastral unit.

(3) On dividing a cadastral unit under subsection (2)(c), the Keeper may combine any of the resultant parts with a different cadastral unit.

(4) The Keeper must make such changes to the register as are necessary in consequence of anything done under subsections (2) and (3).

14 **The archive record**

(1) The archive record is to consist of—
   (a) copies of all documents submitted to the Keeper,
   (b) copies of all documents which the Keeper is required to include under land register rules, and
   (c) copies of such other documents as the Keeper considers appropriate.

(2) The Keeper must also include in the archive record such information as is required for the purposes of section 100.

(3) But the Keeper need not include in the archive record a copy of—
   (a) any enactment, or
   (b) any document comprised in any other register under the management and control of the Keeper or of the Keeper of the Records of Scotland.

(4) A fact which can be discovered from the archive record is not, by reason only of that circumstance, a fact which a person ought to know.

15 **The application record**

The application record is to consist of all—
   (a) applications for registration as are for the time being pending, and
   (b) advance notices as are for the time being extant.
Tenements etc.

16 Tenements and other flatted buildings

(1) Where the Keeper considers it appropriate in relation to a flatted building to do so, the Keeper may, instead of representing each registered flat in the building as a separate cadastral unit, represent the building and all the registered flats in it as a single cadastral unit.

(2) Where a flatted building and the registered flats in it are represented as a single cadastral unit—
   (a) the cadastral map must show, for that cadastral unit, the title numbers of each registered flat, and
   (b) the respective pro indiviso shares in the pertinents of the registered flats need not be entered in the proprietorship section of the title sheet of any of those flats.

(3) But subsections (1) and (2) do not apply in relation to land pertaining to the flatted building which—
   (a) extends more than 25 metres from the building in so far as it so extends, or
   (b) is further than 25 metres from the building (measuring along a horizontal plane from whatever point of that building is nearest to the land).

(4) In this Act a “flatted building” means—
   (a) a tenement, or
   (b) any other subdivided building.

(5) A “subdivided building”—
   (a) means a building or part of a building, not being a tenement, which comprises two or more related flats, at least two of which—
      (i) are, or are designed to be, in separate ownership, and
      (ii) are divided from each other vertically, and
   (b) includes the solum and any other land pertaining to the building or part of the building.

(6) In determining whether flats comprised in a subdivided building are related, the Keeper must have regard, among other things, to—
   (a) the title to the building, and
   (b) any real burdens.

(7) In subsection (6), “title to the building” means—
   (a) any conveyance, or reservation, of property which affects the subdivided building, any flat in the building or any pertinent of the building or of any such flat, and
   (b) the relevant title sheet of the building, any flat in it or any pertinent of the building or of any such flat.

(8) Expressions used in this section and in sections 26 and 29 of the Tenements (Scotland) Act 2004 (asp 11) have the meanings given in that Act.
### Shared plots

(1) This section applies where a plot of land—

(a) is owned in common by the proprietors of two or more other plots of land by virtue of their ownership of those other plots,

(b) is not owned in common by anyone else.

(2) The Keeper may, if the Keeper considers it appropriate, designate the title sheet of the plot of land to be a “shared plot title sheet”.

(3) In this section and in sections 18 and 19—

(a) references to a “shared plot” are to a plot of land the title sheet of which is designated under subsection (2),

(b) references to the “sharing plots” are to the other plots of land the proprietors of which own the shared plot in common.

(4) Unless the context otherwise requires, any reference in a document to a sharing plot is to be taken to include a reference to the share in the shared plot which pertains to the sharing plot.

(5) Registration has the same effect in relation to a share in a shared plot which pertains to a sharing plot as it has in relation to the sharing plot (except in so far as may otherwise be provided in the deed registered).

### Shared plot and sharing plot title sheets

(1) The Keeper must enter—

(a) in the property section of the title sheet of each of the sharing plots, the title number of the shared plot title sheet,

(b) in the proprietorship section of the shared plot title sheet, the title numbers of the title sheets of each of the sharing plots.

(2) The Keeper must also enter—

(a) in the property section of the title sheet of each sharing plot, the quantum of the share which the proprietor of that sharing plot has in the shared plot,

(b) in the proprietorship section of the shared plot title sheet, in relation to the information required by section 7(1)(b), the respective share each sharing plot has in the shared plot,

(c) in the securities section of that title sheet, a statement to the effect that the shared plot may be subject to a heritable security registered against a sharing plot,

(d) in the burdens section of that title sheet, a statement to the effect that the shared plot may be subject to some other encumbrance so registered.

(3) The Keeper must not enter in or, if entered, must omit from—

(a) the proprietorship section of the shared plot title sheet, the information that would otherwise be required under section 7(1)(a),

(b) the securities section of that title sheet, the information that would otherwise be required under section 8(1) unless the security is over the shared plot only,
(c) that title sheet, any matter that would otherwise be required under section 10(2)(b).

(4) The Keeper may, if the condition mentioned in subsection (5) is satisfied and the Keeper considers it appropriate, omit from the burdens section of the shared plot title sheet any entry which would otherwise be required under section 9(1).

(5) The condition is that the encumbrance to which the entry would relate is (or falls to be) registered against each of the sharing plots.

19 Conversion of shared plot title sheet to ordinary title sheet

(1) The Keeper may at any time revoke a designation under section 17(2) of a title sheet as a shared plot title sheet.

(2) Where the Keeper revokes a designation, the Keeper must make such changes to the title sheets of the plots of land that were, in relation to the shared plot title sheet, the shared plot and the sharing plots as are consequential upon the revocation.

20 Shared plot title sheets in relation to registered leases

Schedule 1 makes provision for registered leases tenanted in common similar to that made by sections 17 to 19 for plots of land owned in common.

PART 2

REGISTRATION

Applications for registration

21 Application for registration of deed

(1) A person may apply to the Keeper for registration of a registrable deed.

(2) The Keeper must accept an application under subsection (1) to the extent the applicant satisfies the Keeper that, as at the date of application, the general application conditions are met and—

(a) where the application is made in respect of a disposition of, or a notice of title to, an unregistered plot, the conditions set out in section 23 are met,

(b) where section 25 applies, the conditions set out in that section are met,

(c) in any other case, the conditions set out in section 26 are met.

(3) To the extent the applicant does not so satisfy the Keeper, the Keeper must reject the application.

(4) Subsection (2) is subject to section 44(5).

22 General application conditions

(1) The general application conditions are—

(a) the application is such that the Keeper is able to comply, in respect of it, with such duties as the Keeper has under Part 1,

(b) the application does not relate to a souvenir plot,
(c) the application does not fall to be rejected by virtue of section 6 or 9G of the Requirements of Writing (Scotland) Act 1995 (c.7) (registration of document) or of a prohibition in an enactment,

(d) the application is in the form (if any) prescribed by land register rules, and

(e) either—

(i) such fee as is payable for registration is paid, or

(ii) arrangements satisfactory to the Keeper are made for payment of that fee.

(2) In subsection (1)(b), “souvenir plot” means a plot of land which—

(a) is of inconsiderable size and of no practical utility, and

(b) is neither—

(i) a registered plot, nor

(ii) a plot the ownership of which has, at any time, separately been constituted or transferred by a document recorded in the Register of Sasines.

23 Conditions of registration: transfer of unregistered plot

(1) The conditions are that—

(a) the application is made by the grantee of the disposition or as the case may be the person in whose favour is the notice of title,

(b) the deed is valid,

(c) the deed so describes the plot as to enable the Keeper to delineate its boundaries on the cadastral map,

(d) where within the plot there is a lesser area in respect of which a registrable encumbrance is constituted there is included in, or submitted with, the application a plan or description sufficient to enable the Keeper to delineate the boundaries of the lesser area on the cadastral map,

(e) there is included in the application a description of every public right of way (by whatever means) over or through the plot in so far as known to the applicant.

(2) Subsection (1)(c) and (d) do not apply—

(a) if the plot to which the application relates is a flat in a flatted building, and

(b) either—

(i) the flatted building is, by virtue of section 16, represented as a single cadastral unit on the cadastral map, or

(ii) the Keeper has indicated that the flatted building is, by virtue of that section, to be so represented.

(3) Despite subsection (2), subsection (1)(c) and (d) apply in so far as the plot includes a pertinent outwith the flatted building, being a pertinent only of the plot.

(4) Subsection (1)(d) does not apply in relation to an encumbrance which consists of—

(a) a right to lead a pipe, cable, wire or other such enclosed unit over or under land,

(b) a servitude created other than by registration.

(5) In this section, “the deed” means the disposition or as the case may be the notice of title.
24 Circumstances in which section 25 applies

(1) Section 25 applies where any of subsections (2) to (7) apply.

(2) This subsection applies where—
   
   (a) the application is in respect of a grant of a lease, and
   
   (b) the subjects of the lease consist of or form part of an unregistered plot of land.

(3) This subsection applies where—
   
   (a) the application is in respect of an assignation of an unregistered lease, and
   
   (b) the subjects of the lease consist of or form part of an unregistered plot of land.

(4) This subsection applies where—
   
   (a) the application is in respect of a sublease granted by a tenant, and
   
   (b) the subjects of the tenant’s lease consist of or form part of an unregistered plot of land.

(5) This subsection applies where—
   
   (a) the application is in respect of a deed registrable by virtue of section 47(4), and
   
   (b) the land to which the deed relates consists of or forms part of an unregistered plot of land.

(6) This subsection applies where—
   
   (a) the application is in respect of a notice of title to a subordinate real right, and
   
   (b) the notice of title is registrable by virtue of section 4A (as inserted by section 52(3)) of the Conveyancing (Scotland) Act 1924 (c.27),
   
   (c) the last completed title to the subordinate real right is recorded in the Register of Sasines, and
   
   (d) the land in respect of which the subordinate real right is constituted consists of or forms part of an unregistered plot of land.

(7) This subsection applies where—
   
   (a) the application is in respect of a standard security granted over an unregistered subordinate real right, and
   
   (b) the land in respect of which the subordinate real right is constituted consists of or forms part of an unregistered plot of land.

25 Conditions of registration: certain deeds relating to unregistered plots

(1) The conditions are that—
   
   (a) the deed is valid,
   
   (b) the deed so describes the plot as to enable the Keeper to delineate its boundaries on the cadastral map,
   
   (c) where within the plot there is a lesser area in respect of which a registrable encumbrance is constituted there is included in, or submitted with, the application a plan or description sufficient to enable the Keeper to delineate the boundaries of the lesser area on the cadastral map.
(d) there is included in the application a description of every public right of way (by whatever means) over or through the plot in so far as known to the applicant.

(2) Subsection (1)(b) and (c) do not apply—

(a) if the plot to which the deed relates is a flat in a flatted building, and

(b) either—

(i) the flatted building is, by virtue of section 16, represented as a single cadastral unit in the cadastral map, or

(ii) the Keeper has indicated that the flatted building is, by virtue of that section, to be so represented.

(3) Despite subsection (2), subsection (1)(b) and (c) apply in so far as the plot includes a pertinent outwith the flatted building, being a pertinent only of the plot.

(4) Subsection (1)(c) does not apply in relation to an encumbrance which consists of—

(a) a right to lead a pipe, cable, wire or other such enclosed unit over or under land,

(b) a servitude created other than by registration.

(5) In this section and sections 30 and 40 in so far as they apply by virtue of this section, references to the plot are to be read as references to—

(a) where this section applies by virtue of section 24(2), (3) or (4), the area of land which forms the subjects of the lease,

(b) where this section applies by virtue of section 24(5), the area of land to which the deed relates,

(c) where this section applies by virtue of section 24(6) or (7), the area of land in respect of which the subordinate real right is constituted.

26 Conditions of registration: deeds relating to registered plots

(1) The conditions are that—

(a) the deed is valid,

(b) the deed relates to a registered plot of land,

(c) the deed narrates the title number of each title sheet to which the application relates, and

(d) the deed, in so far as it relates to part only of a plot of land or of the subjects of a lease, so describes the part as to enable the Keeper to delineate on the cadastral map the boundaries of the part.

(2) Where the title number of the title sheet of a sharing plot is narrated in the deed, subsection (1)(c) does not require the narration of the title number of the title sheet of the shared plot.

(3) Subsection (1)(d) does not apply if—

(a) the part to which the deed relates is a flat in a flatted building, and

(b) either—

(i) the flatted building is, by virtue of section 16, represented as a single cadastral unit in the cadastral map, or
(ii) the Keeper has indicated that the flatted building is, by virtue of that section, to be so depicted.

(4) Despite subsection (3), subsection (1)(d) applies in so far as the part includes a pertinent outwith the flatted building, being a pertinent only of the part.

(5) Subsection (1)(d) does not apply in the case of an application which relates to registration to create as a servitude a right to lead a pipe, cable, wire or other such enclosed unit over or under land.

Registration without deed

27 Application for voluntary registration

(1) A person mentioned in subsection (2) may apply for registration of an unregistered plot of land or any part of that plot.

(2) The person is the owner (or, in the case of ownership in common, any of the owners) of the plot.

(3) The Keeper must accept an application under subsection (1) to the extent—

(a) the applicant satisfies the Keeper that, as at the date of the application, the following are met—

(i) the general application conditions, and
(ii) the conditions mentioned in section 28, and
(b) the Keeper is satisfied that it is expedient that the plot (or the part of the plot) should be registered.

(4) To the extent the applicant does not so satisfy the Keeper, the Keeper must reject the application.

(5) Where the application is in respect of a part of a plot of land, references to the plot in section 28 and section 30 in so far as it applies by virtue of this section are to be read as references to the part.

(6) The Scottish Ministers may by order repeal subsection (3)(b).

(7) Before making such an order, the Scottish Ministers must consult the Keeper.

(8) An order under subsection (6) may make different provision for different areas.

28 Conditions of registration: voluntary registration

(1) The conditions are that—

(a) there is submitted with the application a plan or description of the plot sufficient to enable the Keeper to delineate the plot’s boundaries in the cadastral map,

(b) where within the plot there is a lesser area in respect of which a registrable encumbrance is constituted there is included in, or submitted with, the application a plan or description sufficient to enable the Keeper to delineate the boundaries of the lesser area in the cadastral map.

(2) Subsection (1)(a) and (b) does not apply—

(a) if the plot to which the application relates is a flat in a flatted building, and
(b) either—
(i) the flatted building is, by virtue of section 16, represented as a single cadastral unit on the cadastral map, or

(ii) the Keeper has indicated that the flatted building is, by virtue of that section, to be so depicted.

3 Despite subsection (2), subsection (1)(a) and (b) applies in so far as the plot includes a pertinent outwith the flatted building, being a pertinent only of the plot.

4 Subsection (1)(b) does not apply in relation to an encumbrance which consists of—

(a) a right to lead a pipe, cable, wire or other such enclosed unit over or under land, or

(b) a servitude created other than by registration.

29 Keeper-induced registration

10 Other than on application and irrespective of whether the proprietor or any other person consents, the Keeper may register an unregistered plot of land or part of that plot.

2 Where the Keeper decides under this section to register a part of a plot, references to the plot in section 30 are to be read as references to the part.

30 Completion of registration of plot

1 This section applies where—

(a) the Keeper accepts—

(i) an application under section 21 in respect of a disposition of, or a notice of title to, an unregistered plot of land,

(ii) an application under section 21 by virtue of it meeting the conditions in section 25, or

(iii) an application under section 27 in respect of a plot of land or a part of a plot, or

(b) the Keeper decides to register a plot of land or a part of a plot under section 29.

2 The Keeper must—

(a) make up a title sheet for the plot,

(b) make such other changes to the title sheet record as are necessary or expedient,

(c) create a cadastral unit for the plot,

(d) make such other changes to the cadastral map as are necessary or expedient, and

(e) copy into the archive record any document which—

(i) has been submitted to the Keeper or, where this section applies by virtue of subsection (1)(a)(ii) or (1)(b), is reasonably available to the Keeper, and

(ii) is relevant to the accuracy of the register.

3 Subsection (2)(e) is subject to section 14(3).

4 Changes under paragraph (b) or (d) of subsection (2) may include—

(a) cancelling a title sheet and cadastral unit, or
(b) making up a new title sheet and creating a new cadastral unit.

(5) In a case where—
(a) this section applies by virtue of subsection (1)(a)(ii) or (1)(b), and
(b) any name or designation to be entered in the new title sheet to be made up cannot, or cannot with reasonable certainty, be determined by the Keeper,

the Keeper may, in place of or as part of that entry, enter a statement that the name or designation is not known or as the case may be is not known with reasonable certainty.

31 Completion of registration of deed

(1) This section applies where the Keeper accepts an application under section 21 other than an application to which section 30 applies.

(2) The Keeper must as soon as reasonably practicable after accepting the application—
(a) make such changes to the title sheet, or each of the title sheets, to which the application relates as are necessary to give effect to the deed,
(b) make such other changes (if any) to the title sheet record as are necessary or expedient,
(c) make such changes (if any) to the cadastral map as are necessary or expedient, and
(d) copy into the archive record—
   (i) the deed being given effect to by registration, and
   (ii) any other document which has been submitted to the Keeper and is relevant to the accuracy of the register.

(3) Subsection (2)(d)(ii) is subject to section 14(3).

(4) Changes under paragraphs (a) to (c) of subsection (2) may include—
(a) cancelling a title sheet and cadastral unit, or
(b) making up a new title sheet and creating a new cadastral unit.

31A References to certain entries in Register of Inhibitions

(1) Subsection (2) applies where—
(a) the Keeper accepts an application for registration under section 21, and
(b) the validity of the deed to which the application relates might be affected by an entry in the Register of Inhibitions.

(2) The Keeper must, as soon as reasonably practicable after accepting the application, enter a reference to the entry in the title sheet.

(3) Subsection (2) does not apply where the entry mentioned in subsection (1)(b) is—
(a) a notice of land attachment (within the meaning of section 83(1) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3)), or
(b) a notice of a signeted summons in an action of reduction of a deed granted in breach of inhibition.
General provision about applications

32  Recording in application record

(1) On receipt of an application for registration, the Keeper must—
   (a) as soon as reasonably practicable, or
   (b) if the application record is not open for the making of entries, as soon as
       reasonably practicable on the application record next opening for that purpose,

enter in the application record details of the application (including the date the entry
under this subsection is made).

(2) No such entry need be made however if, on receipt of the application, it is immediately
    apparent to the Keeper that the application falls to be rejected.

(3) On an application being—
   (a) withdrawn,
   (b) accepted by the Keeper, or
   (c) rejected by the Keeper,

the Keeper must remove the entry relating to it from the application record.

33  Withdrawal and amendments etc. of application

(1) While an application for registration is pending, the applicant—
   (a) may withdraw it, but
   (b) except with the consent of the Keeper, may not substitute it or amend it.

(2) Land register rules may specify circumstances in which consent under subsection (1)(b)
    must be given.

34  Period within which decision must be made

(1) The Keeper’s decision as to whether to accept or reject an application for registration
    must be made within such period as may be prescribed in land register rules.

(2) Different periods may be so prescribed for different kinds of application.

(3) The Keeper must deal with an application without unreasonable delay.

Date of application and registration etc.

35  Date of application

Any reference in this Act, however expressed, to the date of an application for
registration is a reference to the date an entry in respect of the application is made in the
application record under subsection (1) of section 32 (or, but for subsection (2) of that
section, would fall to be made).
36 Date and time of registration

(1) Where the Keeper accepts an application for registration, the date of registration is the date of the application.

(2) The time of registration is deemed to be the moment at which, following the application being received by the Keeper, the application record next closes.

(3) The Scottish Ministers may by order—

(a) amend subsection (2) so as to make different provision as regards time of registration, and

(b) make such other amendments to this Act as are consequential upon that amendment.

(4) Before making such an order, the Scottish Ministers must consult the Keeper.

37 Power to amend section 6 of the Land Registers (Scotland) Act 1868

If, under section 36(3)(a), the Scottish Ministers amend this Act, they may, in that order, correspondingly amend section 6 of the Land Registers (Scotland) Act 1868 (c.64) (which provides for registration in the General Register of Sasines) and make such other amendments to that Act as are consequential upon that amendment to that section.

Applications in relation to the same land

38 Order in which applications are to be dealt with

(1) The Keeper must deal with two or more applications for registration in relation to the same land in order of receipt.

(2) In the absence of evidence to the contrary, the order of receipt is to be taken to be the order in which the details of the applications were entered in the application record.

(3) Subsection (1) is subject to subsections (4) to (7).

(4) Subsection (5) applies where—

(a) two applications (“application A” and “application B”) are received on the same date in relation to the same land,

(b) to accept one of the applications would require the Keeper to reject the other,

(c) the deed to which application A purports to give effect is a deed in relation to which a protected period is running, and

(d) the deed to which application B purports to give effect either—

(i) is not such a deed, or

(ii) is such a deed but the protected period relating to the deed to which application A purports to give effect began before the protected period relating to the deed to which application B purports to give effect.

(5) The Keeper must deal with application A before application B.

(6) Subsection (7) applies where—

(a) two applications (“application C” and “application D”) are received on the same date in relation to the same land,
(b) the deed to which one of them (application C) purports to give effect is a deed in favour of a person (“X”), and
(c) the deed to which the other (application D) purports to give effect is a deed granted by X.

(6A) Subsection (7) also applies where—
(a) two applications (“application C” and “application D”) are received on the same date in relation to the same land,
(b) one application (application C) is an application under section 27, and
(c) the other (application D) is an application under section 21.

(7) The Keeper must deal with application C before application D.

Notification

39 Notification of acceptance, rejection or withdrawal of application
(1) On an application for registration being accepted or rejected, the Keeper must notify—
(a) the applicant,
(b) the granter of the deed sought to be registered (if any),
(c) if notification of receipt of the application was given under section 44(1), those to whom it was given, and
(d) any other person the Keeper considers appropriate.

(2) On an application for registration being withdrawn, the Keeper must notify—
(a) the granter of the deed which had been sought to be registered (if any),
(b) if such notification as is mentioned in subsection (1)(c) was given, those to whom it was given, and
(c) any other person the Keeper considers appropriate.

(3) The Keeper’s duty to notify persons under subsections (1) and (2) only applies in so far as the Keeper considers it reasonably practicable to notify them.

(4) Notification is to be by such means as the Keeper considers appropriate.

(5) Land register rules may make further provision about notification under subsections (1) and (2).

(6) A failure to comply with subsections (1) and (2) or with any rules so made does not affect the competence or validity of the acceptance, rejection or withdrawal in question.

40 Notification to proprietor
(1) This section applies where—
(a) the Keeper accepts an application under section 21 by virtue of it meeting the conditions in section 25, or
(b) the Keeper registers a plot of land under section 29.

(2) The Keeper is to notify—
(a) the proprietor of the plot, and
(b) any other person the Keeper considers appropriate.

(3) The Keeper’s duty to notify persons under subsection (2) only applies in so far as the Keeper considers it reasonably practicable to notify them.

(4) Notification is to be by such means as the Keeper considers appropriate.

5

(5) Land register rules may make further provision about notification under subsection (2).

(6) A failure to comply with subsection (2) or with any rules so made does not affect the competence or validity—

(a) of the acceptance of the application in question, or

(b) of the registration of the plot of land in question.

41

Notification to Scottish Ministers of certain applications

(1) This section applies where an application under section 21 is rejected on the ground that (or on grounds which include the ground that) the Keeper is not satisfied that the application does not relate to a transfer prohibited—

(a) by section 40(1) of the Land Reform (Scotland) Act 2003 (asp 2) (effect of registration of community interest in land), or

(b) under section 37(5)(e) of that Act (prohibition pending determination as to whether a community interest in land is to be registered).

(2) However, this section does not apply where the only reason for the Keeper not being satisfied as mentioned in subsection (1) is that the application is not accompanied by a declaration required under section 43(2) of that Act (incorporation of certain declarations into deed giving effect to transfer).

(3) The Keeper must—

(a) notify the Scottish Ministers, and

(b) provide them with a copy of the application.

Prescriptive claimants etc.

42

Prescriptive claimants

(1) For the purposes of sections 23(1)(b), and 26(1)(a), a disposition is to be treated as being valid despite not being so if the conditions mentioned in subsections (2) to (4) are met.

(2) It appears to the Keeper that the disposition is not valid (or, as regards part of the land to which the application relates, is not valid) for the reason only that the person who granted it had no title to do so.

(3) The applicant satisfies the Keeper that the land to which the application relates (or as the case may be the part in question) has been possessed openly, peaceably and without judicial interruption—

(a) by the disponer or the applicant for a continuous period of 1 year immediately preceding the date of application, or

(b) first by the disponer and then by the applicant for periods which together constitute such a period.

(4) The applicant satisfies the Keeper that the following person has been notified of the application—
(a) the proprietor,
(b) if there is no proprietor (or none can be identified), any person who appears to be able to take steps to complete title as proprietor, or
(c) if there is no proprietor and no such person (or, in either case, none can be identified), the Crown.

(5) For the purposes of section 26(1)(a), a deed is to be treated as being valid despite not being so if—
(a) the deed is granted by or is directed against a prescriptive claimant, and
(b) the application would be accepted were the prescriptive claimant’s title valid.

(6) In subsection (5), a “prescriptive claimant” is—
(a) a person whose name is entered as proprietor in the proprietorship section of a title sheet, on an application being accepted by virtue of subsection (1),
(b) a person whose name is entered as holder of a right, in the appropriate section of a title sheet, the entry in relation to the right being one marked provisional under section 79(3)(a)(i),
(c) any person in right of a person mentioned in paragraph (a) or (b).

(7) Land register rules may make further provision about notification under subsection (4).

(8) The Scottish Ministers may, by order, amend subsection (3) so as to substitute for the period for the time being mentioned there a different period.

(9) Before making such an order, the Scottish Ministers must consult the Keeper.

43 Provisional entries on title sheet
(1) Where the Keeper accepts an application under section 21 by virtue of section 42(1) or (5), the Keeper is to mark any resulting entry in the title sheet as provisional.

(2) The Keeper is to remove the provisional marking from an entry if and when the real right to which the entry relates becomes, under section 1 of the Prescription and Limitation (Scotland) Act 1973 (c.52) (validity of right), exempt from challenge.

(3) While an entry remains provisional—
(a) it does not affect any right held by any person in the land to which the entry relates, and
(b) rights set out in the register are not to be altered or deleted by virtue only of the entry.

44 Notification of prescriptive applications
(1) Before accepting an application under section 21 which is received by virtue of section 42(1), the Keeper must notify—
(a) the proprietor,
(b) if there is no proprietor (or none can be identified), any person who appears to the Keeper able to take steps to complete title as proprietor, or
(c) if there is no proprietor and no such person (or, in either case, none can be identified), the Crown.
(2) The Keeper’s duty to notify persons under subsection (1) only applies in so far as the Keeper considers it reasonably practicable to notify them.

(3) Notification is to be by such means as the Keeper considers appropriate.

(4) A person to whom a notice is given under subsection (1) may object in writing to the application being accepted.

(5) If the Keeper receives such an objection within 60 days of the notice, the Keeper must reject the application.

(6) Land register rules may make further provision about notification under subsection (1).

(7) The Scottish Ministers may, by order, amend subsection (5) so as to substitute for the number of days for the time being mentioned there a different number of days.

(8) Before making such an order, the Scottish Ministers must consult the Keeper.

Further provision

45 Applications relating to compulsory acquisition

In the application of sections 21, 23, 30 and 47 to a case in which transfer of ownership is by virtue of compulsory acquisition, any reference in those sections to a “disposition” includes a reference to—

(a) a conveyance the form of which is provided for by an enactment,

(b) a notarial instrument, or

(c) a general vesting declaration.

46 Effect of death or dissolution

(1) The Keeper must reject an application if the applicant dies, or as the case may be is dissolved, before the date of the application.

(2) An application is not incompetent by reason only that the person who granted the deed sought to be registered dies, or as the case may be is dissolved, after the delivery of the deed.

Closure of Register of Sasines etc.

47 Closure of Register of Sasines etc.

(1) The recording of any of the following in the Register of Sasines has no effect—

(a) a disposition,

(b) a lease,

(c) an assignation of a lease,

(d) any other deed in so far as it relates to a registered plot of land or to a registered lease.

(2) The recording, on or after such day as is prescribed, of a standard security in the Register of Sasines has no effect.

(3) The recording, on or after such day as is prescribed, of a deed other than one mentioned in subsection (1) or (2) in the Register of Sasines has no effect.
(4) On and after the day prescribed under subsection (3), any deed the recording of which would, by virtue of that subsection, have no effect is (subject to the provisions of this Act) registrable in the Land Register.

(5) Where by virtue of this section the recording of a deed, disposition, lease, assignation or standard security in the Register of Sasines would have no effect, the Keeper is to reject any application to record it.

(6) Subsection (1)(a) is without prejudice to sections 4 (creation of real burden) and 75 (creation of positive servitude by writing: deed to be registered) of the Title Conditions (Scotland) Act 2003 (asp 9).

(7) Any day prescribed under subsection (2) or (3) is to be a day no earlier than the day subsection (3)(b) of section 27 is repealed by virtue of subsection (6) of that section.

(8) In subsections (2) and (3), “prescribed” means prescribed by the Scottish Ministers by order.

(9) An order under subsection (2) or (3) may make different provision for different areas.

(10) Before making an order under subsection (2) or (3), the Scottish Ministers must consult—
(a) the Keeper, and
(b) such other persons appearing to have an interest in the closure of the Register of Sasines to the recording of deeds as the Scottish Ministers consider appropriate.

PART 3

COMPETENCE AND EFFECT OF REGISTRATION

Registrable deeds

(1) A deed is registrable only if and in so far as its registration is authorised (whether expressly or not) by—
(a) this Act,
(b) an enactment mentioned in subsection (3), or
(c) any other enactment.

(2) Registration of such a deed has the effect provided for (whether expressly or not) by—
(a) this Act,
(b) an enactment mentioned in subsection (3),
(c) any other enactment, or
(d) any rule of law.

(3) The enactments referred to in subsections (1) and (2) are—
(a) the Registration of Leases (Scotland) Act 1857 (c.26),
(b) the Conveyancing (Scotland) Act 1924 (c.27),
(c) the Conveyancing and Feudal Reform (Scotland) Act 1970 (c.35),
(d) the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73).
(4) Registration of an invalid deed confers real effect only to the extent that an enactment so provides.

Specific provisions on competence and effect of registration

49 Transfer by disposition

(1) A disposition of land may be registered.
(2) Registration of a valid disposition transfers ownership.
(3) An unregistered disposition does not transfer ownership.
(4) Subsections (1) to (3) are subject to—
   (a) sections 42 and 82, and
   (b) any other enactment or rule of law by or under which ownership of land may pass.
(5) In subsection (1), “land” includes land held on udal title.

50 Proper liferents

(1) A deed creating a proper liferent over land may be—
   (a) registered, or
   (b) recorded in the Register of Sasines.
(2) The proper liferent is not created before the deed is so registered or recorded.
(3) Subsections (1) and (2) are subject to any other enactment or any rule of law by or under which a proper liferent over land may be created.
(4) References in this section to the recording of a deed include references to the recording of a notice of title deducing title through a deed.

51 Registration of, and of transactions and events affecting, leases

(1) The Registration of Leases (Scotland) Act 1857 (c.26) is amended as follows.
(2) After section 20 insert—

"20A Certain transactions or events registrable in the Land Register of Scotland

(1) A deed mentioned in subsection (2) which affects a lease registered in the Land Register of Scotland is registrable in that register.
(2) The deed is one—
   (a) terminating the lease,
   (b) extending the duration of the lease,
   (c) otherwise altering the terms of the lease.

20B Effect of registration in the Land Register of Scotland

(1) Registration in the Land Register of Scotland has the effect of—
(a) vesting in the person registered as entitled to the lease a real right in and to the lease and to any right or pertinent, express or implied, forming part of the lease, subject only to the effect of any matter entered in that register so far as adverse to the entitlement,

5 (b) making any registered right or obligation relating to the registered lease a real right or obligation, and

(c) affecting any registered real right or obligation relating to the registered lease,

in so far as the right or obligation is capable, under any enactment or rule of law, of being vested as a real right, of being made real or (as the case may be) of being affected as a real right.

(2) Registration in the Land Register of Scotland is the only means—

(a) whereby rights or obligations relating to a registered lease become real rights or obligations, or

(b) of affecting such real rights or obligations.

(3) Subject to Part 9 of the Land Registration etc. (Scotland) Act 2012 (asp 00) (rights to persons acquiring etc. in good faith), registration of an invalid deed confers no real effect.

3 Schedule 2, which contains minor and consequential modifications of the 1857 Act in consequence on this Act, has effect.

52 Completion of title

(1) The Conveyancing (Scotland) Act 1924 (c.27) is amended as follows.

(2) In section 4 (completion of title)—

(a) for “by a title which has not been completed by being recorded in the appropriate Register of Sasines, may” substitute “may, if the last recorded title to the right is recorded in the General Register of Sasines,”,

(b) the title of the section becomes “Completion of title: General Register of Sasines”.

(3) After section 4 insert—

“4A Completion of title: Land Register

Any person having right either to land or to a heritable security may complete title by registration in the Land Register of a notice of title in or as nearly as may be in the terms of the form in schedule BA to this Act.

4B Further provision as regards completion of title

(1) If it is competent to register a disposition or assignation in the Land Register, it is not competent for the disponee or assignee to complete title in the manner provided for in section 4 of this Act.

(2) In this section and in section 4A of this Act, “Land Register” means the Land Register of Scotland.”.

(4) After section 49 insert—
“49A Power of the Scottish Ministers to prescribe forms

(1) The Scottish Ministers may, by order, modify any schedule to this Act.

(2) Such an order may, in particular, substitute for any form, notice, clause, warrant or other deed for the time being set out in such a schedule another such form, notice, clause, warrant or other deed.

(3) An order under this section is subject to the affirmative procedure.”.

(5) After schedule B insert—

“SCHEDULE BA

FORM OF NOTICE OF TITLE: LAND REGISTER

Be it known that A.B. (designation) has right as proprietor to all and whole (description) conform to the last completed title and subsequent writ (or writs), which title and writ (or writs) have been examined by me, Y.Z. (designation), Notary Public (or Law Agent).

[Testing clause.]

Y.Z.

NOTES TO SCHEDULE BA

Note 1: Where the notice is in respect of a subordinate real right, other than a registered lease having its own title sheet, for “proprietor to” substitute “holder of liferent (or other right, as the case may be) over”.

Note 2: Where the notice is in respect of a registered lease having its own title sheet, for “proprietor to” substitute “tenant of”.

Note 3: If any writ by which A.B. acquired right contains a new title condition, whether burdening or benefiting the property, the condition is to be inserted in full after the description of the property.

Note 4: In the case of a traditional document, subscription of it by the notary public (or law agent) on behalf of the granter will suffice for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes: see the Requirements of Writing (Scotland) Act 1995 (c.7) (which also makes provision as regards the authentication of an electronic document).”.

53 Registration of decree of reduction

After section 46 of the Conveyancing (Scotland) Act 1924 (c.27) insert—

“46A Further provision as regards decree of reduction

(1) Where a deed mentioned in subsection (2) is reduced, the decree of reduction—

(a) may be registered in the Land Register of Scotland, and

(b) does not have real effect until so registered.

(2) The deed is one which—
(a) is voidable, and
(b) relates to a plot of land or lease registered in the Land Register of Scotland.

(3) Subsection (1) applies to an arbitral award which—

(a) orders the reduction of a deed mentioned in subsection (2), and
(b) may be enforced in accordance with section 12 of the Arbitration (Scotland) Act 2010 (asp 1),
as it applies to a decree of reduction.”.

54 Registration of order for rectification of document etc.

(1) The Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73) is amended as follows.

(2) In section 8 (rectification of defectively expressed documents)—

(a) in subsection (3), after “made to it” insert “and in either case after calling all parties who appear to it to have an interest”,

(b) after that subsection insert—

“(3A) If a document is registered in the Land Register of Scotland in favour of a person acting in good faith then, unless the person consents to rectification of the document, it is not competent to order its rectification under subsection (3) above.”,

(c) in subsection (4), for “section 9(4)” substitute “sections 8A and 9(4)”. 

(3) After section 8 insert—

“8A Registration of order for rectification

An order for rectification made under section 8 of this Act in respect of a document which has been registered in the Land Register of Scotland—

(a) may be registered in that register, and

(b) does not have real effect until so registered.”.

(4) In section 9 (provisions supplementary to section 8: protection of other interest)—

(a) in subsection (2)—

(i) for “subsection (3)” substitute “subsections (2A) and (3)”,

(ii) repeal “or on the title sheet of an interest in land registered in the Land Register of Scotland being an interest to which the document relates”,

(b) after that subsection insert—

“(2A) This section does not apply where the document to be rectified is a deed registered in the Land Register of Scotland.”,

(c) in subsection (3)—

(i) in paragraph (a), repeal “or (as the case may be) the title sheet”,

(ii) in paragraph (b), repeal “or on the title sheet”,

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(d) subsection (6) is repealed.

**Part 4**

**Advance notices**

**55 Advance notices**

1. An advance notice is a notice—
   a. stating that a person intends to grant a deed to another person,
   b. stating the name and designation of both persons,
   c. describing the nature of the intended deed (as for example whether it is to be a disposition),
   d. where the intended deed relates to a registered lease or a registered plot of land—
      i. stating the title number of the title sheet to which the deed is to relate,
      ii. where the deed is to relate to a registered lease which does not have a lease title sheet, stating the particulars of the lease, and
      iii. where the deed is to relate to part only of the subjects of the lease, or to part only of the plot, describing the part so as to enable the Keeper to delineate on the cadastral map the boundaries of the part, and
   e. where the intended deed relates to an unregistered lease or unregistered plot of land, describing the lease or, as the case may be, plot.

2. Subsection (1)(d)(iii) does not apply if—
   a. the part to which the deed relates is a flat in a flatted building, and
   b. either—
      i. the flatted building is, by virtue of section 16, represented as a single cadastral unit on the cadastral map, or
      ii. the Keeper has indicated that the flatted building is, by virtue of that section, to be so depicted.

3. Despite subsection (2), subsection (1)(d)(iii) applies in so far as the part includes a pertinent outwith the flatted building, being a pertinent only of the part.

4. The Scottish Ministers may by regulations make provision about the description to be contained in an advance notice by virtue of subsection (1)(e).

**56 Application for advance notice**

1. A person falling within subsection (2) may apply to the Keeper for an advance notice in relation to a registrable deed which the person intends to grant.

2. A person falls within this subsection if—
   a. the person may validly grant the intended deed, or
   b. the person has the consent of such a person to apply.

3. The Keeper may accept an application under subsection (1) only if—
   a. such fee as is payable in respect of the application is paid, or
(b) arrangements satisfactory to the Keeper are made for payment of that fee.

(4) If the Keeper accepts an application under subsection (1), the Keeper must—

(a) where the intended deed relates to a registered plot of land—

(i) as soon as reasonably practicable or, if the application record is not open for the making of entries, as soon as reasonably practicable on the application record next opening for that purpose, enter an advance notice in the application record, and

(ii) where (and to the extent that) section 55(1)(d)(iii) applies in relation to the notice, delineate the boundaries of the part on the cadastral map,

(b) in any other case, record an advance notice in the Register of Sasines.

57 Period of effect of advance notice

(1) An advance notice has effect for the period of 35 days beginning with the day after the notice is entered in the application record or, as the case may be, recorded in the Register of Sasines.

(2) Subsection (1) is subject to section 60.

(3) The period during which an advance notice has effect is referred to in this Act as the “protected period”.

(4) Subsection (5) applies where two advance notices in relation to the same plot of land or lease are entered into the application record or recorded in the Register of Sasines on the same date.

(5) The protected period in relation to the advance notice which is first to be entered in the application record, or as the case may be recorded in the Register of Sasines, is deemed to begin before the protected period in relation to the other advance notice.

(6) The Scottish Ministers may, by order amend subsection (1) so as to substitute for the period for the time being mentioned there a different period.

(7) Before making such an order, the Scottish Ministers must consult the Keeper.

58 Effect of advance notice: registered deeds

(1) Subsections (2) and (3) apply in relation to any two deeds (“deed Y” and “deed Z”) relating to the same plot of land where—

(a) during a protected period relating to deed Y—

(i) an application is made for registration of deed Z, and

(ii) on or after the date of that application, an application is made for registration of deed Y, and

(b) deed Z either—

(i) is not a deed in relation to which a protected period is running, or

(ii) is such a deed, but the protected period relating to deed Y began before the protected period relating to deed Z.

(2) If deed Z is registered before the Keeper comes to make any decision as to whether or not to accept the application for registration of deed Y, that decision is to be taken as if deed Z had not been registered.
(3) If the decision mentioned in subsection (2) is to accept the application—

(a) deed Y has on registration the same effect as if deed Z had not been registered, and

(b) the Keeper must amend the register so that it gives effect (if any) to deed Z as if it were registered after deed Y.

58A Effect of advance notice: recorded deeds

(1) Subsections (2) and (3) apply in relation to any two deeds (“deed Y” and “deed Z”) relating to the same plot of land where, during a protected period relating to deed Y—

(a) deed Z is recorded in the Register of Sasines, and

(b) on or after the date of recording, an application is made for registration of deed Y.

(2) The decision as to whether or not to accept the application for registration of deed Y is to be taken as if deed Z had not been recorded.

(3) If the decision mentioned in subsection (2) is to accept the application—

(a) deed Y has on registration the same effect as if deed Z had not been recorded, and

(b) in making up the title sheet for the plot, the Keeper must give effect (if any) to deed Z as if it were not recorded but registered after deed Y.

58B Effect of advance notice: further provision

(1) A deed to which an advance notice relates, if registered on a date which falls within the protected period, is not subject to—

(a) an inhibition registered in the Register of Inhibitions against the granter and taking effect before that date but during that period, or

(b) anything registered or recorded in that register and taking effect, before that date but during that period, as if an inhibition registered against the granter.

(2) Sections 58 and 58A apply irrespective of whether a deed is voluntary or involuntary.

(3) Sections 58 and 58A do not apply in relation to—

(a) a notice registered, or intended or sought to be registered, under—

(i) section 10(2A) of the Title Conditions (Scotland) Act 2003 (asp 9), or

(ii) section 12(3) of the Tenements (Scotland) Act 2004 (asp 11), and

(b) such other deeds as the Scottish Ministers may by order specify.

(4) Before making an order under subsection (3)(b), the Scottish Ministers must consult the Keeper.

59 Removal of advance notice etc.

(1) After the protected period in relation to an advance notice has elapsed, the Keeper must, if the notice was entered in the application record—

(a) remove it from there, and

(b) if the notice has not already been entered in the archive record, enter it in that record.
(2) After such period in relation to an advance notice as may be prescribed in land register rules the Keeper must, if the intended deed has not been registered, remove from the cadastral map any delineation effected under section 56(4)(a)(ii).

**60 Discharge of advance notice**

(1) A person who applied for an advance notice may apply to the Keeper for the discharge of that notice.

(2) An application under subsection (1) may be made only during the protected period.

(3) The Keeper may accept an application under subsection (1) only if—
   (a) the person to whom the intended deed would be granted consents, and
   (b) either—
      (i) such fee as is payable in respect of the application is paid, or
      (ii) arrangements satisfactory to the Keeper are made for payment of that fee.

(4) If the Keeper accepts the application, the Keeper must—
   (a) if the advance notice was entered in the application record—
      (i) remove it from there, and
      (ii) if the notice has not already been entered in the archive record, enter it in that record,
   (b) if the advance notice was recorded in the Register of Sasines, record a notice of discharge in relation to the advance notice.

(5) On the advance notice being removed from the application record or, as the case may be, a notice of discharge being recorded, the advance notice ceases to have effect.

**61 Application of Part to specific deeds**

(1) The Scottish Ministers may by order modify the application of this Part in relation to any deed of a kind specified in the order.

(2) Before making such an order, the Scottish Ministers must consult the Keeper.

**PART 5
INACCURACIES IN THE REGISTER**

**62 Meaning of “inaccuracy”**

(1) A title sheet is inaccurate in so far as it—
   (a) misstates what the position is in law or in fact,
   (b) omits anything required, by or under an enactment, to be included in it, or
   (c) includes anything the inclusion of which is not expressly or impliedly permitted by or under an enactment.

(2) The cadastral map is inaccurate in so far as it—
   (a) wrongly depicts or shows what the position is in law or in fact,
(b) omits anything required, by or under an enactment, to be depicted or shown on it, or
(c) depicts or shows anything the depiction or showing of which is not expressly or impliedly permitted by or under an enactment.

(3) The cadastral map is not inaccurate in so far as it does not depict something correctly by reason only of an inexactness in the base map which is within the published accuracy tolerances relevant to the scale of map involved.

(4) Neither a title sheet nor the cadastral map is inaccurate by reason only that a deed which gave rise to the acquisition, variation or discharge of a real right—
(a) was voidable and has been reduced, or
(b) has been rectified under section 8 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73) (rectification of defectively expressed documents).

(5) This section is subject to section 63(3).

63 Shifting boundaries

(1) This section applies where the proprietors of adjacent plots of land affected by alluvion agree that their common boundary (or part of it) is not to be so affected.

(2) Such an agreement may, on the joint application of both proprietors, be registered in the title sheets of both plots of land.

(3) Where such an agreement is registered, the cadastral map and the title sheets of the plots do not become inaccurate as a result of alluvion affecting the boundary (or part of it) occurring after registration.

65 Warrant to place a caveat

(1) This section applies to civil proceedings—
(a) for the reduction of a registered deed on the ground that it is voidable,
(b) which could result in a judicial determination that the register is inaccurate, or
(c) for an order which, if granted, would be registrable under section 8A of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73) (registration of order for rectification).

(2) A party to the proceedings may, at any time while the proceedings are in dependence, apply to the court for warrant to place a caveat on the title sheet of a plot of land to which the proceedings relate.

(3) The court may, if satisfied as to the matters mentioned in subsection (4), make an order granting the warrant applied for.

(4) The matters are that—
(a) the applicant has a prima facie case on the merits of the proceedings,
(b) were warrant for placing the caveat not granted, there is a real and substantial risk that enforcement of any decree or order in the proceedings granted in favour of the applicant would be defeated or prejudiced by reason of the other party being likely to deal with the plot of land, and

(c) in all the circumstances, including the effect which granting the warrant may have on any person having an interest, it is reasonable to make the order granting it.

(5) The onus is on the applicant to satisfy the court that the order granting the warrant should be made.

### 66 Duration of caveat

(1) A caveat, warrant for which is granted under section 65(3), expires 12 months after it is placed on the title sheet unless renewed, recalled or discharged before the expiry of that period.

(2) Subsection (1) applies to a caveat renewed under section 67(2) as it applies to a caveat warrant for which is granted under section 65(3).

(3) The Scottish Ministers may, by order, amend subsection (1) so as to substitute for the period for the time being mentioned in the subsection a different period.

(4) Before making such an order, the Scottish Ministers must consult the Keeper.

### 67 Renewal of caveat

(1) The applicant may apply to the court which granted the warrant to place the caveat for warrant to renew it.

(2) The court may, if satisfied as to the matters mentioned in subsection (3), make an order granting warrant to renew the caveat.

(3) The matters are that—

   (a) the applicant has a prima facie case on the merits of the proceedings,

   (b) were warrant to renew the caveat not granted, there is a real and substantial risk that enforcement of any decree or order in the proceedings granted in favour of the applicant would be defeated or prejudiced by reason of the other party being likely to deal with the plot of land, and

   (c) in all the circumstances, including the effect which renewing the caveat may have on any person having an interest, it is reasonable to make the order renewing it.

(4) The onus is on the applicant to satisfy the court that the order renewing the caveat should be made.

(5) The court may renew a caveat on more than one occasion.

(6) In this section and in sections 68 and 69, “the applicant” means the person who has placed a caveat on the title sheet.

### 68 Restriction of caveat

(1) Any person with an interest, other than the applicant, may at any time apply to the court which granted the warrant to place the caveat for an order restricting the caveat.

(2) The court may, if satisfied—
Part 6—Caveats

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(a) as to the matters mentioned in subsection (3), and

(b) that it is reasonable in all the circumstances to do so,

make an order restricting the caveat.

(3) The matters are that—

(a) the applicant has a prima facie case on the merits of the proceedings,

(b) there is a real and substantial risk that enforcement of any decree or order in the proceedings granted in favour of the applicant would be defeated or prejudiced by reason of the other party being likely to deal with the plot of land, and

(c) in all the circumstances, including the effect which granting the warrant to place the caveat may have on any person having an interest, it is reasonable for the caveat to continue to have effect.

(4) The onus is on the applicant to satisfy the court that the order restricting the caveat should not be made.

69 Recall of caveat

(1) Any person with an interest, other than the applicant, may at any time apply to the court which granted the warrant to place the caveat for the caveat to be recalled.

(2) The court must, if no longer satisfied as to the matters mentioned in subsection (3), make an order recalling the caveat.

(3) The matters are that—

(a) the applicant has a prima facie case on the merits of the proceedings,

(b) there is a real and substantial risk that enforcement of any decree or order in the proceedings granted in favour of the applicant would be defeated or prejudiced by reason of the other party being likely to deal with the plot of land, and

(c) in all the circumstances, including the effect which granting the warrant to place the caveat may have on any person having an interest, it is reasonable for the caveat to continue to have effect.

(4) The onus is on the applicant to satisfy the court that the order recalling the caveat should not be made.

70 Discharge of caveat

A person—

(a) in whose favour warrant to place a caveat has been granted, or

(b) who has renewed a caveat under section 67(2),

may at any time discharge the caveat.
Part 7

Keeper’s warranty

Keeper’s warranty

71 Keeper’s warranty

(1) The Keeper, in accepting an application for registration, warrants to the applicant that, as at the time of registration, the title sheet to which the application relates—

(a) is accurate—

(i) in so far as it shows an acquisition, variation or discharge in favour of the applicant, or

(ii) in the case of an application under section 27, in so far as it shows the applicant to be the proprietor or proprietor in common, and

(b) is not inaccurate in so far as there is omitted from it any encumbrance the inclusion of which is permitted or required by or under an enactment.

(2) But the Keeper does not warrant that—

(a) the plot of land to which the application relates is unencumbered by any public right of way,

(b) the land is unencumbered by a path delineated in an order under section 22 of the Land Reform (Scotland) Act 2003 (asp 2) (compulsory powers to delineate paths in land in respect of which access rights are exercisable),

(c) the land is unencumbered by a servitude created other than by registration in accordance with section 75(1) of the Title Conditions (Scotland) Act 2003 (asp 9) (creation of positive servitude by writing: deed to be registered),

(d) a right appearing on the title sheet as a pertinent is of a kind capable of being a valid pertinent,

(e) a pertinent appearing on the title sheet and of a kind extinguishable or variable without registration against the title of the benefited property has not been extinguished, or varied, without registration,

(f) the applicant has by registration acquired a right to mines or minerals,

(g) a registered lease has not been varied or terminated without the variation or termination having been registered,

(h) the title sheet to which the application relates is accurate—

(i) in so far as it shows an acquisition, variation or discharge more extensive than the deed registered bore to effect, or

(ii) in the case of an application under section 27, in so far as it shows the applicant to be the proprietor or proprietor in common of a plot of land more extensive than the plot registration of which the application bore to effect, or

(i) alluvion has not had an effect on a boundary.

(3) The benefit of warranty extends to persons to whom the benefit of warrantice by the granter of a deed would extend.
(4) In relation to an application for registration of a deed relating to a title condition, references in subsections (1) and (2) and in section 76 to the applicant are to be read as references to the person benefiting from the deed given effect to.

(5) The Keeper does not warrant as provided for in subsections (1) and (2) where the application for registration is accepted by virtue of section 42.

(6) This section is subject to sections 73 and 74.

**72 Keeper’s warranty on registration under sections 25 and 29**

(1) The Keeper, on registering a plot of land by virtue of section 25 or under section 29, warrants to the owner that, as at the time of registration, the title sheet of the plot—

(a) is accurate in so far as it shows the owner to be the proprietor or proprietor in common, and

(b) is not inaccurate in so far as there is omitted from it any encumbrance the inclusion of which is permitted or required by or under an enactment.

(2) Subsections (2), (3) and (5) of section 71 apply to warranty under this section as they apply to warranty under that section.

(3) Subsection (2) of section 71 is subject to the following modifications—

(a) for paragraph (h) substitute—

“(h) in the case of registration by virtue of section 25, the title sheet is accurate in so far as it shows the owner to be the proprietor or proprietor in common of a plot of land more extensive than the area of land which forms the subjects of the lease, to which the deed relates or, as the case may be, in respect of which the subordinate real right is constituted,

(ha) in the case of registration under section 29, the title sheet is accurate in so far as it shows the owner to be the proprietor or proprietor in common of a plot of land more extensive than the plot the Keeper sought to register, or”,

(b) references in that subsection to—

(i) the application are to be read as references to the registration by virtue of section 25 or under section 29,

(ii) to the applicant are to be construed as references to the owner.

(4) This section is subject to sections 73 and 74.

**73 Extension, limitation or exclusion of warranty**

(1) The Keeper may—

(a) if satisfied (having regard to sufficiency of evidence as to title) that it is appropriate to do so, grant more extensive warranty than is provided for in section 71 or 72, or

(b) if not satisfied as to the validity of the acquisition, variation or discharge mentioned in section 71(1)(a)(i) or that the applicant or owner is the proprietor as mentioned in section 71(1)(a)(ii) or 72(1)(a)—

(i) grant less extensive warranty than is so provided for, or
(ii) exclude warranty.

(2) For the purposes of subsection (1), the Keeper must have regard to any relevant caveat placed on the title sheet by virtue of section 65.

(3) Where warranty is granted or excluded under subsection (1), the Keeper must give effect to the grant or exclusion by entering a statement describing it in the title sheet.

(4) If an entry made in the title sheet on an application being accepted by virtue of section 42 ceases to be provisional, the Keeper may—
   (a) grant such warranty as the Keeper (having regard to sufficiency of evidence as to title) considers appropriate, and
   (b) give effect to the grant by entering a statement describing it in the title sheet.

### Variation of warranty

(1) This section applies where warranty is—
   (a) as provided for in section 71 or 72,
   (b) granted under section 73(1)(a), (b)(i) or (4)(a), or
   (c) excluded under section 73(1)(b)(ii).

(2) The Keeper may, if the Keeper comes to be satisfied (having regard to sufficiency of evidence as to title) that it is appropriate to do so, grant—
   (a) warranty as provided for in section 71,
   (b) less extensive warranty than as so provided, or
   (c) more extensive warranty than as so provided.

(3) The Keeper may not, under subsection (2), grant warranty that is less extensive than the warranty which was originally provided for or granted as mentioned in subsection (1)(a) or (b).

(4) For the purposes of subsection (2), the Keeper must have regard to any relevant caveat placed on the title sheet by virtue of section 65.

(5) Where the Keeper grants warranty or more extensive warranty under subsection (2), the Keeper must—
   (a) unless the warranty granted is warranty only as provided for in section 71, give effect to the grant by entering a statement describing it on the title sheet, and
   (b) remove any statement previously entered under section 73(3) or (4)(b).

### Claims under warranty

#### Claims under Keeper’s warranty

(1) The Keeper must pay compensation for loss incurred as a result of a breach of the Keeper’s warranty.

(2) Liability to pay such compensation arises only if and when the inaccuracy giving rise to the claim for compensation is rectified.

(3) A claimant is not required to exhaust other remedies before making a claim to such compensation.
(4) Payment by the Keeper under this section does not extinguish any rights which the claimant may have against another person in respect of the loss compensated.

(5) But it is a condition of any such payment that the claimant assign any such rights to the Keeper.

76 **Claims under warranty: circumstances where liability excluded**

The Keeper has no liability to pay compensation by virtue of section 75(1)—

(a) if the inaccuracy is consequent upon an error in the cadastral map and that error was made in reasonable reliance upon the base map,

(b) if the existence of the inaccuracy was, or ought to have been, known to—

(i) the applicant, or

(ii) any person acting as solicitor or other legal adviser to the applicant, at the time of registration,

(c) in so far as the inaccuracy is attributable to a failure of—

(i) the applicant, or

(ii) any person acting as solicitor or other legal adviser to the applicant, to comply with the duty owed to the Keeper under section 107,

(d) in so far as the claimant’s loss could have been avoided by the applicant, owner or claimant taking certain measures which it would have been reasonable for the applicant, owner or claimant to take,

(e) in so far as the connection between the claimant’s loss and the inaccuracy is too remote, or

(f) for non-patrimonial loss.

77 **Claims under warranty: quantification of compensation**

(1) Compensation payable by virtue of section 75(1)—

(a) is, in so far as it is not compensation mentioned in paragraph (b), to be quantified as at the date on which the inaccuracy giving rise to the claim is rectified, and

(b) is to include—

(i) reimbursement of reasonable extra-judicial legal expenses, and

(ii) compensation for any other consequential loss.

(2) Interest on a sum so payable runs from the date mentioned in subsection (3) until the sum in question is paid.

(3) The date is—

(a) where the sum is payable other than by virtue of subsection (1)(b), the date mentioned in subsection (1)(a),

(b) where the sum is payable by virtue of subsection (1)(b)(i), the date on which the claimant paid the sum in question, and

(c) where the sum is payable by virtue of subsection (1)(b)(ii), the date on which the loss was sustained.
(4) The Scottish Ministers may by regulations make provision as to the rate of interest payable by virtue of subsection (2).

**PART 8**

**RECTIFICATION OF THE REGISTER**

*Rectification*

**78 Rectification of the register**

(1) This section applies where the Keeper becomes aware of a manifest inaccuracy in a title sheet or in the cadastral map.

(2) The Keeper must rectify the inaccuracy if what is needed to do so is manifest.

(3) Where what is so needed is not manifest, the Keeper must enter a note identifying the inaccuracy in the title sheet or, as the case may be, in the cadastral map.

(4) Where the Keeper rectifies an inaccuracy, the Keeper must—

(a) include in the archive record a copy of any document which discloses, or contributes to disclosing, the inaccuracy, and

(b) give notice of the rectification to any person who appears to the Keeper to be affected by it materially.

(5) Land register rules may make provision about—

(a) the persons to be notified by the Keeper, and

(b) the method by which such notice is to be given.

(6) A failure to comply with subsection (4) or with any rules so made does not affect the validity of a rectification under subsection (2).

**79 Rectification where registration provisional etc.**

(1) This section applies where it appears to the Keeper that rectification of an inaccuracy would interrupt a period of possession—

(a) which is current, and

(b) which, if uninterrupted, would, under section 1(1) or 2(1) of the Prescription and Limitation (Scotland) Act 1973 (c.52) (sections which provide for positive prescription), affect a real right.

(2) If the inaccuracy is in an entry marked provisional by virtue of section 43, the Keeper—

(a) may rectify the register if all those affected consent,

(b) where there is no such consent, must not rectify the register before the existence of the inaccuracy is judicially determined.

(3) In any other case, the Keeper—

(a) must—

(i) mark the relevant entry in the title sheet provisional,

(ii) enter in the appropriate section of the title sheet the name and designation of the true holder of the right affected by the inaccuracy (if any such person can be identified),
(b) may rectify the register if all those affected consent,
(c) where there is no such consent, must not rectify the register before the existence
of the inaccuracy is judicially determined.

Referral of questions to Lands Tribunal

79A  Referral to the Lands Tribunal for Scotland

(1) A person with an interest may refer a question relating to—
   (a) the accuracy of the register, or
   (b) what is needed to rectify an inaccuracy in the register,
to the Lands Tribunal for Scotland.

(2) The Lands Tribunal must, on determining the question, give notice to—
   (a) the applicant,
   (b) any other person appearing to them to have an interest, and
   (c) the Keeper.

(3) This section is without prejudice to any other right of recourse, whether under an
   enactment or under a rule of law.

Keeper’s right to be heard in proceedings

Proceedings involving the accuracy of the register

The Keeper is entitled to appear and be heard in any civil proceedings, whether before a
court or tribunal, in which—

(a) the accuracy of the register, or
(b) what is needed to rectify an inaccuracy in the register,
is put in question.

Compensation in consequence of rectification

80  Rectification: compensation for certain expenses and losses

(1) The Keeper must pay compensation for—
   (a) reimbursement of reasonable extra-judicial legal expenses incurred by a person in
       securing rectification of the register, and
   (b) any loss sustained by the person in consequence of the inaccuracy rectified.

(2) A claimant is not required to exhaust other remedies before making a claim to such
    compensation.

(3) Payment by the Keeper under this section does not extinguish any rights which the
    claimant may have against another person in respect of the loss compensated.

(4) But it is a condition of any such payment that the claimant assigns any such rights to the
    Keeper.
(5) Interest on a sum payable under this section runs from the date mentioned in subsection (6) until the sum in question is paid.

(6) The date is—
   (a) where the sum is payable by virtue of subsection (1)(a), the date on which the claimant paid the sum in question,
   (b) where the sum is payable by virtue of subsection (1)(b), the date on which the loss was sustained.

(7) The Scottish Ministers may by regulations make provision as to the rate of interest payable by virtue of subsection (5).

81 **Rectification: circumstances where liability excluded**

The Keeper has no liability to pay compensation under section 80—
   (a) if the inaccuracy is caused other than by a change made by the Keeper to a title sheet or the cadastral map,
   (b) if the inaccuracy is consequent on an error in the cadastral map and that error was made in reasonable reliance on the base map,
   (c) in so far as the inaccuracy is in an entry made on an application being accepted by virtue of section 42(1) or under section 42(5),
   (d) in so far as the inaccuracy is caused by some act or omission on the part of the claimant,
   (e) in so far as the claimant’s loss could have been avoided by the claimant taking certain measures which it would have been reasonable for the claimant to take,
   (f) in so far as the connection between the claimant’s loss and the inaccuracy is too remote, or
   (g) for non-patrimonial loss.

**Part 9**

**Rights of persons acquiring etc. in good faith**

**Ownership**

82 **Acquisition from disponer without valid title**

(1) This section applies where a person (“A”), who is not the proprietor of a registered plot of land but—
   (a) is entered in the proprietorship section of the title sheet as proprietor, and
   (b) is in possession of the land,

purports to dispone the land.

(2) The disponee (“B”) acquires ownership of the land provided that the conditions in subsection (3) are met.

(3) The conditions are that—
   (a) the land has been in the possession, openly, peaceably and without judicial interruption—
(i) of A for a continuous period of at least 1 year, or
(ii) of A and then of B for periods which together constitute such a period,
(b) at no time during that period did the Keeper become aware that the register was inaccurate as a result of A (or B) not being the proprietor,
(c) B is in good faith,
(d) the disposition would have conferred ownership on B had A been proprietor when the land was disponed,
(e) at no time during the period mentioned in paragraph (a)—
(i) was the title sheet subject, by virtue of section 65, to a caveat relevant to the acquisition by B,
(ii) did the title sheet contain a statement under section 30(5), and
(f) the Keeper warrants (or is to be taken to warrant) A’s title.

(4) The date on which ownership is acquired by virtue of subsection (2) is—
(a) where subsection (5) applies, the date on which the disposition is registered,
(b) where subsection (6) applies, the date on which the period of possession mentioned in that subsection expires.

(5) This subsection applies where, as at the date of registration, the land has been in the possession, openly, peaceably and without judicial interruption—
(a) of A for a continuous period of at least 1 year, or
(b) of A and then of B for periods which together constitute such a period.

(6) This subsection applies where there is a continuous period of possession such as is mentioned in subsection (5) but that period, though it commences before registration on the application of B, does not expire until a date later than the date of registration.

83 Acquisition from representative of disponer without valid title

(1) Section 82 also applies where a person (“P”), who is not entered in the proprietorship section of the title sheet as proprietor but who would have power to dispone the land—
(a) were A the proprietor, or
(b) (where A has died) had A been the proprietor, purports to dispone it.

(2) For the purposes of section 82, possession of the plot of land by P is to be treated as if it were possession of the land by A.

Leases

84 Acquisition from assigner without valid title

(1) This section applies where a person (“A”), who is not the tenant under a registered lease but—
(a) is shown in the title sheet as tenant, and
(b) is in possession of the subjects of the lease, purports to assign the lease.
(2) The assignee ("B") acquires the lease provided that the conditions in subsection (3) are met.

(3) The conditions are that—

(a) the subjects of the lease have been in the possession, openly, peaceably and without judicial interruption—

(i) of A for a continuous period of at least 1 year, or

(ii) of A and then of B for periods which together constitute such a period,

(b) at no time during that period did the Keeper become aware that the register was inaccurate as a result of A (or B) not being the tenant,

(c) B is in good faith,

(d) the lease is extant,

(e) B would have acquired the lease had A been tenant when the lease was assigned,

(f) at no time during the period mentioned in paragraph (a) was the title sheet subject, by virtue of section 65, to a caveat relevant to the acquisition by B, and

(g) the Keeper warrants (or is to be taken to warrant) A’s title.

(4) The date on which the lease is acquired by virtue of subsection (2) is—

(a) where subsection (5) applies, the date on which the deed of assignation is registered,

(b) where subsection (6) applies, the date on which the period of possession mentioned in that subsection expires.

(5) This subsection applies where, as at the date of registration, the subjects of the lease have been in the possession, openly, peaceably and without judicial interruption—

(a) of A for a continuous period of at least 1 year, or

(b) of A and then of B for periods which together constitute such a period.

(6) This subsection applies where there is a continuous period of possession such as is mentioned in subsection (5) but that period, though it commences before registration on the application of B, does not expire until a date later than the date of registration.

Acquisition from representative of assigner without valid title

(1) Section 84 also applies where a person ("P"), who is not entered in the title sheet as tenant but who would have power to assign the lease—

(a) were A the tenant, or

(b) (where A has died) had A been the tenant, purports to assign it.

(2) For the purposes of section 84, possession of the subjects of the lease by P is to be treated as if it were possession of the subjects by A.
Servitudes

86  Grant of servitude by person not proprietor

(1) This section applies where a person (“A”), who is not the proprietor of a registered plot of land but—

(a) is entered in the proprietorship section of the title sheet as proprietor, and

(b) is in possession of the land,

purports to create a servitude, with the land as the burdened property.

(2) The servitude is created provided that the conditions mentioned in subsection (3) are met.

(3) The conditions are that—

(a) the land has been in the possession of A, openly, peaceably and without judicial interruption, for a continuous period of at least 1 year,

(b) at no time during that period did the Keeper become aware that the register was inaccurate as a result of A not being the proprietor,

(c) the proprietor of what is to be the benefited property is in good faith,

(d) at no time during the period mentioned in paragraph (a) was the title sheet subject, by virtue of section 65, to a caveat relevant to the creation of the servitude, and

(e) the Keeper warrants (or is to be taken to warrant) A’s title.

(4) The date on which the servitude is created by virtue of subsection (2) is—

(a) where subsection (5) applies, the date of registration,

(b) where subsection (6) applies, the date on which the period mentioned in that subsection expires.

(5) This subsection applies where, as at the date of registration, the land has been in the possession of A, openly, peaceably and without judicial interruption, for a continuous period of at least 1 year.

(6) This subsection applies where there is a continuous period of possession such as is mentioned in subsection (5) but that period, though it commences before registration, does not expire until a date later than the date of registration.

(7) This section is subject to section 75 of the Title Conditions (Scotland) Act 2003 (asp 9) (creation of positive servitude by writing: deed to be registered).

Extinction of encumbrances etc.

87  Extinction of encumbrance when land disposed

(1) Where the conditions mentioned in subsection (2) are met, a person (“A”) who acquires ownership of land on registration or on a later date by virtue of section 82(4)(b)—

(a) takes the land free of an encumbrance which is not entered in the title sheet as at the date on which A acquires ownership of the land, and

(b) any such encumbrance is extinguished.

(2) The conditions are that, as at the date on which ownership is acquired—

(a) A is in good faith, and
(b) the title sheet is not, by virtue of section 65, subject to a caveat relevant to such acquisition by A.

(3) Subsection (1) does not apply to an heritable security which is not entered in the securities section of a shared plot title sheet by virtue of section 18(3)(b).

(4) “Encumbrance” in subsection (1) does not include—

(a) a public right of way,

(b) a path delineated in an order under section 22 of the Land Reform (Scotland) Act 2003 (asp 2) (compulsory powers to delineate paths in land in respect of which access rights are exercisable),

(c) a servitude created other than under section 75(1) of the Title Conditions (Scotland) Act 2003 (asp 9),

(d) a lease, or

(e) an encumbrance the creation of which does not require registration of the constitutive deed.

**88 Extinction of encumbrance when lease assigned**

(1) Where the conditions mentioned in subsection (2) are met, a person (“A”) who acquires a registered lease on registration or on a later date by virtue of section 84(4)(b)—

(a) takes that lease free of an encumbrance—

(i) of a kind mentioned in subsection (4), and

(ii) which is not entered in the title sheet as at the date on which A acquires the registered lease, and

(b) any such encumbrance is extinguished.

(2) The conditions are that, as at the date on which the lease is acquired—

(a) A is in good faith, and

(b) the title sheet is not, by virtue of section 65, subject to a caveat relevant to such acquisition by A.

(3) Subsection (1) does not apply to an heritable security which is not entered in the securities section of a shared lease title sheet by virtue of paragraph 8(b) of schedule 1.

(4) The encumbrances are—

(a) a heritable security over the lease,

(b) a title condition such as is mentioned in paragraph (d) or (e) of the definition of “title condition” in section 122(1) of the Title Conditions (Scotland) Act 2003 (asp 9).

**89 Extinction of floating charge when land disposed**

A person who, in good faith, acquires ownership of land from another person (“A”), takes the land free of any floating charge which was granted by a predecessor in title of A.
Compensation in consequence of this Part

90 Compensation for loss incurred in consequence of this Part

(1) The Keeper must pay compensation for loss incurred by a person mentioned in subsection (2).

(2) The person is one who—

   (a) is deprived of a right by virtue of this Part, or

   (b) is the proprietor of a property burdened by a servitude created by virtue of section 86.

(3) A claimant is not required to exhaust other remedies before making a claim to such compensation.

(4) Payment by the Keeper under this section does not extinguish any rights which the claimant may have against another person in respect of the loss compensated.

(5) But it is a condition of any such payment that the claimant assigns any such rights to the Keeper.

(6) The Keeper has no liability to pay compensation—

   (a) in so far as the claimant’s loss could have been avoided by the claimant taking certain measures which it would have been reasonable for the claimant to take,

   (b) in so far as the claimant’s loss is too remote, or

   (c) for non-patrimonial loss.

91 Quantification of compensation

(1) Compensation payable by virtue of section 90(1)—

   (a) is, in so far as it is not compensation mentioned in paragraph (b), to be quantified as at the date on which the claimant lost the right or, as the case may be, on which the servitude was created, and

   (b) is to include—

      (i) reimbursement of reasonable extra-judicial legal expenses, and

      (ii) compensation for any other consequential loss.

(2) Interest on a sum so payable runs from the date mentioned in subsection (3) until the sum in question is paid.

(3) The date is—

   (a) where the sum is payable other than by virtue of subsection (1)(b), the date mentioned in subsection (1)(a),

   (b) where the sum is payable by virtue of subsection (1)(b)(i), the date on which the claimant paid the sum in question, and

   (c) where the sum is payable by virtue of subsection (1)(b)(ii), the date on which the loss was sustained.

(4) The Scottish Ministers may by regulations make provision as to the rate of interest payable by virtue of subsection (2).
92 Where requirement for writing satisfied by electronic document

Electronic documents

(1) The Requirements of Writing (Scotland) Act 1995 (c.7) (the “1995 Act”) is amended as follows.

(2) In section 1 (writing required for certain contracts, obligations, trusts, conveyances and wills)—

(a) in subsection (2)—

(i) for “subsections (2A) and” substitute “subsection”,

(ii) after “written document” insert “which is a traditional document”,

(iii) after “section 2” insert “or an electronic document complying with section 9B”,

(iv) after paragraph (b) insert—

“(ba) the constitution of an agreement under section 63(1) of the Land Registration etc. (Scotland) Act 2012 (asp 00),”,

(b) in subsection (3)—

(i) for “subsections (2)(a) or (2A)” substitute “subsection (2)(a)”,

(ii) repeal “written”,

(iii) for “an electronic document complying with section 2A,” substitute “section 9B”,

(c) in subsection (5), for “subsections (2)(a) or (2A)” substitute “subsection (2)(a)”.

(3) The provisions of section 1 as amended by subsection (2) become Part 1 of the Act.

(4) The title of Part 1 is “When writing is required”.

93 Electronic documents

(1) The 1995 Act is further amended as follows.

(2) After section 9 insert—

“PART 3

ELECTRONIC DOCUMENTS

9A Application of Part 3

This Part applies to documents which, rather than being written on paper, parchment or some similar tangible surface are created in electronic form (“electronic documents”).

9B Validity of electronic documents

(1) No electronic document required by section 1(2) is valid in respect of the formalities of execution unless—
Part 10—Electronic documents, electronic conveyancing and electronic registration

(a) it is authenticated by the granter, or if there is more than one granter by each granter, in accordance with subsection (2), and
(b) it meets such other requirements (if any) as may be prescribed by the Scottish Ministers in regulations.

(2) An electronic document is authenticated by a person if the electronic signature of that person—
(a) is incorporated into, or logically associated with, the electronic document,
(b) was created by the person by whom it purports to have been created, and
(c) is of such type, and satisfies such requirements (if any), as may be prescribed by the Scottish Ministers in regulations.

(3) A contract mentioned in section 1(2)(a) may be regarded as constituted or varied (as the case may be) if—
(a) the offer is contained in one or more electronic documents,
(b) the acceptance is contained in another electronic document or in other such documents, and
(c) each of the documents is authenticated by its granter or granters.

(4) Where a person grants an electronic document in more than one capacity, authentication by the person of the document, in accordance with subsection (3), is sufficient to bind the person in all such capacities.

(5) Nothing in this section prevents an electronic document which has not been authenticated by the granter or granters of it from being used as evidence in relation to any right or obligation to which the document relates.

(6) Regulations under subsection (1)(b) or (2)(c) are subject to the negative procedure.

9C Presumption as to authentication of electronic documents

(1) Where—
(a) an electronic document bears to have been authenticated by the granter,
(b) nothing in the document or in the authentication indicates that it was not so authenticated, and
(c) the conditions set out in subsection (2) are satisfied,
the document is to be presumed to have been authenticated by the granter.

(2) The conditions are that the electronic signature incorporated into, or logically associated with, the document—
(a) is of such type and satisfies such requirements as may be prescribed by the Scottish Ministers in regulations, and
(b) (either or both)—
   (i) is used in such circumstances as may be so prescribed,
   (ii) bears to be certified,
and that if the electronic signature bears to be certified (and does not conform with paragraph (b)(i)) the certification is of such type and satisfies such requirements as may be so prescribed.

(3) Regulations under subsection (2) are subject to the negative procedure.

9D Presumptions as to granter’s authentication etc. when established in court proceedings

(1) Where—
(a) an electronic document bears to have been authenticated by a granter of it, and
(b) there is no presumption under section 9C that the document has been authenticated by that granter,
the court must, on an application being made to it by any person who has an interest in the document, if satisfied that the document was authenticated by that granter, grant decree to that effect.

(2) Where—
(a) an electronic document bears to have been authenticated by a granter of it, and
(b) there is no presumption by virtue of section 9E(1) as to the time, date or place of authentication,
the court must, on an application being made to it by any person who has an interest in the document, if satisfied as to that time, date or place, grant decree to that effect.

(3) On an application under subsection (1) or (2), evidence is, unless the court otherwise directs, to be given by affidavit.

(4) An application under subsection (1) or (2) may be made either as a summary application or as incidental to, and in the course of, other proceedings.

(5) The effect of a decree—
(a) under subsection (1), is to establish a presumption that the document has been authenticated by the granter concerned, or
(b) under subsection (2), is to establish a presumption that the statement in the decree as to time, date or place is correct.

(6) In this section, “the court” means—
(a) in the case of a summary application—
(i) the sheriff in whose sheriffdom the applicant resides, or
(ii) if the applicant does not reside in Scotland, the sheriff at Edinburgh, or
(b) in the case of an application made in the course of other proceedings, the court before which those proceedings are pending.
9E Further provision by Scottish Ministers about electronic documents

(1) The Scottish Ministers may, in regulations, make provision as to the effectiveness or formal validity of, or presumptions to be made with regard to—

(a) any alteration made, whether before or after authentication, to an electronic document,

(b) the authentication, by or on behalf of the granter, of such a document,

(c) the authentication, by or on behalf of a person with a disability, of such a document, or

(d) any annexation to such a document,

(including, without prejudice to the generality of this subsection, presumptions to be made with regard to the time, date and place of authentication of such a document).

(2) Regulations under subsection (1) may make such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient for the purposes of, or in consequence of the regulations.

(3) Subject to subsection (4), regulations under subsection (1) are subject to the negative procedure.

(4) Regulations which—

(a) make provision of the kind mentioned in subsection (1)(b), or

(b) add to, replace or omit any part of an Act (including this Act),

are subject to the affirmative procedure.

9F Delivery of electronic documents

(1) An electronic document may be delivered electronically or by such other means as are reasonably practicable.

(2) But such a document must be in a form, and such delivery must be by a means—

(a) the intended recipient has agreed to accept, or

(b) which it is reasonable in all the circumstances for the intended recipient to accept.

9G Registration and recording of electronic documents

(1) Subject to subsection (6), it is not competent—

(a) to record an electronic document in the Register of Sasines,

(b) to register such a document in the Land Register of Scotland,

(c) to register such a document for execution or preservation in the Books of Council and Session, or

(d) to record or register such a document in any other register under the management and control of the Keeper of the Registers of Scotland,
unless both subsection (2) and subsection (3) apply in relation to the document.

(2) This subsection applies where—
(a) the document is presumed under section 9C or 9D or by virtue of section 9E(1) to have been authenticated by the granter, or
(b) if there is more than one granter, the document is presumed by virtue of any of those provisions to have been authenticated by at least one of the granters.

(3) This subsection applies where—
(a) the document,
(b) the electronic signature authenticating it, and
(c) if the document bears to be certified, the certification,
are in such form and of such type as are prescribed by the Scottish Ministers in regulations.

(4) Before making regulations under subsection (3), the Scottish Ministers must consult with—
(a) the Keeper of the Registers of Scotland,
(b) the Keeper of the Records of Scotland, and
(c) the Lord President of the Court of Session.

(5) Regulations under subsection (3)—
(a) may make different provision for different cases or classes of case, and
(b) are subject to the negative procedure.

(6) Subsection (1) above does not apply in relation to—
(a) a document’s—
(i) being recorded in the Register of Sasines,
(ii) being registered in the Land Register of Scotland or in the Books of Council and Session, or
(iii) being recorded or registered in any other register under the management and control of the Keeper of the Registers of Scotland,
if an enactment requires or expressly permits such recording or registration notwithstanding that the document is not presumed to have been authenticated by the granter or by at least one of the granters,
(b) the recording of a court decree in the Register of Sasines or the registering of such a decree in the Land Register of Scotland,
(c) the registering in the Books of Council and Session of—
(i) a document registration of which is directed by the Court of Session,
(ii) a document the formal validity of which is governed by a law other than Scots law, provided that the Keeper of the Registers of Scotland is satisfied that the document is formally valid according to that other law,

(iii) a court decree granted under section 9D, or by virtue of section 9E(1), of this Act in relation to a document already registered in the Books of Council and Session, or

(d) the registration of a court decree in a separate register maintained for that purpose.

(7) An electronic document may be registered for preservation in the Books of Council and Session without a clause of consent to registration.”.

94 Amendment of Requirements of Writing (Scotland) Act 1995

Schedule 3, which contains modifications of the 1995 Act consequential on sections 92 and 93, has effect.

15 Electronic conveyancing

95 Automated registration

(1) The Keeper may, by means of a computer system under the Keeper’s management and control, enable—

(a) the creation of electronic documents,

(b) the electronic generation and communication of applications for registration in the register, and

(c) automated registration in the register.

(2) Only a person authorised by the Keeper, whether directly or indirectly, may use the system mentioned in subsection (1) to make applications for registration.

(3) The Scottish Ministers may, by regulations, make provision about the system mentioned in subsection (1) including—

(a) the kinds of deeds which may be authorised for use in the system,

(b) the persons who may be authorised to use the system,

(c) the suspension or revocation of a person’s authorisation under subsection (2),

(d) the method of appeal against any such suspension or revocation,

(e) the imposition of obligations on persons using the system, and

(f) the creation of deemed warranties (whether in favour of the Keeper or of other users) by persons using the system.

(4) Before making such regulations, the Scottish Ministers must consult the Keeper.
Electronic recording and registration

96  **Power to enable electronic registration**

(1) The Scottish Ministers may, by regulations, make provision to enable the recording or registration of electronic documents in any register under the management and control of the Keeper.

(2) Regulations under subsection (1) may, in particular, make provision—
   (a) regulating the making up and keeping of any such register,
   (b) regulating the procedure to be followed by any person applying for recording or registration in any such register,
   (c) regulating the procedure to be followed by the Keeper in relation to—
      (i) any such application, and
      (ii) the recording or registration of electronic documents to which such an application relates,
   (d) that the Scottish Ministers consider necessary or expedient to enable recording or registration of electronic documents in any such register.

(3) Regulations under subsection (1) may modify any enactment.

(4) Before making regulations under subsection (1), the Scottish Ministers must consult—
   (a) the Keeper,
   (b) the Keeper of the Records of Scotland, and
   (c) the Lord President of the Court of Session.

PART 11

MISCELLANEOUS AND GENERAL

Deduction of title

97  **Deduction of title**

(1) Where a person applies to register a deed mentioned in subsection (2), the deed need not deduce title.

(2) The deed is one validly granted by the unregistered holder of—
   (a) land, or
   (b) a real right in land,

to which the deed relates.

Notes on register

98  **Note of date on which entry in register is made**

When an entry is made in the register there is to be included in that entry the date on which it is made.
Appeals

99 Appeals

(1) An appeal may be made to the Lands Tribunal for Scotland, on a question of fact or on a point of law, against any decision of the Keeper under this Act.

5 (2) Subsection (1) is without prejudice to any other right of recourse, whether under an enactment or under a rule of law.

(3) Where a person successfully appeals against a decision of the Keeper to reject an application for registration, the application is not revived.

Extracts and certified copies

100 Extracts and certified copies: general

(1) A person may apply to the Keeper for an extract—
   (a) of, or of any part of, a title sheet,
   (b) of any part of the cadastral map, or
   (c) of, or of any part of, a document in the archive record.

(2) A person may apply to the Keeper for a certified copy—
   (a) of an application or advance notice in the application record,
   (b) of, or of any part of, any other document in that record.

(3) The Keeper must issue the extract or, as the case may be the certified copy, if—
   (a) such fee as is payable for issuing it is paid, or
   (b) arrangements satisfactory to the Keeper are made for payment of that fee.

(4) If, on application under subsection (1)(a) or (b), the applicant requests an extract in relation to a title sheet or the cadastral map as at a specific date, the Keeper need comply with the request only to the extent that it is reasonably practicable to do so.

(5) An extract of a part of the cadastral map issued under subsection (3)—
   (a) must include the base map so far as relating to that part either—
      (i) as at the date on which the extract is issued, or
      (ii) if the Keeper considers it appropriate to do so, as at some earlier date, and
   (b) must specify the base map date opted for under paragraph (a).

(6) The Keeper may authenticate the extract or, as the case may be the certified copy, as the Keeper considers appropriate.

(7) The Keeper may issue the extract, or as the case may be the certified copy, as an electronic document if (and only if) the applicant requests that it be issued in that form.

101 Evidential status of extract or certified copy

(1) An extract or certified copy issued under subsection (3) of section 100 in relation to an application under subsection (1)(a) or (b) or (2)(a) of that section is to be accepted for all purposes as sufficient evidence of the contents—
   (a) of the original, and
   (b) of any matter relating to the original which appears on the extract or copy.
(2) An extract or certified copy issued under subsection (3) of that section in relation to an application under subsection (1)(c) or (2)(b) of that section is to be accepted for all purposes as sufficient evidence of the contents—
   (a) of the document as submitted to the Keeper, and
   (b) of any matter relating to the document as so submitted which appears on the extract or copy.

102 Liability of Keeper in respect of extracts, information and lost documents etc.

(1) A person is entitled to be compensated by the Keeper in respect of loss suffered as a consequence of—
   (a) the issue of an extract or certified copy under section 100 that is not a true extract, or as the case may be a true copy,
   (b) the provision (in writing or in such other manner as provision is made for in an order under section 103(1)(a)) of other information as to the contents of the register that is incorrect,
   (c) a document being lost, damaged or destroyed while lodged with the Keeper.

(2) The Keeper has no liability under subsection (1)—
   (a) in so far as the claimant’s loss could have been avoided by the applicant or claimant taking certain measures which it would have been reasonable for the applicant or claimant to take,
   (b) in so far as a claimant’s loss is too remote, or
   (c) for non-patrimonial loss.

Information and access

103 Information and access

(1) The Scottish Ministers may, by order, make further provision as regards—
   (a) information to be made available by the Keeper and the manner in which it is to be made available,
   (b) access to any register under the management and control of the Keeper.

(2) In subsection (1)(a), “information” includes information in the form of extracts and certified copies.

Keeper’s functions

104 Provision of services by the Keeper

(1) The Keeper may provide consultancy, advisory or other commercial services.

(2) Those services need not relate to the law and practice of registration.

(3) The terms on which those services are provided (including the fees charged for provision of them) are to be such as may be agreed between the Keeper and those provided with them.

(4) If the Keeper considers it expedient to do so in connection with the provision of any of those services, the Keeper may (either or both)—
(a) form, or participate in the forming of, a body corporate or other entity,
(b) purchase, or invest in, a body corporate or other entity.

(5) This section does not affect any other power or duty of the Keeper.

105 Performance of Keeper’s functions during vacancy in office etc.

(1) This section applies where—
(a) there is a vacancy in the office of the Keeper or the Keeper is incapable by reason of ill health of performing the Keeper’s functions, and
(b) no person has been authorised by the Scottish Ministers, under section 1(6) of the Public Registers and Records (Scotland) Act 1948 (c.57), to perform the functions of the Keeper.

(2) A member of the Keeper’s staff may perform the Keeper’s functions.

(3) Any function performed by a member of the Keeper’s staff by virtue of subsection (2) is to be treated as if it had been performed by the Keeper.

Fees

106 Fees

(1) The Scottish Ministers may, by order—
(a) provide for the fees payable in relation to—
(i) registering, recording or entering in any register under the management and control of the Keeper,
(ii) access to such a register,
(iii) information made available by the Keeper,
(b) provide for the method of paying any such fees, and
(c) authorise the Keeper to determine, in such circumstances and subject to such limitations and conditions as may be specified in the order, any such fees.

(2) An order under this section may make different provision for different cases or for different classes of case.

(3) Before making an order under this section, the Scottish Ministers must consult the Keeper about, among other things—
(a) the expenses incurred by the Keeper in relation to administering and improving the systems of—
(i) registering, recording or entering in any register under the management and control of the Keeper,
(ii) providing access to any such register, and
(iii) making information available,
(b) in the case of the register, the expenses incurred by the Keeper in bringing all titles to land into it,
(c) the desirability of encouraging registering, recording and entering in any register under the management and control of the Keeper.
(4) In subsections (1)(a)(iii) and (3)(a)(iii), “information”—

(a) includes information in the form of extracts and certified copies,

(b) does not include information provided by virtue of section 104.

Duty to take reasonable care

107 Duties of certain persons

(1) A person mentioned in subsection (2) must take reasonable care to ensure that the Keeper does not inadvertently make the register inaccurate as a result of a change made in consequence of the grant mentioned in that subsection.

(2) The persons are—

(a) a person granting a deed intended to be registered,

(b) a person who, in connection with the grant, acts as a solicitor or other legal adviser to the grantor.

(3) A person mentioned in subsection (4) must take reasonable care to ensure that the Keeper does not inadvertently make the register inaccurate as a result of a change made in consequence of the application mentioned in that subsection.

(4) The persons are—

(a) a person making an application for registration,

(b) a person who, in connection with the application, acts as a solicitor or other legal adviser to the applicant.

(5) The Keeper is entitled to be compensated by a person in breach of the duty under subsection (1) or (3) for any loss suffered as a consequence of that breach.

(6) But a person has no liability under subsection (5) in so far as—

(a) the Keeper’s loss could have been avoided by the Keeper taking certain measures which it would have been reasonable for the Keeper to take, or

(b) the Keeper’s loss is too remote.

Offence

108 Offence relating to applications for registration

(1) A person mentioned in subsection (2) commits an offence if the person—

(a) makes a materially false or misleading statement in relation to an application for registration knowing that, or being reckless as to whether, the statement is false or misleading, or

(b) intentionally fails to disclose material information in relation to such an application or is reckless as to whether all material information is disclosed.

(2) The persons are—

(a) a person making an application for registration, or

(b) a person who, in connection with such an application, acts as solicitor or other legal adviser to the applicant.
(3) It is a defence for a person charged with an offence under subsection (1) (the “accused”) that the accused took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(4) The defence is established if the accused—

(a) acted in reliance on information supplied by another person, and

(b) did not know and had no reason to suppose that—
   (i) the information was false or misleading, or
   (ii) all material information had not been disclosed.

(5) Subsection (4) does not exclude other ways of establishing the defence mentioned in subsection (3).

(6) An accused may not rely on a defence involving the allegation that the commission of the offence was due to reliance on information supplied by another person unless—

(a) the accused has complied with subsection (7), or

(b) the court grants leave.

(7) The accused must serve on the prosecutor a notice giving such information identifying or assisting in the identification of the other person as is in the accused’s possession—

(a) in proceedings on indictment, at least 14 clear days before the preliminary hearing (where the case is to be tried in the High Court) or the first diet (where the case is to be tried in the sheriff court),

(b) in summary proceedings—
   (i) where an intermediate diet is held, at or before that diet,
   (ii) where no such diet is held, at least 10 clear days before the trial diet.

(7A) Subsection (6) does not apply where—

(a) the accused lodges a defence statement—
   (i) under section 70A of the Criminal Procedure (Scotland) Act 1995 (c.46), or
   (ii) under section 125 of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) in accordance with the time limits mentioned in subsection (7)(b), and

(b) the accused’s defence involves an allegation that the commission of the offence was due to reliance on information supplied by another person.

(8) A person guilty of an offence under subsection (1) is liable—

(a) on summary conviction, to imprisonment for a period not exceeding 12 months, to a fine not exceeding the statutory maximum, or to both,

(b) on conviction on indictment, to imprisonment for a period not exceeding 2 years, to a fine, or to both.

General provisions

109 Interpretation

(1) In this Act, unless the context otherwise requires—

“1995 Act” means the Requirements of Writing (Scotland) Act 1995 (c.7),
“advance notice” has the meaning given by section 55(1),

“application for registration” means an application under section 21 or 27,

“application record” has the meaning given by section 15,

“archive record” has the meaning given by section 14(1),

“the base map” has the meaning given by section 11(6),

“benefited property” has the meaning given by section 122(1) of the Title Conditions (Scotland) Act 2003 (asp 9),

“burdened property” has the meaning given by section 122(1) of the Title Conditions (Scotland) Act 2003 (asp 9),

“cadastral map” has the meaning given by section 11(1),

“cadastral unit” has the meaning given by section 12,

“date of application” (in relation to an application for registration) has the meaning given by section 35,

“date of registration” has the meaning given by 36(1),

“deed” means a document (and includes a decree which is registrable under an enactment),

“designation” includes—

(a) where the person designated is not a natural person—

(i) the legal system under which the person is incorporated or otherwise established,

(ii) if a number has been allocated to the person under section 1066 of the Companies Act 2006 (c.46), that number, and

(iii) any other identifier (whether or not a number) peculiar to the person, and

(b) if the person designated has a right in land in a special capacity, a description of that capacity,

“the designated day” has the meaning given by section 118,

“enactment” includes—

(a) an enactment comprised in, or in an instrument made under, this Act, and

(b) a local and personal or private Act,

“existing title sheet” means a title sheet which is in existence immediately before the commencement of the designated day,

“flat” has the meaning given by section 29(1) of the Tenements (Scotland) Act 2004 (asp 11),

“flatted building” has the meaning given by section 16(4),

“heritable creditor” means the holder of a heritable security,

“heritable security” means—

(a) a standard security, or
(b) any other right in security over heritable property provided that it is not a right in security created as a floating charge,

“the Keeper” means the Keeper of the Registers of Scotland,

“land” includes—

(a) buildings and other structures,

(b) the seabed of the territorial sea of the United Kingdom adjacent to Scotland (including land within the ebb and flow of the tide at ordinary spring tides), and

(c) other land covered with water,

“land register rules” means rules made under section 111(1),

“lease” includes sub-lease,

“lease title sheet” means a title sheet for a registered lease,

“personal real burden” has the meaning given by section 122(1) of the Title Conditions (Scotland) Act 2003 (asp 9),

“plot of land” has the meaning given by section 3(4) and (5),

“possession” includes civil possession (analogous expressions being construed accordingly),

“proprietor” means a person who has a valid completed title as proprietor to a plot of land,

“protected period” has the meaning given by section 57(3),

“the register” means the Land Register of Scotland,

“registrable deed” is to be construed in accordance with section 48,

“sharing plot” and “shared plot” are to be construed in accordance with section 17(3),

“tenement” has the meaning given by section 26 of the Tenements (Scotland) Act 2004 (asp 11),

“title condition” has the meaning given by section 122(1) of the Title Conditions (Scotland) Act 2003 (asp 9),

“title sheet record” has the meaning given by section 3(3).

(2) A deed on which an application under section 21 is based is “valid” for the purposes of this Act if—

(a) by the registration applied for a right would be acquired, varied or extinguished, or

(b) the deed is certificatory of an acquisition, variation or extinction which has taken place.

(3) In relation to a lease title sheet, any reference in this Act—

(a) to a proprietor is (except in section 63) to be read as a reference to the tenant,

(b) to a proprietorship section is to be construed as a reference to a tenancy section, and

(c) to ownership in common is to be construed as a reference to tenancy in common.
The Scottish Ministers may, by order, amend paragraph (b) of the definition of “designation” in subsection (1).

Before making such an order, the Scottish Ministers must consult the Keeper.

References to “registering” etc. in the Land Register of Scotland

In this Act (other than subsection (2)), unless the context otherwise requires—

(a) any reference to “registration” is to registration in the register, and

(b) analogous expressions are to be construed accordingly.

Unless the context otherwise requires—

(a) any reference, however expressed, in any enactment to “registering” a document in the register, is to be construed as including a reference to giving effect to that document in accordance either with section 30 or with section 31, and

(b) analogous expressions are to be construed accordingly.

Land register rules

The Scottish Ministers may, by regulations, make land register rules—

(a) regulating the making up and keeping of the register,

(b) regulating the procedure in relation to applications for registration,

(c) prescribing forms to be used in relation to the register,

(d) as to when the application record is open for the making of entries,

(e) requiring the Keeper to enter in the title sheet record such information as may be specified in the rules or authorising or requiring the Keeper to enter in that record such rights or obligations as may be so specified,

(f) relating to any other matter which this Act provides may or must be provided for by land register rules, or

(g) concerning other matters and seeming to them to be necessary or expedient in order to give full effect to the purposes of this Act.

Before making land register rules, the Scottish Ministers must consult the Keeper.

Subordinate legislation

Any power conferred by this Act on the Scottish Ministers to make orders or regulations may be exercised to make different provision for different cases or descriptions of case or for different purposes.

Orders and regulations under the following sections are subject to the negative procedure—

(a) section 11(6)(b),

(b) section 27(6),

(c) section 44(7),

(ca) section 47(2) or (3),

(cb) section 55(4),
(f) subject to subsection (4)(a), section 96(1),

(g) section 111(1),

(h) subject to subsection (4)(b), section 113(1).

(3) Orders and regulations under the following provisions are subject to the affirmative procedure—

(a) section 36(3),

(b) section 42(8),

(e) section 57(6),

(ea) section 58B(3)(b),

 eb) section 61(1),

(f) section 66(3),

(fa) section 77(4),

(fb) section 80(7),

(fc) section 91(4),

(g) section 95(3),

(h) section 103(1),

(i) section 106(1),

(j) section 109(4).

(4) Orders and regulations under the following sections which add to, replace or omit the text of any Act are subject to the affirmative procedure—

(a) section 96(1),

(b) section 113(1).

113 Ancillary provision

(1) The Scottish Ministers may, by order, make such incidental, supplementary, consequential, transitory, transitional or saving provision as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, any provision made by or under this Act.

(2) An order under subsection (1) may modify any enactment (including this Act).

114 Transitional provisions

Schedule 4, which contains transitional provisions, has effect.

115 Minor and consequential modifications

Schedule 5, which contains minor amendments and repeals, and amendments and repeals consequential upon the provisions of this Act, has effect.
116 Saving provisions

(1) The amendments to the Prescription and Limitation (Scotland) Act 1973 (c.52) made by paragraph 18(2) and (4) of schedule 5 do not apply in relation to a continuous period which has expired before the designated day.

(2) Despite the repeal, by paragraph 19(5) of schedule 5, of section 28(1) of the Land Registration (Scotland) Act 1979 (c.33), that section continues to have effect for the purposes of sections 15(4), 16, 20 to 22A and 29 of and schedules 1 and 3 to the 1979 Act.

117 Crown application

(1) No contravention by the Crown of section 108 makes the Crown criminally liable.

(2) But the Court of Session may, on the application of the Keeper or any person authorised by the Keeper, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Despite subsection (1), section 108 applies to persons in the public service of the Crown as it applies to other persons.

118 The designated day

The Scottish Ministers may, for the purposes of this Act, by order, designate a day (“the designated day”), being a day which falls not less than 6 months after the order is made.

119 Commencement

(1) The following sections come into force on the day after Royal Assent—

(a) section 109,

(b) section 110(1),

(c) section 112,

(d) section 113,

(e) section 118,

(f) this section, and

(g) section 120.

(2) The following provisions of this Act come into force on the designated day—

(a) Parts 1 to 9 (other than sections 52(4) and 61) and schedules 1 and 2,

(b) sections 97 to 102,

(c) section 107,

(d) section 108,

(da) section 110(2),

(e) section 111,

(f) section 114 and schedule 4,

(g) section 115 and schedule 5,

(h) section 116, and
(i) section 117.

(3) The other provisions of this Act come into force on such day as the Scottish Ministers may, by order, appoint.

120 **Short title**

The short title of this Act is the Land Registration etc. (Scotland) Act 2012.
SCHEDULE 1

(introduced by section 20)

REGISTERED LEASES TENANTED IN COMMON

Shared leases

5 1 This schedule applies where—
   (a) an area of land—
       (i) is tenanted in common by the tenants of two or more registered leases by
           virtue of their tenancy under those leases,
       (ii) is not tenanted in common by anyone else,
   (b) those registered leases have lease title sheets.

2 The Keeper may, if the Keeper considers it appropriate—
   (a) where the area tenanted in common does not have a lease title sheet, make up such
       a title sheet and designate it as a “shared lease title sheet”,
   (b) where that area is the subjects of a registered lease, make up (if necessary) a lease
       title sheet and designate it as a shared lease title sheet.

3 In the following provisions of this schedule—
   (a) references to a “shared lease” are to a lease the title sheet of which is designated
       under paragraph 2,
   (b) references to the “sharing leases” are to the other leases the tenants of which are
       tenants in common of the shared lease.

4 Unless the context otherwise requires, any reference in a document to a sharing lease is
   to be taken to include a reference to the share in the shared lease which pertains to the
   sharing lease.

5 Registration has the same effect in relation to a share in a shared lease which pertains to
   a sharing lease as it has in relation to the sharing lease (except in so far as may otherwise
   be provided in the deed registered).

Shared lease and sharing lease title sheets

6 The Keeper must enter—
   (a) in the property section of the title sheet of each of the sharing leases the title
       number of the shared lease title sheet,
   (b) in the proprietorship section of the shared lease title sheet, the title numbers of the
       title sheets of each sharing lease.

7 The Keeper must also enter—
   (a) in the property section of the title sheet of each sharing lease, the quantum of the
       share which the tenant of that sharing lease has in the shared lease,
   (b) in the proprietorship section of that title sheet, in relation to the information
       required by section 7(1)(b), the respective share each sharing lease has in the
       shared lease,
(c) in the securities section of the shared lease title sheet, a statement to the effect that the shared lease may be subject to a heritable security registered against a sharing lease.

(d) in the burdens section of that title sheet, a statement to the effect that the shared lease may be subject to some other encumbrance so registered.

8 The Keeper must not enter in or, if entered, must omit from—

(a) the proprietorship section of the shared lease title sheet, the information that would otherwise be required under section 7(1)(a),

(b) the securities section of that title sheet, the information that would otherwise be required under section 8(1) unless the security is over the shared lease only,

(c) that title sheet, any matter that would otherwise be required under section 10(2)(b).

9 The Keeper may, if the condition mentioned in paragraph 10 is satisfied and the Keeper considers it appropriate, omit from the burdens section of the shared lease title sheet any entry which would otherwise be required under section 9(1).

10 The condition is that the encumbrance to which the entry would relate is (or falls to be) registered against each of the sharing leases.

Conversion of shared lease title sheet to ordinary lease title sheet

11 The Keeper may at any time revoke a designation under paragraph 2 of a lease title sheet as a shared lease title sheet.

12 Where the Keeper revokes a designation, the Keeper must make such changes to the title sheets of the leases that were, in relation to the shared lease title sheet, the shared lease and the sharing leases as are consequential upon the revocation.

SCHEDULE 2
(introduced by section 51)

AMENDMENT OF REGISTRATION OF LEASES (SCOTLAND) ACT 1857

1 The Registration of Leases (Scotland) Act 1857 (c.26) is amended as follows.

2 In section 1 (long leases, and assignations thereof, registrable in Register of Sasines)—

(a) before first “record” insert “register in the Land Register of Scotland or as the case may be”,

(b) for second “record” to “thereof” substitute “register or record assignations and translations of such leases”,

(c) the existing provisions as so amended become subsection (1),

(d) after that subsection insert—

“(2) In subsection (1) above, the expression “lands and heritages in Scotland” is, without prejudice to its generality, to be construed as including the seabed of the territorial sea of the United Kingdom adjacent to Scotland.”.

3 In the title of section 1 as so amended, for “registerable” substitute “registrable in Land Register of Scotland or Register of Sasines”.
4 In section 2 (recorded leases effectual against singular successors in the lands let)—
   (a) after “duly” insert “registered or”,
   (b) in the proviso, after first “of” insert “, and subject to section 20C of,”.

5 In the title of section 2 as so amended, for “Recorded” substitute “Registered and recorded”.

6 In section 3 (assignations of recorded leases)—
   (a) in subsection (1)—
      (i) after first “been” insert “registered or”,
      (ii) before second “recorded” insert “registered or”,
      (iii) after “Schedule” insert “(ZA.) or, as the case may be,”,
      (iv) before “recording” insert “registering or”,
   (b) in subsection (2)—
      (i) repeal “recording of such assignation or the”,
      (ii) after first “interest” insert “or the registration of such assignation under the
           Land Registration etc. (Scotland) Act 2012 (asp 00) or the recording of
           such assignation”,
      (iii) for “and it” to the end substitute “and, as the case may be, the grantee’s
           interest or the lease had been so registered or the lease had been duly
           recorded.”,
   (c) in subsection (2C), repeal—
      (i) “, notwithstanding section 3(4) of the Land Registration (Scotland) Act
           1979 (c.33) (creation of real right or obligation on date of registration
           etc.),”,
      (ii) “of an interest in land under”.

7 In the title of section 3 as so amended, before “recorded” insert “registered or”.

8 In section 10 (adjudgers to complete right by recording abbreviate)—
   (a) after first “lease” insert “registered or recorded”,
   (b) before “recording” insert “registering or”,
   (c) before second “recorded” insert “registered or”.

9 In section 12 (preferences regulated by date of recording transfer)—
   (a) after first “assignations” insert “of any such lease registered or recorded as
      aforesaid”,
   (b) before second “recorded” insert “registered or”,
   (c) before “recording” insert “registering or”.

10 In the title of section 12 as so amended, before “recording” insert “registering or”.

11 In section 13 (renunciations and discharges to be recorded)—
   (a) after first “aforesaid” insert “registered or”,
   (b) for“(G.)” substitute “(ZG.) (or (G.))”. 
Schedule 2—Amendment of Registration of Leases (Scotland) Act 1857

(c) after “duly” insert “register or”.

12 In the title of section 13 as so amended, before “recorded” insert “registered or”.

13 In section 14 (entry of decree of reduction)—
(a) after “renunciation” insert “registered or as the case may be”,
(b) after “duly” insert “register or”.

14 In section 15 (mode of registering etc.)—
(a) the existing provisions become subsection (1),
(b) after that subsection insert—
“(2) References in subsection (1) above to registration are not to be construed as including references to registration in the Land Register of Scotland.”.

15 In section 16 (registration equivalent to possession), after subsection (2) insert—
“(3) References in subsections (1) and (2) above to registration are not to be construed as including references to registration in the Land Register of Scotland.”.

16 After section 20B (as inserted by section 51) insert—

“20C  Disapplication of Leases Act 1449

The Leases Act 1449 (c.6) does not apply to a lease registrable under this Act and granted on or after the date on which—
(a) the land to which the lease relates, or any part of that land, became land within an operational area (that is to say within an area in respect of which the provisions of the Land Registration (Scotland) Act 1979 (c.33) had come into operation), or
(b) section 51 of the Land Registration etc. (Scotland) Act 2012 (asp 00) (amendment of Registration of Leases (Scotland) Act 1857 (c.26)) comes into force.

20D  Long fishing leases

This Act applies to a contract within the meaning of section 66 of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 (asp 15) (application of Leases Act 1449) as it does to a lease described in section 1 of this Act provided that the contract in question—
(a) is for a period exceeding 20 years, or
(b) includes an obligation such as is described in section 17 of this Act.

20E  The expression “the register”

Except where the context otherwise requires, in this Act—
(a) the expression “the register” is to be construed as including a reference to the Land Register of Scotland, and
(b) analogous expressions are to be construed accordingly.”.
Before schedule (A.) insert—

“SCHEDULE (ZA.)

FORM OF ASSIGNATION OF LEASE REGISTERED IN THE LAND REGISTER OF SCOTLAND

I, A.B., [designation] in consideration of the sum now paid to me, [or otherwise, as the case may be,] assign to C.D. [designation] a lease registered in the Land Register of Scotland under title number [number] [but (where the lease is assigned in part only) in so far only as regards the following portion of the subjects leased; viz. (specify particularly the portion),] with entry as at (term of entry). And [where sub-lease] I assign the rents from [term]; and I grant warrandice; and I bind myself to free and relieve the said C.D. of all rents and burdens due to the landlord or others at and prior to the term of entry in respect of said lease; and I consent to registration for preservation and execution.

[Testing clause.†]

†Note.—In the case of a traditional document, subscription of it by the granter will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes: see the Requirements of Writing (Scotland) Act 1995 (c.7) (which also makes provision as regards the authentication of an electronic document).”.

In each of schedules (A.) (form of assignation of lease), (G.) (renunciation of lease) and (H.) (form of discharge of bond and assignation in security), in the note relating to subscription of the document in question—

(a) for “Subscription of the document by the granter of it” substitute “In the case of a traditional document, subscription of it by the granter”,

(b) after “1995” insert “, which also makes provision as regards the authentication of an electronic document”.

In the title of schedule (A.), at the end insert “recorded in Register of Sasines”.

Schedule (B.) (form of bond and assignation in security) and the note to that schedule are repealed.

Schedule (D.) (form of translation of assignation in security) and the note to that schedule are repealed.

Before schedule (G.) insert—

“SCHEDULE (ZG.)

RENUNCIATION OF LEASE REGISTERED IN THE LAND REGISTER OF SCOTLAND

I, A.B. [designation] renounce as from the term of [term] in favour of C.D. [or as the case may be] a lease granted by the said C.D. [or as the case may be] and registered in the Land Register of Scotland under title number [number].

[Testing clause.†]

†Note.—In the case of a traditional document, subscription of it by the granter will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes: see the Requirements of
Land Registration etc. (Scotland) Bill
Schedule 3—Amendment of Requirements of Writing (Scotland) Act 1995

Writing (Scotland) Act 1995 (c.7) (which also makes provision as regards the authentication of an electronic document)."

23 In the title of schedule (G.), at the end insert “recorded in the Register of Sasines”.

SCHEDULE 3
(introduced by section 94)

AMENDMENT OF REQUIREMENTS OF WRITING (SCOTLAND) ACT 1995

1 The 1995 Act is amended as follows.

2 After section 1 insert—

"PART 2

TRADITIONAL DOCUMENTS

1A Application of Part 2

This Part of this Act applies to documents written on paper, parchment or some similar tangible surface (“traditional documents”)."

3 In section 2 (type of writing required for formal validity of certain documents)—

(a) in subsection (1), after “No” insert “traditional”,

(b) in subsection (2)—

(i) for “documents” in both places substitute “traditional documents”,

(ii) for first “document” substitute “traditional document”,

(iii) after “each” substitute “such”,

(c) in subsection (3), for first “document” substitute “traditional document”.

4 In the title of section 2, after “certain” insert “traditional”.

5 Sections 2A, 2B and 2C are repealed.

6 In section 3 (presumption as to granter’s subscription or date or place of subscription)—

(a) in subsection (1)(a), for “document” substitute “traditional document”,

(b) in subsection (2), for “testamentary document consists” substitute “traditional document is a testamentary document consisting”,

(c) in subsection (4), for first “document” substitute “traditional document”,

(d) in subsection (9), for “document” substitute “traditional document”,

(e) in subsection (10)(a), for “testamentary document bears” substitute “traditional document is a testamentary document bearing”.

7 Section 3A is repealed.

8 In section 4 (presumption as to granter’s subscription or date or place of subscription when established in court proceedings)—

(a) in subsection (1), for first “document” substitute “traditional document”,

(b) in subsection (2), for first “document” substitute “traditional document”.

9 In section 5 (alterations to documents: formal validity and presumptions)—
(a) in subsection (1), for first “document” substitute “traditional document”,
(b) in subsection (3), for first “document” substitute “traditional document”,
(c) in subsection (4), for first “document” substitute “traditional document”,
(d) in subsection (8), for first “document” substitute “traditional document”,
(e) subsection (9) is repealed.

In the title of section 5, for “documents” substitute “traditional documents”.

In section 6 (registration of documents)—
(a) in subsection (1), repeal “and section 6A of this Act”,
(b) in subsection (1)(a), for “document” substitute “traditional document”,
(c) in subsection (1)(b), for “document” substitute “traditional document”,
(ca) after subsection (1)(b) insert—
“(ba) to register a traditional document in the Land Register of Scotland,”,
(cb) for subsection (3)(a) substitute—
“(a) a document’s—
(i) being recorded in the Register of Sasines, or
(ii) being registered in the Land Register of Scotland, in the Books of Council and Session or in sheriff court books,
if an enactment requires or expressly permits such recording or registration notwithstanding that the document is not presumed to have been subscribed by the grantor or by at least one of the granters,”,
(cc) in subsection (3)(b), after “Sasines” insert “or the registering of such a decree in the Land Register of Scotland”,
(d) in subsection (4), for “document” substitute “traditional document”.

In the title of section 6, for “documents” substitute “traditional documents”.

Section 6A is repealed.

In section 7 (subscription and signing)—
(a) in subsection (1), for first “document” substitute “traditional document”,
(b) in subsection (2)—
(i) for first “document” substitute “traditional document”,
(ii) for second “a document” substitute “such a document”,
(c) in subsection (4), for first “document” substitute “traditional document”,
(d) in subsection (5)—
(i) for first “document” substitute “traditional document”,
(ii) for second “a document” substitute “such a document”,
(e) in subsection (7), for “documents” substitute “traditional documents”.

In section 8 (annexations to documents)—
(a) in subsection (1), for first “document” substitute “traditional document”,

(b) in subsection (4), for first “document” substitute “traditional document”,
(c) in subsection (5), for first “document” substitute “traditional document”.

16 In the title of section 8, for “documents” substitute “traditional documents”.

17 In section 9 (subscription on behalf of blind granter or granter unable to write)—
(a) for first “document” substitute “traditional document”,
(b) in subsection (5)—
   (i) in paragraph (a), for “document” substitute “traditional document”,
   (ii) in paragraph (b), for first “document” substitute “traditional document as mentioned in section 5(1)”.

18 Section 11 is repealed.

19 In section 12 (interpretation)—
(a) in subsection (1)—
   (i) repeal the definition of “ARTL System”,
   (ii) after the definition of “authorised” insert—
   “certification”, in relation to an electronic signature incorporated into or logically associated with an electronic document, means confirming in a statement that—
   (a) the electronic signature,
   (b) a means of producing, communicating or verifying that signature, or
   (c) a procedure applied to that signature,
   is, either alone or combined with other factors, a valid means of establishing the authenticity of the electronic document, its integrity or both its authenticity and its integrity (it being immaterial, in construing this definition, whether the statement is made before or after the authentication of an electronic document to which the statement relates),”,
   (iii) repeal the definition of “dealing”,
   (iv) repeal the definition of “digital signature”,
   (v) in the definition of “document”, after first “includes” insert “, in the case of a traditional document,”,
   (vi) repeal the definition of “electronic communication”,
   (vii) for the definition of “electronic document” substitute—
   “electronic document” has the meaning given by section 9A,
   “electronic signature” means so much of anything in electronic form as—
   (a) is incorporated into, or logically associated with, an electronic document, and
(b) purports to be so incorporated or associated for the purpose of
being used in establishing the authenticity of the electronic
document, its integrity or both its authenticity and its integrity,”.

(viii) repeal the definitions of “signature-creation data” and “signature-creation
device”,

(ix) at the end insert—

“‘traditional document” has the meaning given by section 1A.”,

(b) after subsection (3) insert—

“(4) In relation to an electronic document—

(a) references to authenticity—

(i) are references to whether the document has been electronically
signed by a particular person, and

(ii) may include references to whether the document is accurately
timed or dated, and

(b) references to integrity are references as to whether there has been any
tampering with, or other modification of, the document.”.

19A In section 13 (Crown application), in subsection (1)(c), after “Sasines” insert “,
registered in the Land Register of Scotland”.

20 The provisions of sections 10 to 15 as amended by this schedule become Part 4 of the
Act.

21 The title of Part 4 is “General provisions”.

22 In schedule 1 (alterations made to documents after subscription)—

(a) in paragraph 1(1)(a), for first “document” substitute “traditional document”,

(b) in paragraph 2—

(i) in sub-paragraph (1), for first “document” substitute “traditional
document”,

(ii) in sub-paragraph (2), for first “document” substitute “traditional
document”.

23 In the title to schedule 1, for “document” substitute “traditional document”.

24 In schedule 2 (subscription and signing: special cases)—

(a) in paragraph 1, for first “document” substitute “traditional document”;

(b) in paragraph 2(1), for first “document” substitute “traditional document”;

(c) in paragraph 3—

(i) in sub-paragraph (1), for first “document” substitute “traditional
document”;

(ii) in sub-paragraph (4), for “document” substitute “traditional document”;

(iii) in sub-paragraph (5)(a), in paragraph (a) of the first subsection set out in
substitution for section 3(1), for first “document” substitute “traditional
document”. 

25 (b) references to integrity are references as to whether there has been any
tampering with, or other modification of, the document.”.

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(iv) in sub-paragraph (6)(a), in paragraph (a) of the sub-paragraph set out in substitution for paragraph 1(1) of schedule 1, for “document” substitute “traditional document”,

(d) in paragraph 3A—

(i) in sub-paragraph (1), for first “document” substitute “traditional document”,

(ii) in sub-paragraph (4), for “document” substitute “traditional document”,

(iii) in sub-paragraph (5)(a), in paragraph (a) of the first subsection set out in substitution for section 3(1), for “document” substitute “traditional document”,

(iv) in sub-paragraph (6)(a), in paragraph (a) of the first sub-paragraph set out in substitution for paragraph 1(1) of schedule 1, for “document” substitute “traditional document”,

(e) in paragraph 4—

(i) in sub-paragraph (1), for first “document” substitute “traditional document”,

(ii) in sub-paragraph (4), for “document” substitute “traditional document”,

(iii) in sub-paragraph (5), in paragraph (a) of the first subsection set out in substitution for section 3(1), for “document” substitute “traditional document”,

(iv) in sub-paragraph (7), in paragraph (a) of the first sub-paragraph set out in substitution for paragraph 1(1) of schedule 1, for “document” substitute “traditional document”;

(f) in paragraph 5—

(i) in sub-paragraph (2), for first “document” substitute “traditional document”,

(ii) in sub-paragraph (4), for “document” substitute “traditional document”,

(iii) in sub-paragraph (5), in paragraph (a) of the first subsection set out in substitution for section 3(1), for first “document” substitute “traditional document”,

(iv) in sub-paragraph (7), in paragraph (a) of the first sub-paragraph set out in substitution for paragraph 1(1) of schedule 1, for “document” substitute “traditional document”,

(g) in paragraph 6—

(i) in sub-paragraph (1), for first “document” substitute “traditional document”,

(ii) in sub-paragraph (5), for “document” substitute “traditional document”,

(iii) in sub-paragraph (6), in paragraph (a) of the first subsection set out in substitution for section 3(1), for first “document” substitute “traditional document”,

(iv) in sub-paragraph (7), in paragraph (a) of the first sub-paragraph set out in substitution for paragraph 1(1) of schedule 1, for first “document” substitute “traditional document”.
In schedule 3 (modifications of the Act in relation to subscription or signing by relevant person under section 9 of the Act)—

(a) in paragraph 2, in paragraph (a) of the subsection set out in substitution for section 3(1), for “document” substitute “traditional document”,

(b) in paragraph 4, in the subsection set out in substitution for section 3(4), for first “document” substitute “traditional document”,

(c) in paragraph 7, in paragraph (a) of the subsection set out in substitution for section 4(1), for “document” substitute “traditional document”,

(d) in paragraph 9, in sub-paragraph (a) of the paragraph set out in substitution for paragraph 1(1) of schedule 1, for first “document” substitute “traditional document”,

(e) in paragraph 14, in sub-paragraph (a) of the paragraph set out in substitution for paragraph 2(1) of schedule 1, for first “document” substitute “traditional document”.

In paragraph 1 of schedule 4 (minor and consequential amendments)—

(a) in sub-paragraph (1), after “section 6(2)” insert “or 9F(2)”, and

(b) in sub-paragraph (2), for “or subscribed” substitute “, subscribed or authenticated”.

### SCHEDULE 4
(introduced by section 114)

#### TRANSITIONAL PROVISIONS

**Existing title sheets**

1. On the designated day an existing title sheet becomes part of the title sheet record.

2. An existing title sheet which becomes, under paragraph 1, part of the title sheet record, may be amended by the Keeper so as—

   (a) to conform with a requirement of, or imposed by virtue of, this Act, or

   (b) to reflect something permitted by, or by virtue of, this Act.

3. An amendment under paragraph 2 may be made on the designated day or at such later date as the Keeper considers appropriate.

4. An existing title sheet as respects an interest of ownership becomes under paragraph 1 a title sheet as respects a plot of land; and the Keeper, on or as soon as practicable after the designated day, must create a cadastral unit for that plot.

5. An existing title sheet as respects an interest of tenancy becomes under paragraph 1 a lease title sheet.

6. Section 12(2) does not apply to a cadastral unit created under paragraph 4.
Common areas: general

7 If, by reason of being owned in common, the selfsame area of land is, immediately before the designated day, included in two or more existing title sheets the Keeper may, if the Keeper considers it appropriate, make up a title sheet for that area and create a cadastral unit for it.

8 Where a title sheet is created by virtue of paragraph 7—
(a) the Keeper is to make such changes to the other title sheets mentioned in that paragraph and to the cadastral map as are consequential upon its being so constituted, and
(b) the respective shares of the proprietors of the area of land need only be entered in the title sheet if they were entered in the existing title sheets.

Common areas: developments begun before designated day

9 If, by reason of being owned in common, the selfsame area of land (in this paragraph and in paragraph 11 referred to as “area A”) is, immediately before the designated day, included in two or more existing title sheets and on or after that day title sheets (in this paragraph and in paragraph 10 referred to as the “new title sheets”) are to be constituted for plots of land the proprietors of which will (qua proprietors of those plots) be comprised within those who own area A in common, area A may, by reason of being owned in common, be included in the new title sheets.

10 Where the respective shares of the proprietors were not entered in the existing title sheets they need not be entered in the new title sheets.

11 The Keeper may at any time create a separate title sheet for area A.

Archive record

12 The Keeper must include in the archive record—
(a) all copies of documents upon which the terms of the existing title sheets are founded,
(b) all copies of documents which relate to past states of title sheets and title plans, and
(c) such other information, in whatever form, as so relates,
in so far as those copy documents, and as the case may be that other information, is held by the Keeper immediately before the designated day.

Pending applications

13 Nothing in this Act, other than provision made by or by virtue of section 34, affects an application under section 4 (applications for registration) of the Land Registration (Scotland) Act 1979 (c.33) (the “1979 Act”) provided that the date of receipt of the application is before the designated day.

14 An application by virtue of section 9(1) of the 1979 Act (rectification of the register) falls if it has not been determined by the Keeper as at the designated day.
Claims under the 1979 Act

15 Where, immediately before the designated day, a person has an entitlement to claim indemnity under section 12(1) of the 1979 Act (indemnity in respect of loss) but either—

(a) no such claim has been made, or
(b) any such claim as has been made is as yet undetermined,

nothing in this Act affects the entitlement or claim.

16 Nothing in this Act affects any entitlement to reimbursement under subsection (1) of section 13 of the 1979 Act (reimbursement of certain expenditure) or any claim made by virtue of that subsection.

Bijural inaccuracies

17 If there is in the register, immediately before the designated day, an inaccuracy which the Keeper has power to rectify under section 9 of the 1979 Act (rectification of the register) then, as from that day—

(a) any person whose rights in land would have been affected by such rectification has such rights (if any) in the land as that person would have if the power had been exercised, and
(b) the register is inaccurate in so far as it does not show those rights as so affected.

18 For the purpose of determining whether the Keeper has the power mentioned in paragraphs 17 and 22, the person registered as proprietor of the land is to be presumed to be in possession unless the contrary is shown.

19 Where, by virtue of paragraph 17—

(a) a right is lost, compensation is payable under Part 7 as if warranty had been granted under section 71 in accepting an application by the person in whom the right was vested, or
(b) an encumbrance is revived, compensation is so payable as if such warranty had been granted in respect of an omission of the encumbrance.

20 Except that—

(a) compensation is not so payable in so far as, had the Keeper rectified the inaccuracy before the designated day, either a right to indemnity under section 12 of the 1979 Act (indemnity in respect of loss) was excluded by virtue of subsection (2) of that section or there would, by virtue of subsection (3) of that section, have been no entitlement to such indemnity,
(b) any compensation so payable is to be reduced to the extent that, had the Keeper rectified the inaccuracy before the designated day, the amount of any indemnity would have been reduced by virtue of section 13(4) of that Act (reduction proportionate to the extent to which a claimant has contributed, by fraudulent or careless act or omission, to loss), and
(c) in construing Part 7 for the purposes of paragraph 19, paragraphs (b) and (c) of section 76 are to be disregarded.

21 Section 75(4) and (5) applies in relation to a payment made by virtue of paragraph 19(a) as that section applies in relation to any other payment under Part 7.
22 If there is in the register, immediately before the designated day, an inaccuracy which
the Keeper does not have power to rectify under section 9 of the 1979 Act, then on that
day it ceases to be an inaccuracy.

23 Where, by virtue of paragraph 22, a person suffers loss which, had it been suffered by
virtue of paragraph (b) of section 12(1) of the 1979 Act, would (after allowing for the
effect of subsections (2) and (3) of that section) have given rise before the designated
day to an entitlement under that section, the person is entitled to claim compensation, by
virtue of this paragraph, from the Keeper in respect of that loss.

24 Sections 90(3) to (6) and 91 apply in respect of a claim by virtue of paragraph 23 as they
apply in respect of a claim by virtue of section 90(1), but with the modification that, for
paragraph (a) of section 91(1), there is substituted—

“(a) is, in so far as it is not compensation mentioned in paragraph (b), to be
quantified as at the date on which the register became inaccurate,.”.

Depiction of tenement etc.

25 Section 16(3) does not apply if any of the flats comprised in the flatted building
mentioned in that subsection—
(a) is recorded in the Register of Sasines, or
(b) is registered by virtue of an application accepted under section 4 of the 1979 Act.

SCHEDULE 5
(introduced by section 115)
MINOR AND CONSEQUENTIAL MODIFICATIONS

Lands Clauses Consolidation (Scotland) Act 1845 (c.19)

1 In the Lands Clauses Consolidation (Scotland) Act 1845, in the note to schedule (A.)
(form of conveyance)—

25 (a) for “Subscription of the document by the granter of it” substitute “In the case of a
traditional document, subscription of it by the granter”,
(b) after “1995” insert “, which also makes provision as regards the authentication of
an electronic document”.

Commissioners Clauses Act 1847 (c.16)

2 (1) The Commissioners Clauses Act 1847 is amended as follows.

(2) In section 59(2) (conveyance of lands by commissioners)—

30 (a) in paragraph (a)—

35 (i) for “in accordance with section 7 of, and paragraph 5 of Schedule 2 to,”
substitute “or authenticated in accordance with”,
(ii) for “subscribed in accordance with the said section 7” substitute “so
subscribed or authenticated”,
(iii) for “, followed by infeftment duly recorded” substitute “or authenticated,
duly registered in the Land Register of Scotland”,
(b) in paragraph (b), for “word “subscribed”” substitute “the words “subscribed or authenticated””.

(3) In section 75(2)(c) (form of mortgage)—
   (a) in sub-paragraph (i), repeal “section 7 of, and paragraph 5 of Schedule 2 to,”,
   (b) in sub-paragraph (ii), for “section 7” substitute “Act”.

**Ordnance Board Transfer Act 1855 (c.117)**

3 In section 5(2) of the Ordnance Board Transfer Act 1855 (description in conveyances etc.), after “subscribing” insert “, or as the case may be authenticating,”.

**Transmission of Moveable Property (Scotland) Act 1862 (c.85)**

4 In the Transmission of Moveable Property (Scotland) Act 1862, in the note to each of schedules A (form for assignation of bond or conveyance) and B (form of bond or conveyance)—
   (a) for “Subscription of the document by the granter of it” substitute “In the case of a traditional document, subscription of it by the granter”,
   (b) after “1995” insert “, which also makes provision as regards the authentication of an electronic document”.

**Land Registers (Scotland) Act 1868 (c.64)**

5 (1) The Land Registers (Scotland) Act 1868 is amended as follows.
   (2) Sections 13, 19 and 25 are repealed.

**Titles to Land Consolidation (Scotland) Act 1868 (c.101)**

6 (1) The Titles to Land Consolidation (Scotland) Act 1868 is amended as follows.
   (2) In section 159 (litigiosity not to begin before date of registration of notice of summons)—
      (a) the existing provisions become subsection (1),
      (b) after that subsection insert—
         “(2) A notice registered under subsection (1) on or after the date on which section 65 of the Land Registration etc. (Scotland) Act 2012 (asp 00) (warrant to place a caveat) comes into force shall not have any effect in rendering litigious any land a title sheet for which is comprised in the Land Register of Scotland or in placing in bad faith any person acquiring such land.”.

   (3) In section 159A (registration of notice of summons of action of reduction)—
      (a) in each of subsections (2)(b) and (3)(b), repeal “register in the Land Register of Scotland or, as the case may be,”,
      (b) after subsection (3) insert—
         “(4) This section does not apply in relation to lands for which there is a title sheet in the Land Register of Scotland.”.

   (4) In schedule B, in form No. 1 (formal clauses of a disposition of land etc.), in the note relating to subscription of the document in question—
(a) for “Subscription of the document by the granter of it” substitute “In the case of a traditional document, subscription of it by the granter”,
(b) after “1995” insert “, which also makes provision as regards the authentication of an electronic document”.

Conveyancing (Scotland) Act 1874 (c.94)

7 (1) The Conveyancing (Scotland) Act 1874 is amended as follows.
(2) In schedule M (form of assignation of right of relief etc.), in the note—
(a) for “Subscription of the document by the granter of it” substitute “In the case of a traditional document, subscription of it by the granter”,
(b) after “1995” insert “, which also makes provision as regards the authentication of an electronic document”.

Trusts (Scotland) Act 1921 (c.58)

8 (1) The Trusts (Scotland) Act 1921 is amended as follows.
(2) In schedule A (form of minute of resignation), in the note—
(a) for “Subscription of the document by the granter of it” substitute “In the case of a traditional document, subscription of it by the granter”,
(b) after “1995” insert “, which also makes provision as regards the authentication of an electronic document”.
(3) In schedule B (form of deed of assumption), in the note—
(a) for “Subscription of the document by the granter or granters of it” substitute “In the case of a traditional document, subscription of it by the granter or granters”,
(b) after “1995” insert “, which also makes provision as regards the authentication of an electronic document”.

Conveyancing (Scotland) Act 1924 (c.27)

9 (1) The Conveyancing (Scotland) Act 1924 is amended as follows.
(2) In section 2(5) (interpretation), after “registrable” insert “in the Land Register of Scotland or”.
(3) In section 3 (disposition etc.), for “manner” substitute “such manner as was (immediately before the repeal of the note)”.
(4) In section 44 (General Register of Inhibitions and Register of Adjudications to be combined; limitation of effect of entries therein), after subsection (2) insert—
“(2A) A notice registered under subsection (2)(a)(i) of this section on or after the date on which section 65 of the Land Registration etc. (Scotland) Act 2012 (asp 00) (warrant to place a caveat) comes into force shall not have any effect in rendering—
(a) any land or lease for which there is a title sheet in the Land Register of Scotland, or
(b) any heritable security the particulars of which are entered in a title sheet in that register,"
litigious or in placing in bad faith any person acquiring such land, lease or heritable security.”.

(5) In schedule B (notice of title), in note 8—

(a) for “Subscription of the document” substitute “In the case of a traditional document, subscription of it”,

(b) after “1995” insert “, which also makes provision as regards the authentication of an electronic document”.

(6) The title of schedule B becomes—

“FORMS OF NOTICE OF TITLE: REGISTER OF SASINES”.

10 Burgh Registers (Scotland) Act 1926 (c.50)

10 The Burgh Registers (Scotland) Act 1926 is repealed.

Public Registers and Records (Scotland) Act 1948 (c.57)

11 Section 4 of the Public Registers and Records (Scotland) Act 1948 is repealed.

Land Drainage (Scotland) Act 1958 (c.24)

12 In section 18(1) of the Land Drainage (Scotland) Act 1958 (interpretation), in the definition of “long lease”, after “being,” insert “registered in the Land Register of Scotland or”.

Harbours Act 1964 (c.40)

13 In section 57(1) of the Harbours Act 1964 (interpretation), in the definition of “long lease”, after “being,” insert “registered in the Land Register of Scotland or”.

Succession (Scotland) Act 1964 (c.41)

14 In section 21A(a) of the Succession (Scotland) Act 1964 (evidence as to testamentary documents in commissary proceedings), for “or 4” substitute “or 9D”.

Industrial and Provident Societies Act 1965 (c.12)

15 (1) The Industrial and Provident Societies Act 1965 is amended as follows.

(2) In section 29D(1) (execution of documents: Scotland), after “subscribed” insert “(or, in the case of an electronic document, authenticated)”.

(3) In section 29G(2)(a) (authorisation of use of official seal), after “subscribed” insert “or authenticated”.

(4) In schedule 3 (form of receipt on mortgage, heritable security etc.), in Part 2, in the note to each of forms C, D and E—

(a) for “Subscription of the document by the granter of it” substitute “In the case of a traditional document, subscription of it by the granter”,

(b) after “1995” insert “, which also makes provision as regards the authentication of an electronic document”.

35
(5) In schedule 4 (forms of bond for officers of society), in Part 2, in the note to form C—

(a) for “Subscription of the document” substitute “In the case of a traditional document, subscription of it”,

(b) after “1995” insert “, which also makes provision as regards the authentication of an electronic document”.

Gas Act 1965 (c.36)

16 In section 28(1) of the Gas Act 1965 (interpretation of Part 2 of the Act), in the definition of “long lease” for the purposes of the definition of “owner”, after “being,” insert “registered in the Land Register of Scotland or”.

Conveyancing and Feudal Reform (Scotland) Act 1970 (c.35)

17 (1) The Conveyancing and Feudal Reform (Scotland) Act 1970 is amended as follows.

(2) In section 9 (the standard security)—

(a) in subsection (2), after first “to” insert “grant and register in the Land Register of Scotland or to”,

(b) in subsection (4)—

(i) after “duly” insert “registered or”,

(ii) after “clear” insert “the Land Register of Scotland or”,

(c) in subsection (8), both—

(i) in paragraph (a), after second “being” insert “registered in the Land Register of Scotland or”,

(ii) in paragraph (b), after “be” insert “registered in the Land Register of Scotland or”.

(3) In section 10(4) (import of forms of, and certain clauses in, standard security), after “duly” insert “registered or”.

(4) In section 11(1) (effect of recorded standard security, and incorporation of standard security), after “duly” insert “registered or”.

(5) In the title of section 11 as so amended, after first “of” insert “registered or”.

(6) In section 12 (standard security may be granted by person uninform)—

(a) for subsection (1) substitute—

“(1) Notwithstanding any rule of law, a standard security may be granted over land or a real right in land by a person whose title thereto has not been completed by being duly registered or recorded.

(1A) If the deed expressing the security is to be recorded in the Register of Sasines, the grantor must, in that deed, deduce his title to the land or real right from the person who appears in the Register of Sasines as having the last recorded title thereto.”,

(b) in subsection (2)—

(i) for “such a deed being” substitute “a deed expressing the security being registered or”,


(ii) repeal “to which he has deduced title therein”;
(iii) after “last” insert “registered or”.

(7) In section 13 (ranking of standard securities)—

(a) in subsection (1)—

(i) after “duly” insert “registered or”;
(ii) after “so” insert “registered or”;

(b) in subsection (2)(a)—

(i) after “duly” insert “registered or”;
(ii) after “subsequent” insert “registration or”;
(iii) after third “the” insert “Land Register of Scotland or”;

(c) after subsection (3) insert—

“(4) An agreement as to the ranking among themselves of two or more standard securities which are granted over the same land or the same real right in land may be registered in the Land Register of Scotland.”.

(8) In section 14(1) (assignation of standard security), after “duly”, in both places, insert “registered or”.

(9) In section 15 (restriction of standard security)—

(a) in subsection (1), after “duly”, in both places, insert “registered or”;
(b) in subsection (2), after “duly” insert “registered or”.

(10) In section 16 (variation of standard security)—

(a) in subsection (1), after “duly”, in both places, insert “registered or”;
(b) in subsection (2)—

(i) after “duly” insert “registered or”;
(ii) after “so” insert “registered or”;
(iii) after “be” insert “registered in the Land Register of Scotland or”;

(c) in subsection (4)—

(i) after first “is” insert “registered or”;
(ii) after “an” insert “unregistered or”.

(11) In section 17 (discharge of standard security), after “duly”, in both places, insert “registered or”.

(12) In section 18(3) (redemption of standard security), after “duly” insert “registered or”.

(13) In section 19 (calling-up of standard security)—

(a) in subsection (2)—

(i) after “last”, in both places, insert “registered or”;
(ii) after first “appearing” insert “in the Land Register of Scotland or”;
(iii) after “record” insert “of the Register of Sasines”;
(iv) before “Register” insert “Land Register of Scotland or”,
(b) in subsection (3), after the word “last”, in both places, insert “registered or”.

(14) In section 26 (disposition by creditor on sale)—
(a) in subsection (1), after “duly” insert “registered or”,
(b) in subsection (2), after second “the” insert “registration or”.

(15) In section 27(1)(c) (application of proceeds of sale), after “duly” insert “registered or”.

(16) In section 28 (foreclosure)—
(a) in subsection (5)—
(i) after “duly” insert “registered or”,
(ii) for “section 15 of the Land Registration (Scotland) Act 1979” substitute “the Land Registration etc. (Scotland) Act 2012 (asp 00)”,
(iii) after “warrant” insert “for registering the extract of the decree in the Land Register of Scotland or”,
(b) in subsection (6)—
(i) after “duly”, in both places, insert “registered or”,
(ii) in paragraph (a), after “date” insert “of the registration or”,
(c) in subsection (7), after “due” insert “registration or”.

(17) In section 30(1) (interpretation of Part 2)—
(a) for the definition of “duly recorded” substitute—

““duly registered or recorded” means registered in the Land Register of Scotland or recorded in the Register of Sasines;”,

(b) after the definition of “real right in land” insert—

““recorded” means recorded in the Register of Sasines;”,

(c) after the definition of “Register of Sasines” insert—

““registered” means registered in the Land Register of Scotland;”.

(18) In section 53(4) (interpretation of Act other than Part 2), for the definition of “duly recorded” substitute—

““duly registered or recorded” means registered in the Land Register of Scotland or recorded in the Register of Sasines;”.

(19) In the notes to schedule 2 (forms of standard security)—
(a) in note 2, after first “subjects” insert “and the deed is to be recorded in the Register of Sasines”,
(b) in note 3, after first “security” insert “to be recorded in the Register of Sasines”,
(c) in note 4, after second “be” insert “registered in the Land Register of Scotland or”,
(d) in note 8—
(i) for “Subscription of the document by the granter of it” substitute “In the case of a traditional document, subscription of it by the granter”,
(ii) after “1995” insert “, which also makes provision as regards the authentication of an electronic document”.
(20) In paragraph 12 of schedule 3 (the standard conditions)—
   (a) before “recorded” insert “registered or”,
   (b) before “recording” insert “registration or”.

(21) In schedule 4 (forms of deeds of assignation, restriction etc.) in each of forms A, C, D, E and F, for “recorded in the register for……on…..” substitute “registered in the Land Register of Scotland on…..over title number…..(or recorded in the Register for……on…….)”.

(22) In the notes to schedule 4—
   (a) in note 1—
      (i) after first “title” insert “and the deed is to be recorded in the Register of Sasines”,
      (ii) before fourth “recorded” insert “registered or”,
   (b) in note 3—
      (i) after first “by” insert “registration of the security in the Land Register of Scotland or”,
      (ii) for “‘recorded’” substitute “‘registered (or recorded)’”,
   (c) in note 5—
      (i) before “recorded”, in the first two places, insert “registered or”,
      (ii) before third “recorded” insert “registered in the Land Register of Scotland or”,
   (d) in note 6, after first “subjects” insert “and the deed is to be recorded in the Register of Sasines”,
   (e) in note 7—
      (i) for “Subscription of the document by the granter of it” substitute “In the case of a traditional document, subscription of it by the granter”,
      (ii) after “1995” insert “, which also makes provision as regards the authentication of an electronic document”.

(23) In schedule 5 (procedures as to redemption)—
   (a) in form A, for “recorded in the register for……on…..” substitute “registered in the Land Register of Scotland on…..over title number…..(or recorded in the Register for……on…….)”,
   (b) in form D (nos. 1 and 2), for “recorded in the register for……on…..” substitute “registered in the Land Register of Scotland on…..over title number…..(or recorded in the Register for……on…….)”,
   (c) in each of the notes to form D—
      (i) for “Subscription of the document by the granter of it” substitute “In the case of a traditional document, subscription of it by the granter”,
      (ii) after “1995” insert “, which also makes provision as regards the authentication of an electronic document”.
(24) In schedule 6 (procedures as to calling-up and default), in each of forms A and B, for “recorded in the register for……on…..” substitute “registered in the Land Register of Scotland on…..over title number…..(or recorded in the Register for……on…….)”.

(25) In schedule 9 (discharge of heritable security constituted by ex facie absolute conveyance), in note 4—

(a) for “Subscription of the document by the grantor of it” substitute “In the case of a traditional document, subscription of it by the grantor”;

(b) after “1995” insert “, which also makes provision as regards the authentication of an electronic document”.

Prescription and Limitation (Scotland) Act 1973 (c.52)

18 (1) The Prescription and Limitation (Scotland) Act 1973 is amended as follows.

(2) In section 1 of the Prescription and Limitation (Scotland) Act 1973 (c.52) (validity of right), for subsection (1)(b) substitute—

“(b) the registration of a deed which is sufficient in respect of its terms to constitute in favour of that person a real right in—

(i) that land; or

(ii) land of a description habile to include that land.”.

(3) In section 2 (special cases)—

(a) in subsection (1)(b), for “recorded or not” substitute “or not registered or recorded”;

(b) in subsection (2)(b), after “been” insert “registered or”, and

(c) in subsection (3), for “section 3(3) of the Land Registration (Scotland) Act 1979 (c.33)” substitute “section 20B or 20C of the Registration of Leases (Scotland) Act 1857 (c.26)”.

(4) In section 5 (further provision supplementary to sections 1, 2 and 3 of the Prescription and Limitation (Scotland) Act 1973), after subsection (1) insert—

“(1A) Any reference in those sections to a real right’s being exempt from challenge as from the expiration of some continuous period is to be construed, if the real right of the possessor was void immediately before that expiration, as including reference to acquisition of the real right by the possessor.”.

(5) In section 15(1) (interpretation of Part 1 of the Act), at end insert “and to the registering of a deed are to the registering thereof in the Land Register of Scotland”.

(6) In paragraph 1 of schedule 1 (obligations affected by prescriptive periods of 5 years under section 6 of that Act), after sub-paragraph (ac) insert—

“(ad) to any obligation of the Keeper of the Registers of Scotland to pay compensation by virtue of section 80 of the Land Registration etc. (Scotland) Act 2012 (asp 00);

(ae) to any obligation to pay compensation by virtue of section 107 of that Act;”.

(7) In paragraph 2 of that schedule (obligations which, notwithstanding paragraph 1 of the schedule, are not affected by prescriptive periods of 5 years under section 6 of that Act), in sub-paragraph (e)—
(a) for "or (ac)" substitute "", (ac), (ad), or (ae)",

(b) after "servitude" insert "and any obligation of the Keeper of the Registers of Scotland to pay compensation by virtue of section 75 or 90 of the Land Registration etc. (Scotland) Act 2012 (asp 00)".

(8) In schedule 3 (rights and obligations which are imprescriptible for certain purposes of that Act) after sub-paragraph (h) insert—

"(i) any obligation of the Keeper of the Registers of Scotland to rectify an inaccuracy in the Land Register of Scotland".

Land Registration (Scotland) Act 1979 (c.33)

19 (1) The Land Registration (Scotland) Act 1979 is amended as follows.

(2) Sections 1 to 14 are repealed.

(3) In section 15 (simplification of deeds relating to registered interests)—

(a) subsections (1) to (3) are repealed,

(b) in subsection (4)—

(i) for "registered interest in land" substitute "plot of land or lease registered in the Land Register of Scotland",

(ii) for "that interest" substitute "the plot or lease".

(4) Section 19 is repealed.

(5) Sections 23 to 28 are repealed.

(6) In section 29(3) (references to recording to include references to registering), paragraph (b) is repealed.

(7) Section 30 is repealed.

(8) Schedule 2 is repealed.

(9) In schedule 3 (enactments not affected by section 29(2))—

(a) paragraphs 3, 4, 10, 12 and 13 are repealed,

(b) in paragraph 5, for paragraphs (a) to (c) substitute "The Whole Act."

(c) in paragraph 6—

(i) for paragraph (d) substitute—

"(d) Section 12."

(d) Section 14.",

(ii) paragraph (e) is repealed,

(d) in paragraph 7, paragraphs (a), (c) to (f), (i) and (j) are repealed,

(e) in paragraph 8, paragraph (b) is repealed,

(f) in paragraph 11—

(i) in paragraph (a), repeal "and note 2 to Schedule K",

(ii) paragraphs (d) and (e) are repealed,
(iii) in paragraph (f), for “24(3)” to the end substitute “24(2) and (3) and that part of subsection (5) from the words “provided that” to the end”,

(iv) for paragraph (g) substitute—

“(ga) Section 46”,

(v) after paragraph (i) insert—

“(j) Schedule J”,

(g) in paragraph 16, for paragraphs (a) and (b) substitute “The Whole Act.”.

(10) Schedule 4 is repealed.

**Education (Scotland) Act 1980 (c.44)**

20 In section 16(2) of the Education (Scotland) Act 1980 (transference of denominational schools to education authorities)—

(a) for paragraphs (a) and (b) substitute “by registration in the Land Register of Scotland of an ordinary disposition or other deed of conveyance by the persons vested with the title”, and

(b) for “the recording of the deed of conveyance or, as the case may be,” substitute “such”.

**Water (Scotland) Act 1980 (c.45)**

21 (1) The Water (Scotland) Act 1980 is amended as follows.

(2) In section 58(5) (termination of right to supply of water on special terms), for “record” to the end substitute “—

(a) register in the Land Register of Scotland any agreement entered into, or order made, under the foregoing provisions of this section terminating an obligation to which this section applies if the obligation was itself registered in the Land Register, or

(b) record in the Register of Sasines any such agreement or order if the obligation was itself recorded in the Register of Sasines.”.

(3) In section 68(2) (agreements as to drainage), for “recorded in the appropriate” substitute “registered in the Land Register of Scotland or recorded in the”.

(4) Section 109(5) is repealed.

**Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c.59)**

22 In section 13(8) of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (transfer of tenancy), in the definition of “long lease”, for “section 28(1) of the Land Registration (Scotland) Act 1979” substitute “section 9(2) of the Land Registration etc. (Scotland) Act 2012 (asp 00)”.

**Civil Aviation Act 1982 (c.16)**

23 In section 55 of the Civil Aviation Act 1982 (c.16) (registration of orders etc. under Part 2 of the Act)—
(a) in subsection (2), repeal “in the Land Register of Scotland”,
(b) in subsection (3), for second “as” to “interest” substitute “, and on being registered shall be enforceable against any person having or subsequently acquiring any right”, and
(c) for subsection (4) substitute—
“(4) References in—
(a) subsection (2) above to registering a grant or agreement, or
(b) subsection (3) above to registering an instrument,
are to registering it in the Land Register of Scotland or, as the case may be, to recording it in the Register of Sasines.”.

Litter Act 1983 (c.35)

24 In section 8 of the Litter Act 1983 (provisions supplementary to section 7 of the Act)—
(a) in subsection (3)—
(i) repeal “Subject to subsection (4) below,”,
(ii) for the words from “be registered” to “so registered” substitute “—
(a) if the land is registered in the Land Register of Scotland, be registered in that register, and
(b) in any other case, be recorded in the Register of Sasines,
and if the agreement is so registered or recorded it”, and
(b) subsection (4) is repealed.

Health and Social Services and Social Security Adjudications Act 1983 (c.41)

25 In section 23(1) of the Health and Social Services and Social Security Adjudications Act 1983 (arrears of contributions secured over interest in land in Scotland), for “Land Registration (Scotland) Act 1979” substitute “Land Registration etc. (Scotland) Act 2012”.

Telecommunications Act 1984 (c.12)

26 In schedule 4 of the Telecommunications Act 1984 (minor and consequential amendments), paragraph 71 is repealed.

Matrimonial and Family Proceedings Act 1984 (c.42)

27 In schedule 1 of the Matrimonial and Family Proceedings Act 1984 (minor and consequential amendments), paragraph 28 is repealed.

Bankruptcy (Scotland) Act 1985 (c.66)

28 (1) The Bankruptcy (Scotland) Act 1985 is amended as follows.
(2) In section 5 (sequestration of estate of a living or deceased debtor), in subsection (4AA)(1)(a)(ii), for “28(1) of the Land Registration (Scotland) Act 1979 (c.33)” substitute “9(2) of the Land Registration etc. (Scotland) Act 2012 (asp 00))”.

(3) In schedule 7 (consequential amendments), paragraph 15 is repealed.

5 Housing Associations Act 1985 (c.69)

29 In section 68(6) of the Housing Associations Act 1985 (loans by Public Works Loan Commissioners: Scotland), after “lease” insert “registered or”.

Law Reform (Miscellaneous Provisions)(Scotland) Act 1985 (c.73)

30 In section 8 of the Law Reform (Miscellaneous Provisions)(Scotland) Act 1985 (rectification of defectively expressed documents)—

(a) in subsection (7), at end insert “except that this subsection is subject to subsection (8A) below.”, and

(b) after subsection (8) insert—

“(8A) A notice under subsection (7) above registered on or after the date on which section 65 of the Land Registration etc. (Scotland) Act 2012 (asp 00) (warrant to place a caveat) comes into force shall not have any effect in rendering litigious any land for which there is a title sheet in the Land Register of Scotland or in placing in bad faith any person acquiring such land.”.

Electricity Act 1989 (c.2)

31 In schedule 16 to the Electricity Act 1989 (minor and consequential amendments), paragraph 23 is repealed.

Property Misdescriptions Act 1991 (c.29)

32 In section 1 of the Property Misdescriptions Act 1991 (offence of property misdescription)—

(a) in subsection (6)(b), for “an “interest” to the end substitute “any right in or over land (“right in or over land” including ownership and any heritable security or servitude but excluding any lease which is not a long lease).”,

(b) after subsection (6) insert—

“(6A) In subsection (6)(b), “long lease” has the meaning given by section 9(2) of the Land Registration etc. (Scotland) Act 2012 (asp 00).”.

Agricultural Holdings (Scotland) Act 1991 (c.55)

33 In section 75(1) of the Agricultural Holdings (Scotland) Act 1991 (power of tenant and landlord to obtain charge on holding), after “recorded” insert “or registered”.

Coal Industry Act 1994 (c.21)

34 In the Coal Industry Act 1994, in schedule 9 (minor and consequential amendments), paragraph 20 is repealed.
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Land Registers (Scotland) Act 1995 (c.14)

35 In section 1 of the Land Registers (Scotland) Act 1995 (prepayment of recording and registration fees)—

(a) in subsection (1), for “payment” to the end substitute “—

5 (a) such fee as is payable in that respect by virtue of section 106 of the Land Registration etc. (Scotland) Act 2012 (asp 00) is paid, or

(b) arrangements satisfactory to the Keeper are made for payment of that fee.”,

(b) subsection (3) is repealed.

Petroleum Act 1998 (c.17)

36 In section 5(9) of the Petroleum Act 1998 (existing licences), after “subscribed” insert “or authenticated”.

Public Finance and Accountability (Scotland) Act 2000 (asp 1)

37 In section 9(1) of the Public Finance and Accountability (Scotland) Act 2000 (Keeper of the Registers of Scotland: financial arrangements), for “section 25 of the Land Registers (Scotland) Act 1868 (c.64)” substitute “section 106 of the Land Registration etc. (Scotland) Act 2012 (asp 00)”.

Adults with Incapacity (Scotland) Act 2000 (asp 4)

38 (1) The Adults with Incapacity (Scotland) Act 2000 is amended as follows.

(2) In section 56(7) (registration of intervention order relating to heritable property, for “the updated Land Certificate or an office copy thereof” substitute “an extract of the updated title sheet”.

3 In section 61(7) (registration of guardianship order relating to heritable property), for “the updated Land Certificate or an office copy thereof” substitute “an extract of the updated title sheet”.

Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5)

39 (1) The Abolition of Feudal Tenure etc. (Scotland) Act 2000 is amended as follows.

(2) Section 4 is repealed.

3 In section 18A(8)(b) (personal pre-emption burdens and personal redemption burdens), for “15(3) of the Land Registration (Scotland) Act 1979 (c.33)” substitute “97 of the Land Registration etc. (Scotland) Act 2012 (asp 00)”.

(4) Section 46 is repealed.

(5) In section 63(2) (baronies and other dignities and offices), for “an interest in land for the purposes of the Land Registration (Scotland) Act 1979 (c.33) or a right as respects which a deed can be” substitute “a right as respects which a deed can be registered in the Land Register of Scotland or”.

(6) Section 65 is repealed.

(7) In section 65A (sporting rights), subsection (12) is repealed.
(8) In section 73 (feudal terms in enactments and documents: construction after abolition of feudal system)—

(a) in subsection (1)—

(i) repeal “or” immediately after paragraph (c), and

(ii) after paragraph (d) insert “or

(e) in an extract or certified copy issued under section 100 of the Land Registration etc. (Scotland) Act 2012 (asp 00),”, and

(b) in subsection (2)(b), for “subsection (1)(d)” substitute “paragraph (d) of, or extract or certified copy such as is mentioned in paragraph (e) of, subsection (1)”.

(9) In schedule 11 (form of assignation, discharge or restriction of reserved right to claim compensation), repeal “section 3 of”.

Standards in Scotland’s Schools etc. Act 2000 (asp 6)

40 In section 58(1) of the Standards in Scotland’s Schools etc. Act 2000 (interpretation), in the definition of “land”, for “interests in land (within the meaning of the Land Registration (Scotland) Act 1979 (c.33)” substitute “rights registered in the Land Register of Scotland”.

National Parks (Scotland) Act 2000 (asp 10)

41 In section 15 of the National Parks (Scotland) Act 2000 (management agreements)—

(a) in subsection (1), for “an interest” substitute “a right”,

(b) for subsection (5) substitute—

“(5) A management agreement which affects a right in land which is—

(a) a right registered in the Land Register of Scotland, may be registered in that register,

(b) a right registrable (but not registered) in that register, may be recorded in the Register of Sasines.”, and

(c) subsection (10) is repealed.

Housing (Scotland) Act 2001 (asp 10)

42 In the Housing (Scotland) Act 2001—

(c) in section 23(1)(b) (tenant’s right to written tenancy agreement and information), after “subscribed” insert “or authenticated”,

(d) in section 24(3) (restriction on variation of tenancy), after “subscribed” insert “or authenticated”.

Title Conditions (Scotland) Act 2003 (asp 9)

43 (1) The Title Conditions (Scotland) Act 2003 is amended as follows.

(2) In section 4 (creation of real burdens), in subsection (1), repeal “, notwithstanding section 3(4) of the 1979 Act (creation of real right or obligation on date of registration etc.),”.
(3) In section 41(b) (deed granted by holder of conservation burden without completing title), for “15(3) of the 1979 Act” substitute “97 of the Land Registration etc. (Scotland) Act 2012 (asp 00)”.

(4) Sections 51 and 58 are repealed.

(5) In section 60 (grant of deed where title not completed: requirements)—

(a) in subsection (1), for “15(3) of the 1979 Act” substitute “97 of the Land Registration etc. (Scotland) Act 2012 (asp 00)”, and

(b) in subsection (2), repeal “or with section 15(3) of the 1979 Act”.

(6) In section 71 (development management scheme), in subsection (1), repeal “, notwithstanding section 3(4) of the 1979 Act (creation of real right or obligation on date of registration etc.)”.

(7) In section 73 (disapplication of development management schemes), in subsection (1)(b), repeal “notwithstanding section 3(4) of the 1979 Act (creation of real right or obligation on date of registration etc.)”.

(8) In section 75 (creation of positive servitudes by writing: deed to be registered), in subsection (2), repeal “, notwithstanding section 3(4) of the 1979 Act (creation of real right or obligation on date of registration etc.)”.

(9) In section 84(2) (extinction following offer to sell), after “section 2” insert “or 9B”.

(10) In section 119 (savings and transitional provisions etc.), subsection (2) is repealed.

(11) In section 122 (interpretation)—

(a) in subsection (1)—

(i) in the definition of “constitutive deed”, after “is” insert “, subject to subsection (4) below,”,

(ii) in the definition of “title condition”, in paragraph (e)(i), for “assignation of” substitute “assignations of registered or”, and

(b) after subsection (3) insert—

“(4) If title is completed in the manner provided for in section 4 or 4A of the Conveyancing (Scotland) Act 1924 (c.27) (completion of title) and a midcouple relevant to the title sets out the terms of a title condition (or of a prospective title condition), then for the purposes of this Act the midcouple and notice of title are together the constitutive deed of the title condition.”.

Civil Partnership Act 2004 (c.33)

44 In section 112(9) of the Civil Partnership Act 2004 (transfer of tenancy), in the definition of “long lease”, for “28(1) of the Land Registration (Scotland) Act 1979 (c.33)” substitute “9(2) of the Land Registration etc. (Scotland) Act 2012 (asp 00)”.

Stirling-Alloa-Kincardine Railway and Linked Improvements Act 2004 (asp 10)

45 In section 16 of the Stirling-Alloa-Kincardine Railway and Linked Improvements Act 2004 (rights in roads or public places), for subsection (3) substitute—

“(3) The powers conferred by this section constitute a real right.”.
Tenements (Scotland) Act 2004 (asp 11)

46 (1) The Tenements (Scotland) Act 2004 is amended as follows.

(2) In section 1(2)(b) (determination of boundaries and pertinents)—

(a) repeal “an interest in”, and

(b) for “title sheet of that interest” substitute “relevant title sheet”.

(3) In paragraph 1(6) of schedule 3 (sale under section 22(3) or 23(1) of the Act), for paragraph (a) substitute—

“(a) where the flat or former flat has been registered in the Land Register of Scotland, the description refers to the number of the title sheet;”.

Edinburgh Tram (Line Two) Act 2006 (asp 6)

47 In section 25 of the Edinburgh Tram (Line Two) Act 2006 (rights under or over roads), for subsection (5) substitute—

“(5) The powers conferred by this section constitute a real right.”.

Edinburgh Tram (Line One) Act 2006 (asp 7)

48 In section 25 of the Edinburgh Tram (Line One) Act 2006 (rights under or over roads), for subsection (5) substitute—

“(5) The powers conferred by this section constitute a real right.”.

Waverley Railway (Scotland) Act 2006 (asp 13)

49 In section 16 of the Waverley Railway (Scotland) Act 2006 (rights in roads or public places), for subsection (3) substitute—

“(3) The powers conferred by this section constitute a real right.”.

Companies Act 2006 (c.46)

50 (1) The Companies Act 2006 is amended as follows.

(2) In section 48(3) (execution of documents by companies), after “subscribed” insert “(or, in the case of an electronic document, authenticated)”.

(3) In section 49(4)(b), after “subscribed” insert “or authenticated”.

(4) In section 1022(6)(b) (protection of persons holding under a lease), for “Land Registration (Scotland) Act 1979 (c.33)” substitute “Land Registration etc. (Scotland) Act 2012 (asp 00)”.

Glasgow Airport Rail Link Act 2007 (asp 1)

51 In section 15 of the Glasgow Airport Rail Link Act 2007 (rights in roads), for subsection (3) substitute—

“(3) The powers conferred by this section constitute a real right.”.
Schedule 5—Minor and consequential modifications

Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3)

52 (1) The Bankruptcy and Diligence etc. (Scotland) Act 2007 is amended as follows.

(2) In section 85 (restriction on priority of ranking of certain securities), in new section 13A (to be inserted in the Conveyancing and Feudal Reform (Scotland) Act 1970 (c.35)), in subsection (1)(a), after “duly” insert “registered or”.

(3) In section 128(1) (interpretation of chapter 2 of Part 4), in the definition of “long lease”, for “28(1) of the Land Registration (Scotland) Act 1979 (c.33)” substitute “9(2) of the Land Registration etc. (Scotland) Act 2012 (asp 00)”.

Edinburgh Airport Rail Link Act 2007 (asp 16)

53 (1) The Edinburgh Airport Rail Link Act 2007 is amended as follows.

(2) In section 9(1) (registration of vested land), for “section 4 of the Land Registration (Scotland) Act 1979 (c.33)” substitute “Part 2 of the Land Registration etc. (Scotland) Act 2012 (asp 00)”.

(3) In section 20 (rights in roads or public places), for subsection (6) substitute—

“(6) The powers conferred by this section constitute a real right.”.

Airdrie-Bathgate Railway and Linked Improvements Act 2007 (asp 19)

54 (1) The Airdrie-Bathgate Railway and Linked Improvements Act 2007 is amended as follows.

(2) In section 9(1) (registration of vested land), for “section 4 of the Land Registration (Scotland) Act 1979 (c.33)” substitute “Part 2 of the Land Registration etc. (Scotland) Act 2012 (asp 00)”.

(3) In section 20 (rights in roads or public places), for subsection (6) substitute—

“(6) The powers conferred by this section constitute a real right.”.

Energy Act 2008 (c.32)

55 In section 77(7) of the Energy Act 2008 (model clauses of petroleum licences), after “subscribed” insert “or authenticated”.

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An Act of the Scottish Parliament to reform and restate the law on the registration of rights to land in the land register; to enable electronic conveyancing and registration of electronic documents in the land register; to provide for the closure of the Register of Sasines in due course; to make provision about the functions of the Keeper of the Registers of Scotland; to allow electronic documents to be used for certain contracts, unilateral obligations and trusts that must be constituted by writing; to provide about the formal validity of electronic documents and for their registration; and for connected purposes.

Introduced by: John Swinney
On: 1 December 2011
Bill type: Executive Bill