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
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