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 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.

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
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