SUBMISSION FROM LANDS TRIBUNAL FOR SCOTLAND

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