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