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\(^1\) 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.

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\(^{1}\) 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><strong>Charge</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></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><strong>Discharge</strong></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 on Improvement Grant</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td><strong>Title Transfers</strong></td>
<td>Assignation 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><strong>Total</strong></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>ARTL 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.
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 is 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\(^4\) 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.
- 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 in respect 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;
- the Keeper accepts Y’s application and Z’s land is encumbered with the standard security as from 15th May.

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.