SUBMISSION FROM STEWART BRYMER

I am a supporter of the main aims of the Bill and strongly believe that its enactment will bring considerable benefits to both citizens and practitioners alike. The 1979 Act needs to be repealed – and soon. I have the following comments in no particular order, namely:-

Advance Notices are an urgent necessity to protect against intervening competing deeds and diligences. I have written extensively on this subject over the course of the past 20 years – as has Emeritus Professor MacDonald. No modern system of land ownership should be without such a facility.

I approve of the provision which allows the Keeper to confirm acceptance of an application.

I wholeheartedly support the fundamental change in relation to rectification and realignment - the previous law preferring the registered proprietor in possession did not operate fairly and was impossible to explain to clients who lost land and then had to argue for compensation.

The new statutory right given to the Keeper to sue solicitors where an inaccuracy in the Register is caused by the carelessness of a solicitor is controversial but, in my opinion, is appropriate. A solicitor has a basic duty of care.

I approve of the powers which the Keeper wishes to have in order to maintain flexibility in the Scottish system of landholding. As I have commented previously however, these powers should only be introduced after full consultation with stakeholders.

Finally, and in my opinion very importantly, I approve of the bringing into line of Scots law with the EU Directive authorising electronic conclusion of contracts. I and other members of the Professorial Panel gave an opinion to the Keeper prior to the introduction of ARTL by secondary legislation to the effect that Scotland should enshrine the Directive into Scots law at the earliest opportunity. That has not yet happened and that should be rectified now. Appropriate safeguards vis a vis fraud etc. are already being worked on by the Law Society. The introduction of this provision should not be delayed. See more detailed comments in the Consultation Process and also Rennie & Brymer, Conveyancing in the Electronic Age. There are vested interests who have expressed arguments against this move away from traditional ways of working. However, it is now time to enable Scotland to have a thoroughly modern system of landholding and title transfer from contract to conveyance. There has been extensive consultation on this point and all views have been discussed in a series of meetings. I firmly believe that this is in the best interests of Scotland.

I trust that these brief comments are of assistance to you.

Stewart Brymer
Professor Stewart Brymer WS
Solicitor