



Land Registration etc. (Scotland) Bill

Bill Number:	SP Bill 6
Introduced on:	1 December 2011
Introduced by:	John Swinney MSP (Government Bill)
Passed:	31 May 2012
Royal Assent:	10 July 2012

Passage of the Bill

The Land Registration etc. (Scotland) Bill was introduced in the Scottish Parliament on 1 December 2011 and the Economy, Energy and Tourism Committee was designated as the lead committee.

Stage 1 oral evidence on the general principles of the Bill was taken in January and February 2012 with the Stage 1 debate taking place on 14 March 2012. The Bill was passed following the Stage 3 parliamentary debate on 31 May 2012.

Purpose and objectives of the Bill

The Bill provided a statutory framework for the continuation and improvement of the land registration system in Scotland.

In particular, it was intended to achieve five broad policy objectives:

- It provided for the eventual completion of the Land Register
- It introduced a system of 'advance notices' designed to remove the risk of losing legal title to the property between the payment of the purchase price and the date the property is registered (which risk is currently underwritten by insurance)
- It introduced amendments to the Requirements of Writing (Scotland) Act 1995 to promote electronic conveyancing and electronic registration

- It sought to realign land registration law with the general principles of property law
- It placed on a statutory footing the administrative practices of the Keeper of the Registers of Scotland that have evolved since the passing of the Land Registration (Scotland) Act 1979

Provisions of the Bill

Part 1 of the Bill provided for a new structure for the Land Register of Scotland.

Part 2 of the Bill provided for the process of registration in the Land Register, including provisions designed to facilitate the eventual completion of the Land Register. Part 3 of the Bill provided for which documents may be registered in the Land Register and made provision about the competence and effect of registration.

Part 4 of the Bill made provision for 'advance notices', as discussed above.

Part 5 of the Bill made provision about 'inaccuracy' in the Land Register. Closely linked to Part 5, Part 8 of the Bill provided for when and how the Land Register is to be rectified to correct an inaccuracy.

Part 6 of the Bill made provision for a new statutory system of 'caveats' in the Land Register that will regulate how litigation affecting the titles in the Land Register is brought to the attention of third parties.

Part 7 of the Bill made provision for the state guarantee of title associated with properties registered in the Land Register.

Part 9 of the Bill made provision about the rights of individuals acquiring property in good faith in certain circumstances.

Part 10 of the Bill made provision about electronic documents and electronic registration, as discussed above.

Part 11 of the Bill contained general and miscellaneous provisions. Schedule 1 of the Bill related to a particular category of registered leases and schedules 2 and 3 of the Bill contained amendments to existing legislation.

Parliamentary consideration

Stage 1

The main recommendations associated with the Bill made by the Economy, Energy and Tourism Committee in its Stage 1 Report were as follows:

- there should be identifiable targets for the completion of the Land Register appearing on the face of the Bill

- the Scottish Government should reflect on options for ensuring that the land registration system reduces the scope for tax evasion, tax avoidance and the use of tax havens
- where there is a land registration application associated with the 'prescriptive' acquisition of legal title to property (i.e. acquisition based on a provisional entry in the Land Register and possession for a specified period of time) there should be a more public process of advertising that property
- in relation to the statutory offence created in section 108 of the Bill (now section 112 of the 2012 Act), the wording of the provision should be reconsidered to make clear the offence covers fraud, not genuine mistakes
- there should be a dispute resolution process affecting title to registered property involving the Lands Tribunal as an alternative to the ordinary courts

Stage 2

At Stage 2 the Bill was amended by a non-government amendment (supported by the Scottish Government in principle) to give the Lands Tribunal a greater role in relation to the dispute resolution process.

As a result of Scottish Government amendments, changes were also made to the steps which require to be taken before a provisional entry will be made in the Land Register relating to a possible prescriptive acquisition of title. However, these changes did not relate to the publicity surrounding applications made by prescriptive claimants.

Scottish Government amendments also altered the wording of section 108 of the Bill to make clearer the steps which require to be taken to avoid committing the statutory offence created by that provision.

There were various other non-government amendments not agreed to which related to the Economy, Energy and Tourism Committee's other areas of interest in its Stage 1 Report.

Stage 3

Minor changes to the Bill were made at Stage 3 as a result of Scottish Government amendments. There were three other non-government amendments, either withdrawn or not agreed to.

Sarah Harvie-Clark
Senior Researcher
Justice and Social Affairs Research Unit