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### By Email

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Date: 10 January 2020

Dear Mr Crawford

### **PUBLIC SERVICES REFORM (REGISTERS OF SCOTLAND) ORDER 2020**

I am writing in response to your letter dated 18 December 2019 requesting comments from Registers of Scotland on the Public Services Reform (Registers of Scotland) Order 2020.

As Keeper of the Registers of Scotland (RoS), I am a non-ministerial office-holder in the Scottish Administration and the Chief Executive of RoS. The details of how RoS operates are set out within our [Framework document](#). We plan to update this document in the light of these changes to reflect the new arrangements. To date, RoS has operated in the same way as a trading fund and has had to cover all expenditure from income generated. It has made no call on the Scottish Consolidated Fund and, as defined in the terms of section 9 of the Public Finance and Accountability (Scotland) Act 2000, all sums received by the Keeper in connection with the exercise of the Keeper's functions have been retained and applied to meet expenditure.

I am reassured that the explanatory document states that there is no need for this change to have any impact on our day-to-day operations and that my status as a non-ministerial office-holder within the Scottish Administration will be unaffected. In particular, I am reassured that the delivery of my specific statutory functions will remain independent of the direction of Scottish Ministers. I believe this independence is vitally important to maintain the confidence of the citizens of Scotland that decisions about specific land and other legal document registration are not subject to political direction.

In my view, the change outlined in the order will affect three aspects of how we currently operate:

- Our existing reserve will be transferred to the Scottish Government.
- Our future income and expenditure budget will be agreed by the Scottish Parliament, as part of the Scottish Consolidated Budget.
- Any difference between income from fees and expenditure in future years, either surplus or deficit, will be managed within the wider Scottish budget i.e. RoS will no longer retain a separate reserve.

The primary impact of these changes can essentially be summarised as transferring a number of risks from being wholly within the control of RoS to manage and mitigate, to being risks to be managed within the larger Scottish Government budgeting framework, albeit with the assistance of RoS as appropriate. These are as follows:

- **Transfer of risk for achieving Land Register Completion by 2024:** The current RoS corporate plan includes a key strategic objective to complete Scotland's Land Register by 2024, as requested by Scottish Ministers. Three of the key activities that are vital to achieving Land Register completion have to date been partially or fully funded by RoS drawing down on our reserve. Voluntary registration (where a property owner voluntarily asks for their property to be transferred onto the Land Register) currently has a 25% fee discount to act as an incentive for land owners to submit their land for registration. RoS is currently self-funding the difference between the cost of delivering this work and the reduced fee income received for those applications. Keeper Induced Registration (where I move properties onto the Land Register without input from the property owner) attracts no fee income so RoS is currently self-funding this work. Engagement with stakeholders to facilitate and encourage Land Register completion is a vital part of the process and RoS is currently self-funding this work. Once this change takes effect I will no longer hold a reserve and will therefore not be able to self-fund any aspect of completion of the Land Register. I will therefore rely on the Scottish Government to provide the funding to cover the difference between the cost of delivering the work and the fee income received, to enable this work to continue at the current rate required to achieve Land Register completion in time for the target date of 2024.
- **Transfer of risk for delivering new registers:** RoS is currently supporting Scottish Government and UK Government colleagues in progressing secondary legislation and regulations relating to new registers including the Register of Controlling Interests in Land, the Register of Overseas Entities and Moveable Transactions. These are all registers for which I, as Keeper, will have statutory duties. There has been no explicit discussion on how the creation and maintenance of these registers will be funded, however, I would note that once this change takes effect I will not be able to self-fund any of this work. I will therefore rely on the Scottish Government to provide the funding to enable me to comply with the new duties that will be placed on me in relation to these registers.
- **Transfer of risk in relation to warranty and compensation payments:** Another purpose for which I currently hold a reserve is to fund the state-backed warranty of title and the associated statutory compensation scheme. The warranty scheme fundamentally underpins the public trust in our land register by operating as a guarantee that the position disclosed by the register is legally accurate; and where it turns out not to be accurate a warranty payment or other compensation payment will be due. It is important to note that the register can become inaccurate in number of ways, including a mistake by an applicant or their solicitor, by fraud, or by a mistake made by a member of my staff. My obligation to make a warranty or compensation payment is not generally affected by how the inaccuracy has arisen. The scale of payments made under the relevant provisions of the Land Registration etc. (Scotland) Act 2012 in any given year is typically in the region of £1m; however there is also the potential for a much larger claim on the warranty as the claims can be for the entirety of the value of the property affected. In our current reserves policy, RoS allocates £5m per annum to keep in reserve for large warranty payments. Once this change takes effect I will no longer hold a reserve and will therefore not be able to fund large warranty payments. I will therefore rely on the Scottish Government to provide me with additional funding to cover the warranty payments that become due in any given year, but without exerting influence over the appropriate level of compensation to be paid. The independence of

my role as a non-ministerial office-holder in the Scottish Administration means that it remains my responsibility to agree the level of compensation for claims. This responsibility includes out of court settlements, and implementing the outcome of a judicial ruling in the event that a case has been to the court.

- Transfer of risk in relation to responding to housing market fluctuations:** One of the purposes for which I, as Keeper, currently hold a reserve is to enable RoS to cope with fluctuations in fee income linked to the housing cycle, ensuring a reserve is built up in buoyant years to cover any period of reduced fee income resulting from a downturn in the housing market. To quantify the potential size of this risk it is useful to outline what happened in the housing market downturn of 2008, when transactions in the housing market dramatically reduced, and over £70 million of RoS reserves were drawn upon, over a period of 5 years, to maintain services. In the light of this experience, in our current reserves policy, RoS now allocates £30m to mitigate the risk of a downturn in the housing market, taking into account the improvements in efficiency delivered by RoS in the intervening years. Once this change takes effect I will no longer hold a reserve and I will no longer be able to mitigate this risk. I will therefore rely on the Scottish Government to provide sufficient funding to cover my expenditure in the event that a market downturn reduces our in-year fees to the extent that I cannot cover the costs of running RoS in any given year from in-year fee income. It should be noted that I may be calling on Scottish Government funds at a time when there are likely to be other increased calls on the same money.
- Transfer of risk for delivering digital innovations and meeting customer needs:** The current RoS corporate plan includes a key strategic objective to develop digital improvements to enable more effective delivery of Land Registration services to the citizens of Scotland. These digital improvements will both increase the speed and the quality of service with which housing transactions can be recorded in the Land Register and property owners can secure their real rights in property. Significant work has been undertaken with our customers, and with our partner organisations, to define the improvements they would like to see in our services, and our current corporate plan is intended to deliver these. RoS has been drawing down on its reserve to fund these digital improvements that go over and above maintenance of underpinning systems and regular business as usual. Once this change takes effect I will no longer hold a reserve and will therefore not be able to self-fund the development of digital tools to improve the effectiveness of our services. I will therefore rely on the Scottish Government to provide the funding to cover this aspect of our work and to enable us to meet customer expectations in relation to the delivery of our current corporate plan.

At the time of writing I have no visibility from the Scottish Government of the level of budget allocation that will be available to RoS in the next financial year. I am therefore currently not in a position to confirm whether all current [corporate plan](#) activities, the financial profile for which is shown below, will be able to continue as planned, or whether it will be necessary to revise our plans if the required level of funding is not made available.

	<b>2020-21</b>	<b>2021-22</b>	<b>2022-23</b>	<b>2023-24</b>
	<b>£M</b>	<b>£M</b>	<b>£M</b>	<b>£M</b>
<b>Income</b>	<b>82.5</b>	<b>79.1</b>	<b>80.5</b>	<b>79.9</b>
<b>Expenditure</b>	<b>96.2</b>	<b>82.7</b>	<b>83.4</b>	<b>84.1</b>
<b>Surplus or (Deficit)</b>	<b>(13.7)</b>	<b>(3.6)</b>	<b>(2.9)</b>	<b>(4.2)</b>

In the absence of any budget allocation information from Scottish Government, I will assume that we can set our 2020/21 budget based on our existing corporate plan as set out in the table above. I would note that there is a timing risk in relation to when RoS is informed of its budget allocation; the later we are informed of our budget allocation, the fewer options we will have available to us to make changes to our plans for next financial year. I note that our equivalent organisation in England and Wales, Her Majesty's Land Registry, was similarly reclassified a year earlier in September 2018, and is introducing new financial arrangements from April 2020 with a transfer of reserves expected on 1 April 2020.

I would observe that the reserve due to transfer to the Scottish Government has been built up from fee-paying customers who, at the time of making their payment, had an expectation, as documented in section 9 of the Public and Finance Accountability (Scotland) Act 2000, that these fees would be used to support the Keeper's purposes. Our current corporate plan was defined on the basis that we would be able to use some of the reserve that we had built up to deliver improvements to our services. We have worked hard to improve customer satisfaction levels and to collaborate with key stakeholders on designing effective services, and I would want to continue to be able to deliver for customers as expected. I am concerned that this change may mean I am now unable to fund the work that our customers are expecting in return for fees already paid.

The Order states accumulated reserves will transfer on 31 March 2020. We would define this as the retained profits within our audited annual accounts. To put the numbers in context, the size of retained profits was £65 million as at 31 March 2019, and is expected to be between £55 million - £60 million at the end of March 2020. However, I would note that the final figure for our retained profits will not be confirmed until our accounts are finalised and agreed by the RoS Board, planned for 18 August 2020. We would therefore propose to transfer an interim amount on the 31 March 2020, with a final instalment to be made once the audited accounts have been finalised.

I appreciate that the above information presents a series of risks that will require effective collaborative working between Scottish Government and RoS colleagues to manage. I would like to reassure you that, if this change to the RoS funding arrangements takes place as described in the Order, I and my staff will do everything within our power to make this change work and minimise the risks that Scottish Government are exposed to as a result of this change.

I hope the information provided above is useful. I would of course be very happy to provide any further information if required.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jennifer Henderson', written in a cursive style.

**JENNIFER HENDERSON**  
**Keeper of the Registers of Scotland**