



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# ECONOMY, ENERGY AND TOURISM COMMITTEE

Wednesday 18 June 2014



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**ECONOMY, ENERGY AND TOURISM COMMITTEE**

**19<sup>th</sup> Meeting 2014, Session 4**

**CONVENER**

\*Murdo Fraser (Mid Scotland and Fife) (Con)

**DEPUTY CONVENER**

\*Dennis Robertson (Aberdeenshire West) (SNP)

**COMMITTEE MEMBERS**

\*Richard Baker (North East Scotland) (Lab)

\*Marco Biagi (Edinburgh Central) (SNP)

\*Chic Brodie (South Scotland) (SNP)

\*Alison Johnstone (Lothian) (Green)

\*Mike MacKenzie (Highlands and Islands) (SNP)

\*Joan McAlpine (South Scotland) (SNP)

\*Margaret McDougall (West Scotland) (Lab)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Fergus Ewing (Minister for Energy, Enterprise and Tourism)

Hugh Welsh (Registers of Scotland)

**CLERK TO THE COMMITTEE**

Douglas Wands

**LOCATION**

The James Clerk Maxwell Room (CR4)



## Scottish Parliament

### Economy, Energy and Tourism Committee

*Wednesday 18 June 2014*

[The Convener *opened the meeting at 10:30*]

### Decision on Taking Business in Private

**The Convener (Murdo Fraser):** Good morning, ladies and gentlemen. Welcome to the 19th meeting of the Economy, Energy and Tourism Committee in 2014. I welcome all members, and I remind everyone to turn off, or at least turn to silent, all mobile phones and other electronic devices.

Item 1 is to ask the committee whether we are content to take items 5 and 6 in private.

**Members** *indicated agreement.*

## Subordinate Legislation

### Land Register of Scotland (Rate of Interest on Compensation) Regulations 2014 [Draft]

### Registers of Scotland (Fees) Order 2014 [Draft]

### Registers of Scotland (Information and Access) Order 2014 [Draft]

### Land Registration etc (Scotland) Act 2012 (Incidental, Consequential and Transitional) Order 2014 [Draft]

10:31

**The Convener:** Under item 2 we have four pieces of draft subordinate legislation to consider. They are all instruments that are subject to affirmative procedure and relate to the Land Registration etc (Scotland) Act 2012.

I welcome, to aid us in our consideration, Fergus Ewing, the Minister for Energy, Enterprise and Tourism. He is joined this morning by Kirsten Simonnet-Lefevre, who is a solicitor in the Scottish Government legal directorate; Hugh Welsh, who is the head of data with Registers of Scotland; and Chris Kerr, who is the head of legal policy and legislation at Registers of Scotland.

I invite the minister to introduce the draft instruments.

**Fergus Ewing (Minister for Energy, Enterprise and Tourism):** I am pleased to have been invited by the committee to speak to the four draft instruments. They form part of a suite of subordinate legislation that needs to be in force for the designated day for the Land Registration etc (Scotland) Act 2012. Last month, I was pleased to make the order setting out the designated day as 8 December this year. On that day, the new scheme of land registration that is provided for in the 2012 act will come into force. That will bring into effect a fairer and more efficient system of land registration for the people of Scotland. The instruments that the committee is considering today will provide further practical details on what requires to be in place to ensure the smooth introduction of the new scheme of land registration.

One key concept of the 2012 act is that the land register of Scotland continues to provide a state guarantee of title. Therefore, the keeper of the registers of Scotland will pay compensation to parties who have suffered loss. The draft Land Register of Scotland (Rate of Interest on

Compensation) Regulations 2014 provide for the interest rate that is to be applied to compensation payments that are made by the keeper. Their purpose is to put the person who incurred the loss in the financial position that he or she would have been in had the loss not occurred. The Government considers that the rate should be suitably flexible so as to respond to changing market conditions. We therefore propose to set the rate at 1 per cent above the Bank of England base rate.

The draft Registers of Scotland (Information and Access) Order 2014 makes provision on how information is made available by the keeper and on access to the keeper's registers. Public access to the registers is one of the overarching principles of registration in Scotland. The key provisions are those in article 4 that provide for how public access to the keeper's registers is given. Access can be provided at the customer services centres that are based at Meadowbank house in Edinburgh and Hanover house in Glasgow, where members of the public are assisted by the keeper's staff to search the registers. Members of the public can also make requests by letter or email or through the Registers of Scotland website. The provisions in the draft order will help to ensure clear procedures for public access to information from the keeper's registers.

The draft order provides for the keeper to issue plain copies of documents that are recorded or registered in the keeper's registers or parts of those registers, such as the title sheet in the land register. That provides the public with a cheaper alternative to a formal extract with evidential value. Article 3 provides that, in relation to the land register, the keeper will issue only extracts or plain copies showing one cadastral unit, to ensure accuracy.

The draft Land Registration etc (Scotland) Act 2012 (Incidental, Consequential and Transitional) Order 2014 is mainly technical. It will amend the 2012 act and make consequential amendments to other legislation. Because the amendments are technical, I propose—with the convener's permission—not to go through all the details. However, I—or, to be more accurate, my officials—would be happy to take questions thereon. The amendments include transitional arrangements on how common parts of titles on the land register can be shown before the general register of sasines closes.

The last instrument that I will discuss in the suite—the draft Registers of Scotland (Fees) Order 2014—is the first fees order to be made under the powers in the 2012 act. It consolidates in one order all the main statutory fees that Registers of Scotland charges, including those for the crofting register and the register of community

interests in land. It also introduces fees for new products and services that result from the 2012 act, such as advance notices and caveats.

One key policy consideration in developing the order was that there should be no increase in the fees that the keeper charges for registering and recording deeds and documents. Fee levels also take into account the need for the keeper to maintain financial reserves to pay compensation that is linked to the state guarantee that the land register provides; to provide a contingency fund for any downturn in the property market; to fund completion of the land register; and to invest in information technology services.

The order retains a fee for rejecting applications, but to help customers to adapt to the changes that will result from the 2012 act, it provides for two calendar months to pass after the designated day before the rejection fee provision commences. That will provide solicitors with time to master the revised requirements for registration on the land register.

The order will maintain the majority of fees at 2010 levels, which are similar to those that were set in 1995. It upholds the principles of transparency, value for money and equality for citizens.

The keeper maintains her commitment to a biennial fee review. The next review is due to begin in 2015.

Before I move the motions to recommend approval of the instruments, my colleagues and I would be happy to answer any questions that the committee has.

**The Convener:** Thank you for that introduction. Do members have questions to pursue with the minister?

**Alison Johnstone (Lothian) (Green):** The land reform review group's view is that

"major progress is still required"

on land registration. Will any of the instruments that we are discussing help to achieve completion of the land register within 10 years?

**Fergus Ewing:** The instruments will enable the smooth running of the register of sasines and the land register. It is useful to remind ourselves that the land register's principal and most practical function is to provide a means for transactions—house sales and commercial transactions—to be carried out and done in a way that ensures a guaranteed title and security and certainty of title, which provide security and confidence about doing business in Scotland. That is the register's primary function. It is important to bear that in mind.

To answer Alison Johnstone's question, the review group has identified a measure that we are

committed to considering. We will produce a consultation paper on beneficial ownership issues, on which we will consult all those who have an interest thereanent.

**Alison Johnstone:** Before I was a member of it, the committee made it clear that it supports better access to information. Public access to information on who owns Scotland is really important. Will you give an update on any progress that is being made to provide an online search facility that is open to the public? How accessible will the information be to the man on the street, who might just be interested?

**Fergus Ewing:** As I said in my introduction, there is transparent access on the website, by email and at the offices in Glasgow and Edinburgh.

The land register shows the owner of the property, which can be an individual or corporate entity. In some cases, such as with property that is owned in trust or by companies, the register does not reveal the beneficial ownership of the property, which means the beneficiaries of the trust or the shareholders of the company. As we discussed during the passage of the Land Registration etc (Scotland) Bill, the concept of beneficial ownership is unknown in Scots law, outside of the law of trusts, tax and insolvency. In particular, the concept is not traditionally recognised in Scottish property law. That is one of the reasons why we feel that it is appropriate to consult on it.

With your permission, convener, Mr Welsh will share some further information, to respond to Alison Johnstone's question.

**Hugh Welsh (Registers of Scotland):** At the moment, the public have access to our system through various means. Sometimes, that is in person or by email. We have the Registers Direct system, which is mainly business to business, although members of the public can access it, if required. In most instances, for a one-off search, people find it more helpful for us to share the information with them. That is particularly the case with the register of sasines, because it takes a bit of technology and a wee bit of expertise to translate the entries. We are working along those lines.

**Alison Johnstone:** Does the Government have a planned programme to register public land that is not yet on the land registry?

**Fergus Ewing:** The keeper and I have for a considerable time been encouraging public sector landowners, particularly the very large ones such as the Forestry Commission, to register land voluntarily. Considerable progress has been made towards achieving that objective. The policy objective's desired target is completion in 10 years, and a great deal of land in public ownership

needs to be registered, so particular thought and encouragement has been given to securing that objective. Plainly, it is an enormous task and it has resource implications, because the legal work that is involved, the preparation of plans in some cases, and the issues that might arise in the course of the voluntary registrations, such as disputes, will be consumptive of time, as the convener in particular will understand from his legal days. We are therefore considering those matters carefully with the main public sector bodies that are involved, including the Forestry Commission. The desire is to complete the register within 10 years, and we expect the public sector to show a lead in that regard.

**The Convener:** I have a follow-up to Alison Johnstone's question, on beneficial ownership. During the passage of the bill, you were very robust in stating your view that identifying beneficial ownership on the register would be a cumbersome and expensive process, if it could be achieved at all. Have you changed your mind on that? It sounds as though the Scottish Government has perhaps softened its position a little.

**Fergus Ewing:** Well, no. Amendments were lodged at stages 2 and 3 of the bill that were designed to enable the land register to disclose beneficial ownership of land, but at that time we were of the view—characteristically perhaps, I expressed my view in robust terms—

**The Convener:** I recall that being the case.

**Fergus Ewing:** The amendments would not have been workable in practice and would have placed an unnecessary burden on applicants and the keeper. Moreover, the potential impacts of the amendments had not been assessed or considered, not least because they had not been consulted on. For that variety of reasons, it appeared to us that the amendments did not commend themselves at that stage. Plainly, however, we want to see whether there is anything else that we can do, so we approach the issue with an open mind. That is why we are having a consultation, which I think has been welcomed by various groups that have been exercised by the matter and which have been pursuing such policy issues for a long time. I expect that we will be back at the committee before not very long to discuss the upshot of that consultation.

**Chic Brodie (South Scotland) (SNP):** I have a question for Mr Welsh. One of the concerns that was expressed when we considered the bill was about the IT system and its lack of user-friendliness. As a sequitur to Alison Johnstone's question, what has changed to provide ease of accessibility? How robust is the new IT system?

10:45

**Hugh Welsh:** The main technology access to our systems is via Registers Direct, which is well used—there are a million searches per year. As I said, members of the public can also email us or appear in person to request expert advice.

We are currently implementing the Land Registration etc (Scotland) Act 2012, so we are making the required changes to the technology to enable implementation. There are no major changes at the moment.

**Chic Brodie:** Does that mean that I was wrong in assuming that the previous IT system has been scrapped? Is it still being used?

**Hugh Welsh:** We are working through the process and adding to what we have. We continually review our IT, as part of the process of fee reviews.

**Chic Brodie:** Thank you.

**The Convener:** I have a question about the fees order. I recall—as will you, minister—that when we dealt with the bill, it was identified that Registers of Scotland had substantial reserves, which had been built up during a period when the level of transactions was high. Do you or your officials know the current level of reserves?

**Fergus Ewing:** I do not have that information in front of me, but I have been considering the matter. The appropriate level of reserves is currently the subject of internal exchange and discussion.

In my opening remarks I mentioned a number of matters for which allowance must be made, which include assessing the sum that must be set aside for potential claims. The keeper's record on claims has been very good; it is known that the failure rate on the part of the keeper is extraordinarily low. Consideration also needs to be given to, for example, the potential for a drop in the property market and the cost of adapting IT systems so that Registers of Scotland can fulfil the functions that are set out in the 2012 act.

All those matters require an exercise in judgment about the appropriate sum, which is an art, not a science. Each matter must be carefully considered, which is why the issue is currently under consideration.

I recall that the most recent statistics available on the volume of transactions, which I think are for the previous year, show a positive picture. There has been a rise in house sales and purchase and a thumping rise—from memory, it was 55 per cent—in the volume of registrations of commercial property transactions. That means that the financial situation for the keeper is more robust.

If the property market continues to grow and be robust, by definition the need to maintain substantial reserves reduces. However, such issues are always a matter of judgment. Perhaps after my discussions with the keeper, which might take a few weeks or slightly longer, I can come back to the committee and give you a more detailed and considered answer, which sets out the level of the reserves and perhaps the criteria that were applied in reaching the decision, so that the matter is—as the Scottish Government likes to be—an open book.

**The Convener:** That would be helpful. Thank you. You are absolutely right to say that, after a period of slow movement in the domestic and commercial property markets, there appears to have been a substantial recovery, so activity and income will be increasing.

At the time when we dealt with the bill, there was a scheme of voluntary redundancy at Registers of Scotland, and folk were being encouraged to leave. Is Registers of Scotland now in a recruitment phase, or does it think that it has enough capacity in the current workforce to deal with an increase in transactions?

**Hugh Welsh:** Intakes have risen 9 per cent in the past year. We dealt with about 280,000 applications for land registration. We are doing them quicker than ever, and 50 per cent of all applications are now done within five days.

We have reduced our staff numbers over the recent period, from a high of around 1,400 down to 900. In the past year, the number of staff increased slightly, mainly in specialist areas such as IT and legal areas. At the moment, we are confident about our ability to deal with the 2012 act and any future enhancement. The triggers from the 2012 act will generate an extra 8,000 applications a year of first registrations, on top of the 27,000 that we dealt with last year. We are confident that we will be able to deal with those.

**The Convener:** Within the current staff resource.

**Hugh Welsh:** Yes.

**Mike MacKenzie (Highlands and Islands) (SNP):** Minister, you mentioned some of the challenges that public sector organisations—and, I dare say, big landowners across the country—face in registering titles, surveying and so on; I appreciate that that might also present a challenge for Registers of Scotland. Do you feel that harnessing the potential of 21st century technology offers not only the prospect of greater transparency and ease of access, but a big prize in terms of increased efficiency to all who are concerned with conveyancing and property in Scotland?



**Fergus Ewing:** Yes. Without a shadow of a doubt, the 2012 act will help to smooth the process, make it more efficient and easier to operate, and assist the smooth running of commercial and domestic transactions in Scotland. That must be a good thing. This is really for the anoraks—by which I mean myself and the convener—but it is much easier and much less time consuming to carry out a house purchase and sale conveyance, especially when acting for the purchaser, when the property is in the land register for the very reason that, in the sasines register, there is not necessarily a map or a plan, deeds can be written in handwriting that is not always scrutable and the whole process takes a long time. It is repetitive and old-fashioned, and the cost is very often borne by the public or the client.

The land register provides a much simpler process. It is map based—it uses the Ordnance Survey map—and you can get a land certificate that shows you the plan and all the conditions in title, the extent of the title, the name of the owner and the consideration paid. It is also useful for people who are buying houses, who can see what price was paid for the houses next door and can get an easy idea of how to move house without tears, or with as few tears as possible. Generally, the land register is good news. The 2012 act makes a number of specific changes that are designed further to improve that process.

Mr MacKenzie mentioned large landowners. I should make it clear to the convener that I am keen to ensure that we engage fully and appropriately with large landowners, and I have arranged to meet Scottish Land & Estates over the next few weeks—first here and then, on 1 August, at Moy game fair—to have discussions, in which the keeper will be fully involved.

At the moment, with the level of maximum fees, it would, in many cases, be sensible and prudent for landowners to decide to proceed with voluntary registration. Of course, by doing that, they will help to generate work for the legal profession, which is just coming out of a time when many young conveyancing lawyers have been laid off. I very much hope that the combined effect of the policy changes that we are proposing, as well as the work that we have already done, will encourage large landowners to consider the voluntary registration of their estates, and we are working positively and in voluntary co-operation with them to that purpose. One of the benefits will be to stimulate a little bit of employment or re-employment in the legal profession, especially of young lawyers who might have been casualties of the recession.

**The Convener:** As there are no further questions, I invite the minister to formally move the four instruments that are before us.

*Motions moved,*

That the Economy, Energy and Tourism Committee recommends that the Land Register of Scotland (Rate of Interest on Compensation) Regulations 2014 [draft] be approved.

That the Economy, Energy and Tourism Committee recommends that the Registers of Scotland (Fees) Order 2014 [draft] be approved.

That the Economy, Energy and Tourism Committee recommends that the Registers of Scotland (Information and Access) Order 2014 [draft] be approved.

That the Economy, Energy and Tourism Committee recommends that the Land Registration etc. (Scotland) Act 2012 (Incidental, Consequential and Transitional) Order 2014 [draft] be approved.—[*Fergus Ewing.*]

*Motions agreed to.*

**The Convener:** Are members content for the convener and the clerk to produce a short, factual report of the committee's decisions and to arrange to have that published?

**Members indicated agreement.**

10:55

*Meeting suspended.*

10:56

*On resuming—*

### **Land Register Rules etc (Scotland) Regulations 2014 (SSI 2014/150)**

**The Convener:** Item 4 on the agenda is another piece of subordinate legislation, in this case a negative instrument. As members have no issues that they wish to raise, do we agree simply to note the instrument?

**Members indicated agreement.**

**The Convener:** At this point, we will move into private session.

10:57

*Meeting continued in private until 11:28.*



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e-format first available  
ISBN 978-1-78457-668-4

Revised e-format available  
ISBN 978-1-78457-683-7