

Economy and Fair Work Committee

19th Meeting, 2022 (Session 6), Wednesday, 7 September 2022

Evidence Session: Registers of Scotland

Background

1. Registers of Scotland (RoS) is the public body responsible for managing public registers of land, property and other legal documents in Scotland.
2. RoS is a non-ministerial office and part of the Scottish administration. It is directly accountable to the Scottish Parliament and scrutiny responsibility falls primarily within the remit of the Economy and Fair Work Committee.
3. The [Keeper of the Registers of Scotland](#) (the Keeper), a senior civil servant and [non-ministerial office holder in the Scottish administration](#), is the Chief Executive of RoS.

Evidence Session

4. The Keeper [last appeared before the Committee on Wednesday 2 March](#). At that meeting, the Committee agreed to seek monthly updates from the Keeper on progress towards clearing the registration backlog and completing the Land Register and to invite the Keeper to a further evidence session in due course.
5. The latest update was received on 10 August and can be found [here](#).
6. In addition to the update, the Committee received correspondence from two members of the public providing additional analysis of the current backlog of cases - attached at **Annexe A**.
7. At today's meeting the Committee will hear from—
 - Jennifer Henderson, Keeper of the Registers of Scotland; and
 - Christopher Kerr, Registration and Policy Director, Registers of Scotland.
8. The evidence session will provide members with an opportunity to further discuss RoS's activities and performance and plans for the coming year.

**Clerks to the Economy and Fair Work Committee
2 September 2022**

Letter received from Mr J Keith Robertson

Registers of Scotland and the registration backlog

The Keeper of the Registers of Scotland, Jennifer Henderson, appeared in March this year before the Economy and Fair Work Committee (EFWC). As a solicitor, recently retired after forty-five years in conveyancing practice in Kingussie, I have taken a keen interest in the ever increasing backlog of cases at Registers of Scotland, a backlog which, this month, reached over 107,000.

Having viewed the evidence given by the Keeper on your website and having read the follow-up monthly reports provided by her, it seems to me that certain facts should be brought to the attention of your committee members before the next occasion on which the Keeper is called before your committee, in particular, the rate at which the “ring fenced” backlog is being eliminated.

Using the figures provided by the Keeper, I have produced the following table showing how quickly applications are being eliminated and when, at that rate, it can be expected that the backlog will be cleared. The timescale appears to be markedly different from that provided by the Keeper in her evidence, “3 years or a little bit longer”. This is particularly concerning in relation to applications lodged in 2017, which have already been outstanding for 5 years. I would mention that the 2021 figure for these has been taken from a letter from the Keeper to your committee dated 15 March, 2021.

Total dispositions out of service standard				
Lodged in:	2017	2018	2019	2020
FR and TP applications outstanding at 08/03/2021	3744	Not available	Not available	Not available
Dispositions outstanding at 01/05/2022	3130	11778	14451	15869
Dispositions outstanding at 01/06/2022	3081	11661	14281	15580
Reduction over period	663	117	170	289
Monthly reduction rate	44.2	117	170	289
Months to eliminate backlog	69.71	99.67	84.01	53.91
Years to eliminate	5.81	8.31	7.00	4.49
ie backlog eliminated by the year	2028	2030	2029	2026
Number of years since lodged	11	12	10	6

As you will see from these completion rates, it may take over a decade to actually register some of these deeds. Apart from 2017, these figures are based on only two months figures and may, of course, vary drastically over a longer period. The 2017 figure, however, includes data provided by the Keeper to the EFWC in March 2021 and therefore gives an accurate picture of what progress Registers of Scotland have made over the past 15 months in reducing the oldest part of the backlog. Projecting that forward shows that it will take over a decade for some 2017 applications to be

completed by Registers of Scotland, without even considering the 2018-2020 cases.

The Keeper, in her evidence, appears to indicate that these delays do not really matter as registration back dates to the date of receipt. Whilst it is true that, if registration is completed, the date of original date of receipt of the application will be treated as the registration date, that ignores the critical possibility that any of these applications may be rejected and lose its place in the queue at any time before registration is completed.

The possibility of rejection is not a remote one. Although Registers of Scotland do not normally publish their rejection numbers, in July 2021, the Keeper provided in her blog the figure for rejections. There were 1363 rejections during the 32 months from October 2018 to June 2021, i.e. an average of over 40 cases rejected per month, hardly an insignificant number. If registration were to take ten years or more, rejection could prove catastrophic due to supervening bankruptcy or liquidation of a seller.

The Keeper, in her evidence also suggested that that expedition is possible “where that is necessary.” There are however stringent requirements which applicants must meet before having an application expedited. In 2020-21, only 728 requests for expedition were granted out of 1359 applications, a 54 percent success rate. That is because the grounds for expedition are quite restrictive, length of delay in registration not being one of them.

I would ask you to pass this to members of your committee and would hope that it will be useful to them in future deliberations.

Yours faithfully

J Keith Robertson
17 June 2022

Follow up letter received from Mr J Keith Robertson

Registers of Scotland - the registration arrear

Following my letter to the Committee of 17 June 2022, there have been two further developments in relation to matters raised in my letter.

Firstly, I received an answer to a Freedom of Information request for a breakdown by age since submission, of rejections by Registers of Scotland after three months from application date. The letter with this information is attached. As will be seen, in the six months from the start of this year, there 181 rejections of deeds lodged between 2017 and 2020, an average of thirty per month. That can hardly be described as a rare occurrence and can have potentially serious consequences for the parties concerned, as set out in my letter.

Whilst it was always anticipated when the 2012 Act was passed, that rejection of applications would occur, it was expected that this would happen within a relatively short time of a few weeks at most. It was never, ever anticipated that rejection might occur five years after the application was lodged, as appears to have happened to

seven 2017 applications between January and June this year. It is hard to imagine how the parties concerned would even begin to sort out the problems caused by such rejection.

Secondly, there is the question of the consequences of these extreme registration delays. The Keeper in each of her follow-up reports stresses to the Committee that “the legal effect of registration backdates to the date when I received the application and homeowners are not restricted from doing anything with their property whilst the application is outstanding.”

In addition to the possible rejection consequences mentioned in my letter, the delay in registration can have other detrimental effects. I was recently contacted by a fellow solicitor who told me of problems encountered by her client in enforcing a right of access where the land over which access was to be taken had been sold on. The deed creating the right of access was one of those in the registration arrear and, until the registration of the right of access was entered in the title of both properties (dual registration), the right of access could not be enforced. As many of the applications stuck in the arrear relate to transfers of part of a property, it seems reasonable to suppose that a good number of these will contain rights of access, wayleave etc, making them vulnerable to just such a scenario.

It does seem therefore that Registers of Scotland should be giving eradication of the arrear a much higher priority than they presently appear to do. Concentrating resources on current applications and aiming to complete these within thirty-five days appears inequitable when set against applicants who prepaid registration dues in 2017, have already been waiting for five years and will face a wait of several more years.

Yours et cetera

J Keith Robertson
retired solicitor

FOI Response to Mr Robertson from Registers of Scotland, 31 August 2022

Thank you for your email request dated 4 August 2022 requesting information held by Registers of Scotland (RoS). Your request has been considered under the Freedom of Information (Scotland) Act 2002 (FOISA).

You asked for;

- ‘1. provide a breakdown of these 96 rejections by year of application?
2. advise how many similar Land Register rejections there have been since 1st January 2022 with a breakdown by year of application’

In relation to information on the [RoS stats page](#) about rejections in June 2022.

Response to your request

1. A breakdown of the June rejections are below.

June 2022	
	No. Rejections over 3m+
2017	2
2018	14
2019	4
2020	7
2021	39
2022	30
Total	96

Of these 96 rejections, there have been 13 re-submissions under the same title number 13 applications, 5 have been completed (5.2%).

For applications that have been with us for more than 3 months, these are reviewed by our senior registration officers to ensure that there is no other option but to reject the application. The main reason for rejections are:

- Withdrawn at agent's request
- Not capable of being registered

The small number of cases that this does happen, we contact the customer to inform them. Once the issue has been resolved on re-submission, we arrange for the application to be expedited to ensure that their application is processed as quickly as possible.

2. A breakdown of the rejections from January to June 2022.

Jan - Jun 2022	
	No. Rejections over 3m+
2017	7
2018	38
2019	51
2020	85
2021	269
2022	52
Total	502

Email received from Mr Iain McDonald

Dear Madam,

I contact you as convenor.

I note your committee was recently addressed by the Keeper of the Registers of Scotland in regard to the backlog in registrations.

I think the Keeper lacks insight of the issues the backlog creates.

Title sheets can be issued with errors. They can be rejected. Titles can be submitted with plans containing areas undergoing registration ie overlaps unbeknown to a submitting agent creating issues only coming to light years later.

In Kirkcudbrightshire we have seen the closure of two legal firms in recent years. Who checks the accuracy of title sheets issued based on applications by them? Who protects the clients of those firms when their applications are rejected or the Keeper raises queries? - I gather the Keeper averages 50 rejections per month.

We were encouraged to have our clients make voluntary applications. Many have paid £100s to the Keeper for an advertised product to find it still awaited after 5-6 years. No one in the private sector would ever get away with this standard of service.

I am about to retire, it us an additional burden on those in the firm being asked to check titles coming in 5 years after submission when I could have done more readily if still there.

How have standards managed to drop so far? Are there any proposals to resolve the matter given the arrears are accumulating month on month and showing no sign of reduction?

I find the staff at RoS very helpful but they are now clearly well under resourced which is hard to understand when they were able to transfer a £5million surplus to the Scottish Government.

Our Land Registers used to be a matter of great pride to me as a Scotsman and I find it a great sadness it is steadily deteriorating and no one seems to want to stop the rot.

Regards,

Iain McDonald
4 August 2022