

LAND REGISTRATION ETC. (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament's Standing Orders, the following documents are published to accompany the Land Registration etc. (Scotland) Bill introduced in the Scottish Parliament on 1 December 2011:

- Explanatory Notes;
- a Financial Memorandum;
- a Scottish Government Statement on legislative competence; and
- the Presiding Officer's Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 6–PM.

EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. Therefore, where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

4. The Land Registration etc. (Scotland) Bill makes provision for land registration in Scotland and provides a new legislative basis for the Land Register. The Bill also increases the number of events that will trigger the transfer of property from the existing General Register of Sasines to the Land Register. This will ensure the eventual completion of the Land Register. The Bill makes provision for applications for voluntary registration of titles in the Land Register and a power for the Keeper of the Registers of Scotland (who manages and controls the Land Register) to register a title without an application (a “Keeper-induced” registration). The Bill seeks to re-align registration law with property law by, for example, adjusting the circumstances in which a person can recover their property rather than only receive compensation under the state guarantee of title from the Keeper of the Registers.

5. In addition to these matters affecting the Land Register, the Bill introduces a system of “advance notices” for conveyancing transactions. The period between delivery and registration of a deed disposing an interest in land is the period in which the grantee of the deed (normally the purchaser) is at risk. The two main risks that a purchaser in a conveyancing transaction is exposed to are (1) the insolvency of the granter of the deed (the seller), and (2) that a competing deed will be registered before that deed. This risk is currently underwritten by insurance. Finally, the Bill introduces amendments to the Requirements of Writing (Scotland) Act 1995, which will allow Scottish Ministers to make subordinate legislation enabling electronic conveyancing and electronic registration.

6. In 2002, the Keeper, with the agreement of Scottish Ministers, invited the Scottish Law Commission (“the SLC”) to review the law of land registration in Scotland. The SLC issued three discussion papers. The first was a Discussion Paper entitled *Land Registration: Void and Voidable Titles* (Scots Law Com DP No 125, 2004), the second was a Discussion Paper on *Land Registration: Registration, Rectification and Indemnity* (Scot Law Com DP No 128, 2005) and the third was a Discussion Paper on *Land Registration: Miscellaneous Issues* (Scot Law Com DP No 130, 2005). The SLC project culminated in the publication of its Final Report on Land Registration (Scot Law Com No 222), including a draft Land Registration (Scotland) Bill, in February 2010. The SLC report and draft Bill provides useful explanatory background. However, there are a number of differences of detail between the Bill as introduced and the SLC draft Bill.

OVERVIEW OF THE BILL

7. The Bill as a whole continues and improves the system for land registration in Scotland. It replaces much of the Land Registration (Scotland) Act 1979.
8. Part 1 of the Bill provides the new structure of the Land Register of Scotland.
9. Part 2 of the Bill provides for the process of registration in the Land Register, including the processes for the additional “triggers” for first registration of titles. A “first registration” is the processing of an application relating to land which is not on the Land Register, the completion of which results in a land registered title. These additional triggers will facilitate the eventual completion of the Land Register.
10. Part 3 of the Bill provides for which documents may be registered in the Land Register and makes provision about the competence and effect of registration.
11. Part 4 of the Bill makes provision for advance notices
12. Part 5 of the Bill makes provision about inaccuracy in the Land Register. This is closely linked to Part 8 below.
13. Part 6 of the Bill makes provision about caveats in the Land Register.
14. Part 7 of the Bill makes provision for state guarantee of title under the Keeper’s warranty.
15. Part 8 of the Bill is closely linked to Part 5 on inaccuracy of the Register. It provides for when and how the Land Register is to be rectified to correct inaccuracy.
16. Part 9 of the Bill makes provision about rights of persons acquiring subjects in good faith in certain circumstances.
17. Part 10 of the Bill makes provision about electronic documents (including electronic conveyancing) and electronic registration.
18. Part 11 of the Bill makes general and miscellaneous provision, including a power of Scottish Ministers to set fees for processing applications and a power to make the Land Register rules
19. Schedule 1 to the Bill relates to registered leases tenanted in common.
20. Schedule 2 to the Bill contains amendments to the Registration of Leases (Scotland) Act 1857.
21. Schedule 3 to the Bill contains consequential amendments to changes to the Requirements of Writing (Scotland) Act 1995 (“the 1995 Act”) in Part 10.

22. Schedule 4 to the Bill contains savings and transitional provision.
23. Schedule 5 to the Bill contains minor and consequential modifications.

PART 1: THE LAND REGISTER

Overview of Part 1

24. Part 1 of the Bill provides for the continuation of the Land Register and sets out what the component parts of the register are. It also makes provision for how the Land Register is to deal with common areas, both within tenements and in other places where property is shared (such as gardens and driveways).

The Land Register of Scotland

Section 1: The Land Register of Scotland

25. The section sets out the underlying legal basis for the Land Register in Scotland. Subsection (1) makes in plain that the register is a public register of rights in land. The equivalent 1979 Act provided for the Land Register to be a register of interests in land. This is not a substantive change, merely a change of emphasis.

26. Subsection (4) gives the Keeper of the Registers authority and flexibility as to the form of the Land Register. In particular, it allows the Land Register to be in electronic form.

27. Subsection (5) makes it clear that it is the Keeper's responsibility to ensure that the Land Register is sufficiently protected, due to the significant implications that would result from problems with it.

Structure and contents of the register

Section 2: The parts of the register

28. This section provides for the constituent parts of the Land Register. The details relating to each part are provided for in the following sections. It is noteworthy that the formal parts of the Land Register are expanded to include the cadastral map, the archive record and the application record. These parts of the Land Register previously existed on an administrative basis only. Section 6 of the Land Registration (Scotland) Act 1979 made provision with regards to title sheets, but did not mention the title sheet record.

Title sheets and the title sheet record

Section 3: Title sheets and the title sheet record

29. Subsections (1) and (6) together establish a key principle that each registered plot of land has a title sheet and there is only one title sheet for each plot. This is however subject to exceptions in subsections (2) and (7).

30. Subsection (4) defines “plot of land” as an area or areas of land all of which are owned by one person or jointly by more than one person. A separate tenement, such as mineral rights, or a flat in a tenement building, is a plot of land for these purposes under subsection (5).

31. Subsection (2) allows the Keeper to continue the current practice of creating a title sheet for a registered lease. This means there may be more than one title sheet for a plot of land where all or part of the plot is leased. Lease title sheets are subsidiary to title sheets made up under subsection (1) of this section.

32. In the case of the exception for pertinents, subsection (7) allows exclusive pertinents (such as gardens, garages and bin-stores) to be included in the same title sheet as the main part of the land being registered. Where a pertinent is in common ownership, a shared plot title sheet may be created instead (see sections 17 to 20).

Section 4: Title and lease title numbers

33. This section is self-explanatory.

Section 5: Structure of title sheets

34. Subsection (1) of this section provides for the sections of a title sheet. This replicates the sections of the title sheets as they appear in existing title sheets. Statutory provision with regards to title sheets was made in section 6 of the Land Registration (Scotland) Act 1979 and in the Land Registration (Scotland) Rules 2006.

35. Subsection (2) contains a power of the Keeper to sub-divide sections of the title sheet, which would enable, for example, the proprietorship section of a title sheet to be divided to reflect the provisional ownership of a prescriptive claimant (see section 42) in one part and the underlying ownership of another person in the other part.

Section 6: The property section of the title sheet

36. This section sets out what has to be included in the property section of the title sheet. It is commonly known as the “A section”. The property section sets out what the registered property is. Subsection (1)(a)(i) requires the description of the plot of land to be a description by reference to the cadastral map. This reflects the importance of the cadastral map in the Land Register under the Bill in showing the registered boundaries of plots of land.

37. Subsection (1)(b) requires the particulars of incorporeal pertinents (such as servitudes) to be entered onto the property section.

38. Subsection (1)(c) requires alluvion agreements (made under section 63) to be entered on the property section.

39. Where the title sheet is for a sharing plot (see sections 17 to 19) or a sharing lease (see section 20 and schedule 1), subsection (1)(d) requires the property section of the title sheet to specify what the share in the shared plot or shared lease area is.

40. Subsection (1)(f) requires in the case of title sheets that relate to the same area of land (such as where both an ordinary title sheet and lease title sheet or salmon fishing title sheet exists), that the property section of each title sheet provide a cross-reference to any other title sheet.

Section 7: The proprietorship section of the title sheet

41. This section of the title sheet will set out who owns the property described in the property section and their respective shares (for common ownership). This section is commonly known as the “B” section.

42. For the purposes of subsection (1)(a), the “designation” of the proprietor is defined in section 109(1).

43. Subsection (2) provides for exceptions to these requirements in the case of shared plot and shared lease area title sheets (see section 17 and schedule 1), and for title sheets which show areas in common which were already included in two or more title sheets before the designated day. Also relevant to the effect of subsection (2) is:

- Where the title sheet is a shared plot or shared lease area title sheet, the plot numbers of the sharing plot are to be entered to make the link. The quantum of the shares (i.e. the share of the whole) in the shared plots must be entered (see section 18(2)(a) and paragraph 7(a) of schedule 1);
- For title sheets created before the commencement of the Bill, where (1) common areas were entered on more than one title sheet and the Keeper makes a shared plot or shared lease area title sheet, and (2) the quantum of shares were not entered on the existing title sheets, the respective shares of the common owner don’t have to be entered on the new shared plot or shared lease area title sheet (see paragraph 9 of schedule 4).
- Where the title sheet is for a flat in a tenement or other single flatted building and the Keeper has mapped the tenement (or flatted building) as provided for in section 16, the Keeper need not enter the respective shares (such as the common close).

Section 8: The securities section of the title sheet

44. Subsection (1) sets out the information that the Keeper must enter in the securities section of a title sheet. It is commonly known as the “C” or charges section.

45. Subsection (2) makes reference to provisions on shared plot and shared lease title sheets which make specific provision about the securities section of those title sheets.

Section 9: The burdens section of the title sheet

46. Subsection (1) sets out the information that the Keeper must enter in the burdens section of a title sheet in respect of the property. It is commonly known as the “D” section.

47. Certain burdens (such as short leases i.e. those lasting 20 years or less) are not capable of registration and so will not appear in the burdens section.

48. Subsection (3) allows the Keeper to omit burdens from a shared plot title sheet (or a shared lease area title sheet) where the burden is disclosed in the title sheets of each of the sharing plots anyway.

Section 10: What is entered or incorporated by reference in a title sheet

49. Subsection (2) sets out the additional matters that the Keeper must enter on a title sheet and includes a general duty to include such information as the Keeper considers appropriate. This might be used, for example, to enter statements on a title sheet about the existence of a real burden subsisting by virtue of any of sections 52 to 56 of the Title Conditions (Scotland) Act 2003 (various implied rights of enforcement) or section 60 of the Abolition of Feudal Tenure etc. (Scotland) Act 2000 (preserved right of Crown to maritime burdens).

50. Subsections (4) and (5) make it clear that the information entered cannot contain any rights or obligations not authorised by law, and if rights or obligations are so entered, their entry has no effect. Therefore, should a right and obligation appear on a title sheet when it is not authorised by law, or the entry relates to a right or obligation, which is merely a personal right, their entry is of no effect and does not constitute notification of the right to any party searching the Land Register.

51. Subsection (3) allows the Keeper to incorporate into the title sheet additional documents by reference. This includes documents in the archive record, such as supplementary plans or deeds registered in other registers the Keeper manages and controls (such as deeds in the General Registers of Sasines, the Register of Inhibitions or the Books of Council and Session).

52. Subsections (2)(b) and (6) mean that while particulars of special destinations can be entered on title sheets generally, they cannot be entered on shared plot title sheets or shared lease title sheets.

The cadastral map

Section 11: The cadastral map

53. This section provides detail on the content of the cadastral map. The cadastral map is a map of registered land rights in Scotland. Its constituent parts are cadastral units (see section 12).

54. Subsection (1) of section 11 provides that the entry on the cadastral map for a cadastral unit is a data set that will show the boundaries of the cadastral unit. The description of the

property as set out in the property section of the title sheet will make reference to the cadastral unit number.

55. Subsection (3) permits, but does not compel, three-dimensional mapping.

56. Subsections (5) and (6) make provision for the base map, on which the cadastral map is to be based. The default base map is to be the Ordnance Map maintained by the Ordnance Survey. The Keeper may use a different system of mapping the base map if appropriate in the future (it may be appropriate to do so for areas of the seabed where there is no entry on the Ordnance Map).

57. Subsection (7) allows the Keeper to make consequential changes to the Land Register when the base map is updated. In practice, this means that where the Ordnance Map is improved, the boundaries of cadastral units can be adjusted as long as the adjustment falls within the tolerances of the base map.

58. Subsection (9) is a marker to note that there is an exception to the general rules on mapping in the cadastral map in section 16 for tenements and other flatted buildings.

Section 12: Cadastral units

59. This section provides that each numbered cadastral unit represents a registered plot of land.

60. Subsection (3) provides for an exception that a pertinent can be included in the same cadastral unit as the land to which it pertains.

61. The consequence of subsection (2) is that entries on the cadastral map, other than entries for separate tenements, and in transitional cases, cannot overlap.

Section 13: The cadastral map: further provision

62. Section 11(6) allows the Keeper to use a different system of mapping as the base map (or for part of the base map) for the cadastral map if appropriate. Section 13(1) recognises that the Ordnance Map does not extend to the seabed. The combination of section 11(6) and subsection (1) allows the Keeper to map seabed titles (such as long leases for renewable energy projects) as the Keeper thinks fit. In practice, this will allow seabed titles to be represented on the cadastral map either by a dataset of co-ordinates or by mapping on a system of mapping other than the Ordnance Map.

63. Subsections (2) to (4) contain important powers for the Keeper to manage the cadastral map by dividing, removing and combining cadastral units. On doing so, the Keeper would be required by the combination of sections 3 and 12 to rationalise the title sheets that correspond to the cadastral units, and subject to transitional arrangements.

The archive record

Section 14: The archive record

64. This section provides for the archive record to be the repository of documents supporting the accuracy of the Land Register.

65. Under subsection (3), the archive record need not include copies of legislation (which is otherwise publicly available), documents contained in other registers that are controlled by the Keeper of the Registers of Scotland, or documents stored by the Keeper of the Records of Scotland.

66. Subsection (4) ensures that although the archive record becomes a constituent part of the register, parties relying on the title sheet record are not considered to have constructive knowledge of its content. This preserves the so-called "curtain principle" of not having to look behind the face of the register.

The application record

Section 15: The application record

67. This section makes provision about the application record. The application record is essentially the Keeper's "in tray" of pending applications the Keeper is to consider. Advance notices (see Part 4) for registered plots of land will be entered in the application record.

Tenements etc.

Section 16: Tenements and other flatted buildings

68. Titles to tenement flats are particularly difficult to map. Typically, tenement properties are conveyed by reference to a verbal description of the individual flat. They are seldom mapped. Subsection (1) allows the Keeper to continue to use the approach of depicting a tenement as a site of single extent on the cadastral map. The power is also extended to single-storey building with internal divisions, where the same issue applies. In practice, this means the cadastral unit for each plot of land in the tenement is the whole tenement (although each flat will have its own title sheet).

69. Subsection (2)(b) makes provision for how pertinents of the flats in tenements are to be treated.

70. Subsection (3) creates a rule that disapplies subsections (1) and (2) in respect of land pertaining to the tenement or flatted building that is further than 25 metres from the "flatted building" as defined in subsection (4). Where a shared pertinent is not further than 25 metres from the tenement building, the Keeper is allowed to include the pertinent in the site of single extent. Where a shared pertinent extends further than 25 metres from the tenement building, a shared plot title sheet will require to be created for the pertinent (see section 17). Where a pertinent is an exclusive pertinent to one flat in the tenement, that pertinent will be able to be included as a discontinuous site on the cadastral map with the same cadastral unit as the tenement building whether or not it extends beyond 25 metres from the building.

Shared plots

Section 17: Shared plots

71. This section and the following three sections provide for a scheme to define common areas and give them standalone title sheets. These common areas, such as driveways, shared gardens, amenity areas and bin stores often currently appear in more than one title sheet, meaning that when viewing the cadastral map it is unclear who the owners of the area of land are.

72. Subsection (2) gives a power to the Keeper to make up a shared plot title sheet. There is no duty to do so.

73. Subsection (3) provides for the relationship between a “shared plot” and a “sharing plot”.

74. Subsection (5) makes special provision that, unless the deed provides otherwise, a deed affecting a sharing plot will similarly affect the relevant share in the shared plot. Subsection (4) makes this reference apply to all other documents (the most important of which is missives).

Section 18: Shared plot and sharing plot title sheets

75. Subsections (1) to (3) set out what is to be included and what is not to be included in a shared plot title sheet and a sharing plot title sheet. Subsection (1) in particular shows the biggest difference between a shared and sharing plot title sheet and an ordinary title sheet. It provides that the sharing plot title sheet will include the title number of the shared plot title sheet in the property section and that the title number of the sharing plot title sheet will appear in the proprietorship section of the shared plot title sheet. This means that where a sharing plot is sold, no change is required to the shared plot title sheet. This is because the sale of the sharing plot will result in a change to the property section of that title sheet but its title number will remain the same.

Section 19: Conversion of shared plot title sheet to ordinary title sheet

76. This section provides that a shared plot title sheet can be converted into an ordinary title sheet. This might happen if one of the sharing plot owners buys up the other owners’ interests in the shared plot.

Section 20: Shared plot title sheets in relation to registered leases

77. This section introduces schedule 1 to the Bill, which makes equivalent provision for shared lease area title sheets. These title sheets correspond to shared plot title sheets but relate to shared lease interests rather than shared ownership interests.

PART 2: REGISTRATION

Overview of Part 2

78. Part 2 of the Bill provides for the process of registration in the Land Register.

79. This Part also makes provision for the three elements that will ensure the eventual realisation of a completed Land Register. These are the additional “triggers” for first registration of titles, voluntary registration and Keeper-induced registration. A “first registration” is the processing of an application relating to land which is not already on the Land Register, the completion of which results in a land registered title.

80. There is no explicit reference in the Bill to the additional triggers for first registration. Instead, the effect comes from the general effect of the Bill and the closure of the General Register of Sasines to the recording of various deeds as provided for in section 47. The first closure step provided for in section 47 is the closure of the General Register of Sasines to transfer deeds. The consequence is that if someone wishes to transact with property registered in the General Register of Sasines and therefore to transfer ownership rights, the only way this can be done is by registering the disposition transferring ownership in the Land Register.

Applications for registration

Section 21: Application for registration of deed

81. This section provides the basic assumptions about applications for registration in the Land Register: that a person can apply for registration of a registrable deed; and that if the application complies with the applicable conditions, the Keeper must accept the application. Provision is also made that if the application does not comply with the applicable conditions, the Keeper has to reject the application.

82. Subsection (4) provides that where an owner of land objects under section 44(5) to their land being subject to a prescriptive claim (see sections 42 to 44 for prescriptive claimants, who do not own the property they are seeking to register), and who does so within 60 days of notice of the prescriptive claim, the application by the prescriptive claimant falls to be rejected.

Section 22: General application conditions

83. This section sets out the general conditions with which all applications have to comply. Section 4 of the Land Registration (Scotland) Act 1979 made only minimal provision for applications for registration.

84. Subsection (1)(a) is a requirement that the application allows the Keeper to comply with the Keeper’s duties under Part 1. The main duties in question are:

- the duties under sections 6 to 9 to enter what those sections provide for into the relevant sections of a title sheet; and
- the duty in section 14(1) to include copies of relevant documents in the archive record in relation to the application.

85. Subsections (1)(b) and (2) prevent any application that relates to a so-called “souvenir plot” (that is, a plot that is very small and of no practical use to anyone) from being accepted.

86. The effect of subsection (1)(c) is that where subordinate legislation (made under section 9G of the Requirements of Writing (Scotland) Act 1995 as inserted by section 93) sets out requirements as to the type of document and level of authentication required for registration of an electronic document, an application for registration has to comply with the terms of the relevant subordinate legislation to be accepted. Traditional documents are required to comply with the rules already in section 6 of the 1995 Act.

87. Subsection (1)(d) provides that an application must comply with requirements as to form that are specified in the Land Register rules (see section 111).

Section 23: Conditions of registration: transfer of unregistered plot

88. This section provides the special conditions for what is known as an application for “first registration”. A first registration is where an unregistered property is taken into the Land Register for the first time. By virtue of the closure of the General Register of Sasines to the recording of deeds relating to registered land under section 47(1) and the closure of the Register of Sasines to dispositions under 47(2), first registration will be induced not only when there is a transaction for value (which is the existing law, replaced by the Bill), but for all transfers.

89. Subsection (1) provides for the additional conditions that apply to a first registration. Subsection (1)(c) requires the application to include information to enable the Keeper make an accurate entry on the cadastral map in relation to the cadastral unit created as a consequence of an accepted application.

90. Subsection (2) provides an exception to these conditions for flats in tenements where the Keeper chooses, under section 16, to represent the tenement as a site of single extent.

91. Subsection (3) is an exception to the exception in subsection (2) and requires any exclusive pertinent of the plot of land, such as a coal cellar or parking space pertaining to one of the flats, to be sufficiently described (because the pertinent would still need to be mapped by the Keeper).

92. Subsection (4) clarifies that the applicant is not required to provide a plan or description of certain servitudes affecting the plot such as pipeline servitudes (subsection (4)(a)) or servitudes created other than by registration, e.g. by prescription (subsection 4(b)).

Sections 24 and 25: Conditions of registration: certain deeds relating to unregistered plots

93. These sections make provision for the circumstances in which, as a consequence of an application for registration of a subordinate real right (such as an assignation of an unregistered lease), a first registration of the underlying land must take place. There will be additional applications of these types by virtue of the closure of the General Register of Sasines under section 47.

94. Section 24 sets out the type of applications in relation to which the conditions in section 25 apply on first registration of the underlying unregistered land. They are:

- on an application for registration of a lease over the land;
- on an application for registration of an assignation of a lease over the land;
- on an application for registration of a sublease over the land;
- on an application for registration of a standard security over the land;
- on an application for registration of a notice of title to a subordinate real right in relation to the land; and
- on an application for registration of a standard security over an unregistered, subordinate real right in relation to the land.

95. Section 25 sets out the additional conditions for the registration of the deeds referred to in section 24.

Section 26: Conditions of registration: deeds relating to registered plots

96. This section provides special provisions for applications relating to plots of land already registered in the Land Register. The main types of such application are a transfer of the whole of a plot (commonly known as a “dealing with whole”), a transfer of part of a plot (known as a “transfer of part”) and the registration of a standard security (usually a mortgage). Transfers of part are most commonly associated with new-build developments. This section applies to all deeds that relate to registered plots of land.

97. Subsection (1)(d) provides a special rule for transfers of part, that the part of the plot which is being transferred has to be sufficiently described to allow the Keeper to accurately map the boundaries of the new plot in the cadastral map. Subsection (3) provides that this mapping rule does not apply to tenements mapped as a site of single extent under section 16. Subsection (4) provides however that exclusive pertinents of plots do still need to be mapped. This is the same arrangement as in section 23 for first registration.

Registration without deed

Section 27: Application for voluntary registration

98. This section provides the scheme for applications for voluntary registration of plots of land or parts of plots to be registered. This is a form of first registration. However, since the applicant will already own the land, there will be no transfer of rights as a result of an accepted application.

99. Subsection (3)(b) gives the Keeper a power to decline to accept an application on the ground of expediency. This broadly replicates the provision in section 2(1)(b) of the Land Registration (Scotland) Act 1979. Subsection (6) allows Scottish Ministers to remove that power by order.

Section 28: Conditions of registration: voluntary registration

100. This section provides the special provisions for voluntary registration applications. These are similar to the conditions in section 25.

Section 29: Keeper-induced registration

101. This section gives the Keeper the ability to register land without application and without the consent of the owner of that land. Registration under this section would not affect the property title of the owner of the property but the Keeper can grant warranty over the land under section 71.

Completion of registration

Section 30: Completion of registration of plot

102. This section draws together the duties of the Keeper in relation to registration on acceptance of an application for first registration, voluntary registration or in relation to a Keeper-induced registration. Subsection (2) lists the practical duties the Keeper must perform to complete registration of a plot of land in the Land Register for the first time.

Section 31: Completion of registration of deed

103. This section provides the duties of the Keeper on acceptance of an application for registration of a deed by virtue of section 26. These provisions are not applicable to cases in which the plot of land has to be registered too. The most common instances of registrations under this section will be transfers of the whole of a plot, a transfer of part of a plot and registrations of a standard security.

General provision about applications

Section 32: Recording in application record

104. Subsection (1) recognises that the Land Register closes at the end of each business day and that where applications for registration are made after the register has closed for the day, the effective date of application will be the next day that the application record opens.

Section 33: Withdrawal and amendments etc. of application

105. This section provides for the so-called “one-shot principle”, that an application cannot be supplemented or substituted after the date of application unless the Keeper consents. Detailed provision can be made in the Land Register rules for that consent.

Section 34: Period within which decision must be made

106. This section allows Scottish Ministers to set turn-around times for the Keeper to deal with applications in the Land Register rules.

Date of application and registration etc.

Section 35: Date of application

107. This section provides that the formal date of application is always the date of the entry in the application record in respect of the application (whether or not the application was made earlier). This section ties in with section 32.

Section 36: Date and time of registration

108. This section provides that the formal date of registration is always backdated to the end of the date of application under section 35. The Scottish Ministers can make different provision by order.

Section 37: Power to amend section 6 of the Land Registers (Scotland) Act 1868

109. This section is self-explanatory.

Applications in relation to the same land

Section 38: Order in which applications are to be dealt with

110. This section is self-explanatory and makes detailed provision for the scenario in which competing applications are received by the Keeper. Subsection (2) clarifies that the order of receipt is to be taken to be the order details of the applications are entered in the application record. The provisions in sections 57 (Period of effect of advance notice) and section 58 (Effect of advance notice) are also relevant to this section.

Notification

Section 39: Notification of acceptance, rejection or withdrawal of application

111. Subsection (1) requires the Keeper, on acceptance or rejection of an application, to notify at least the applicant and any grantor of a deed to be registered.

112. Subsection (2) requires the Keeper, on an application for registration being withdrawn, to notify certain parties.

113. Subsection (3) provides that the duty on the Keeper in subsections (1) and (2) does not need to be carried out when it is not reasonably practicable to do so.

Section 40: Notification to proprietor

114. This section provides for notification to the proprietor in two cases. First, where there is an application for a first registration of a plot of land under sections 21 and 25 as a result of an application for registration of a subordinate real right on the land. The second case is where the Keeper has performed a Keeper-induced registration under section 29. In both cases, the owner of the land may be unaware that the plot of land has been registered in the Land Register.

115. Subsection (3) provides that the duty on the Keeper in subsections (1) and (2) does not need to be carried out when it is not reasonably practicable to do so.

Section 41: Notification to Scottish Ministers of certain applications

116. This section requires the Keeper to notify the Scottish Ministers when an application for registration is rejected on the grounds that it relates to a transfer that is prohibited by the Land Reform (Scotland) Act 2003 in relation to community interests in land.

Prescriptive claimants etc.

Overview of sections 42 to 44: prescriptive claimants

117. Sections 42 to 44 provide for the process whereby a person can apply for title to land to be constituted by prescription. The process for this is for an application to be made for registration of what is known as an *a non domino* disposition in relation to the area of land. The sections provide for the process by which a “prescriptive claimant” can apply to the Keeper to obtain a provisional title in the Land Register. The 10-year prescriptive period provided for by section 1(1) of the Prescription and Limitation (Scotland) Act 1973 can begin to run. If the 10-year period elapses without interruption (for example, such interruption could be by virtue of a challenge from the true owner of the land), the prescriptive claimant can apply to the Keeper under the rectification provisions in Part 8 to become the registered proprietor of the land.

Section 42: Prescriptive claimants

118. Subsection (1) provides that for the purposes of becoming a prescriptive claimant, the disposition granted in favour of the prescriptive claimant can be treated as valid so that the conditions of registration in sections 23 and 26 can be met.

119. Subsection (2) clarifies that this section is applicable to a disposition that is not granted by the person with the title to the subjects being granted.

120. Subsection (3) provides the first limb of the requirements for a person to become a prescriptive claimant. The land that is sought to be acquired must have been abandoned by the true owner for the previous seven years (paragraph (a)) and possessed by the disponer or the prescriptive claimant for one year (paragraph (b)). The prescriptive claimant will require to submit relevant evidence to the Keeper to satisfy these requirements. Subsection (8) allows Scottish Ministers to substitute different time periods for those in subsection (3)(a) and (b).

121. Subsection (4) provides the second limb of the requirements. To make a valid application, the applicant must satisfy the Keeper that they have taken reasonable steps to trace the true owner of the land, or any party able to complete title as true owner and that they have been notified. Where no-one appears to own the land, sub-paragraph (c) requires the applicant to notify the Crown as ultimate heir to land in Scotland. Subsection (7) contains a power to make further provision in Land Register rules regarding notification to various parties. This will allow the Land Register rules to make further provision with regards to the detail of the notification, how it is to be done and the information it should contain.

122. Subsection (5) is relevant to a title that has been provisionally registered in favour of a prescriptive claimant. It clarifies that a prescriptive claimant is able to dispoise such a title.

Section 43: Provisional entries on title sheet

123. This section provides that while a person is a prescriptive claimant, entries relating to the rights they would acquire were the prescriptive period to run successfully are to be marked as provisional. This section deals with both first registrations and dealings with whole of registered plots where there is already a prescriptive claimant.

124. Subsection (2) provides that when the requirements in section 1 of Prescription and Limitation (Scotland) Act 1973 have been met, the person's title is no longer provisional as they have become the true owner of the land in question. The provisional marking will be removed upon a rectification under Part 8.

125. Subsection (3) ensures that provisional markings on title sheets confer no real property rights.

126. Where a prescriptive claimant's name is entered on the proprietorship section of a title sheet and the Keeper knows who the underlying owner of the land is, the Keeper can, by virtue of section 10(2)(e), enter the underlying owner's name as well as the prescriptive claimant's.

Section 44: Notification of prescriptive applications

127. This section provides for further notification to the underlying true owner of property in advance of the acceptance of an application to become a prescriptive claimant. This extends the procedure in section 14 of the Land Registration (Scotland) Act 1979 that provided for the Keeper to notify the Crown Estate Commissioners of applications of foreshore subjects. Subsection (1) requires the underlying owner (who may be the Crown) to be notified by the Keeper. Such notification only requires to be done in the instance when there is not already a prescriptive claim to the title in question.

128. Subsection (2) provides that the duty on the Keeper in subsection (1) does not need to be carried out when it is not reasonably practicable to do so.

129. Subsections (4) and (5) ensure the underlying owner is given 60 days to veto an application for a person to become a prescriptive claimant over their land.

Further provision

Section 45: Applications relating to compulsory acquisition

130. This section makes provision for conveyances as provided for by enactment, notarial instruments and general vesting declarations to be treated as dispositions for the purposes of sections 21, 23, 30 and 47.

Section 46: Effect of death or dissolution

131. This section provides that an application falls to be rejected if the applicant dies (or if a legal person such as a company is dissolved) before the application date under section 35, but can be accepted if the applicant dies or is dissolved while the Keeper's decision as to whether to accept or reject the application is pending.

Section 47: Closure of Register of Sasines etc.

132. This section provides for the phased closure of the General Register of Sasines.

133. Subsection (1)(a) provides that the recording of a disposition in the General Register of Sasines will cease to be effective. In practice, this will mean that in order for ownership to transfer, the disposition will require to be registered in the Land Register. Subsection (1)(a) is subject to the special case of title conditions. It may be necessary to record a disposition in the General Register of Sasines to meet the requirement of "dual registration" as provided for in section 4 of the Title Conditions (Scotland) Act 2003 (the 2003 Act) in respect of real burdens or in section 75 of the 2003 Act in respect of servitudes. This special case is set out in subsection (6). Subsection (1)(d) provides that once a plot of land is registered in the Land Register, nothing in relation to that land can be recorded in the General Register of Sasines.

134. Subsections 1(b) and (c) provide that leases, ("lease" is defined as including sub-lease in section 109(1)) and assignments of leases cannot be recorded in the General Register of Sasines. This will induce first registration in the Land Register of the underlying plot of land.

135. Subsection (2) provides a power for the Scottish Ministers by order to close the General Register of Sasines to standard securities. This would mean a property would need to be registered in the Land Register before a new standard security could be enforced by the creditor.

136. Subsections (3) and (4) provide a similar power to close the General Register of Sasines completely and a corresponding power to register any deeds that could be recorded in that register in the Land Register instead.

137. Subsection (9) allows an order closing the General Register of Sasines under subsections (2) or (3) to apply on an area-by-area basis.

PART 3: COMPETENCE AND EFFECT OF REGISTRATION

Overview of Part 3

138. Part 3 of the Bill provides for which documents can be registered in the Land Register and what the effect of such registration will be.

Registrable deeds

Section 48: Registrable deeds

139. Subsection (1) provides for what documents can be registered in the Land Register. These are documents which any Act provides can be registered. The most common types of registrable documents are:

- dispositions (see section 49);
- standard securities (under section 9 of the Conveyancing and Feudal Reform (Scotland) Act 1970);
- long leases (under section 1 and 20A of the Registration of Leases (Scotland) Act 1857 – section 20A as inserted by section 51);
- notices of title (under section 4A of the Conveyancing (Scotland) Act 1924 (as inserted by section 52(3)));
- decree of reduction (under section 46A(1) of the Conveyancing (Scotland) Act 1924 as inserted by section 53);
- an arbitral award which orders the reduction of a deed (under section 46A of the Conveyancing (Scotland) Act 1924 as inserted by section 53);
- an order for rectification of a document (under section 8A of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 as inserted by section 54(3));
- a standard security ranking agreement (under section 13(4) of the Conveyancing and Feudal Reform (Scotland) Act 1970 as inserted by paragraph 17(7)(c) of schedule 5);
- a deed creating a proper liferent (see section 50); and
- deeds registrable in the Land Register under section 47(7) following the closure of the General Register of Sasines under section 47(6).

Specific provisions on competence and effect of registration

Section 49: Transfer by disposition

140. Subsection (2) continues the important principle that a real right in ownership can only transfer when a valid disposition is registered.

141. Subsection (4)(a) makes subsections (1) to (3) subject to provisions in the Bill on prescriptive claimants and persons acquiring in good faith from a person with invalid title. Subsection (4)(b) makes subsections (1) to (3) subject to any other enactment or rule of law under which ownership may pass. The most significant of these is transfer of ownership by operation of a survivorship destination contained in a disposition.

142. Subsection (5) makes it clear that this section covers udal land (which exists in Orkney and Shetland).

Section 50: Proper liferents

143. This section continues the principle that proper liferents (which allow a person to live in a property until their death) must be registered in either the Land Register or the General Register of Sasines to have real effect as a matter of property law.

Section 51: Registration of, and of transactions and events affecting, leases

144. This section inserts two sections into the Registration of Leases (Scotland) Act 1857. Inserted section 20A allows deeds affecting existing long leases to be registered in the Land Register (new long leases are registrable under section 1 of that Act). Inserted section 20B provides that the registered deed has real effect. Schedule 2 makes further related amendments.

Section 52: Completion of title

145. This section amends the Conveyancing (Scotland) Act 1924 to allow people to use a notice of title to complete an uncompleted title. Under current law, the use of a notice of title is only permitted in the General Register of Sasines.

146. Subsections (2) and (3) provide that an unregistered proprietor of an unregistered property has a choice of methods of completing title. That person is either to record a notice of title in the General Register of Sasines or register a notice of title in the Land Register. The exception to this rule is that where the last recorded title is not in the General Register of Sasines (for example if the property is in a Burgh Register of Sasines or is a pre-1617 title), the effect of subsection (2)(a) is that the option of recording a notice of title in the General Register of Sasines does not apply and the notice must be registered in the Land Register.

147. Subsection (4) is a power to prescribe the forms in relation to completion of title by order. Subsection (5) provides, for Land Register cases, a simplified style of notice (the statutory styles for use in the General Register of Sasines are not altered).

Section 53: Registration of decree of reduction

148. This section inserts a new section 46A into the Conveyancing (Scotland) Act 1924, the effect of which will be that where a voidable deed is reduced, the decree does not immediately change real rights that have been entered in the Land Register. Instead, section 46A(1)(b) provides that the decree has effect on those rights when it is registered in the Land Register. The real rights of the parties concerned thus only change as of the date of the registration of the decree.

149. Subsection (3) ensures that an arbitral award ordering reduction of a deed and made under the Arbitration (Scotland) Act 2010 can where appropriate have equivalent effect as is provided for a decree of reduction under subsection (1).

Section 54: Registration of order for rectification of document etc.

150. Judicial rectification of a document under section 8 of the Law Reform (Miscellaneous Provisions) Scotland Act 1985 operates retrospectively where a court is satisfied that a document failed to give effect to the common intention of the parties. Section 3 of the 1985 Act allows the court to rectify any subsequent document that is defectively expressed by virtue of the defect in the original document. Subsection (2)(a) inserts a new subsection (3A) into section 8 to provide that, where any such subsequent document is registered in the Land Register in favour of a third party who is in good faith, judicial rectification of that document can only happen where the third party consents to the rectification.

151. Subsection (3) inserts a new section 8A which provides that an order for rectification under section 8 of a document registered in the Land Register will have no real effect until the order itself is registered. When it is so registered, it has effect at that point, rather than applying retrospectively to, for example, the date of the making of the order.

PART 4: ADVANCE NOTICES

Overview of Advance notices

152. The first sections in Part 4 provide for a system of advance notices that protects the grantee of a deed during the time between taking delivery of the deed (in exchange for the money) and the registration of that deed. This period is known as the "gap risk" as the grantee is vulnerable in this period to the registration of competing deeds or sequestration of the granter of the deed. The entry of an advance notice referring to a registrable deed ensures that during the next 35 days no disposition or competing advance notice can beat that deed in any race to the register.

153. The following examples of the way in which advance notices are intended to operate in the case of registered titles draw on the examples in schedule 3 to the draft Bill in volume 2 of the final SLC Report. They are provided for illustrative purposes and are no substitute for full consideration of the Bill:

Example 1:

Circumstances:

- X, who is the owner of Blackmains, grants an advance notice in favour of Y in respect of a prospective disposition of that property.
- The advance notice is entered in the application record of the Land Register on 1st May.
- X delivers a disposition of the property to Y but also a disposition of it to Z.
- On 8th May, Z's disposition is registered in the Land Register.
- On 15th May, Y applies for registration in the Land Register.

Consequences:

- The Keeper accepts Y's application and on registering Y's disposition replaces Z's name by Y's in the Land Register. Y becomes registered proprietor of the property with effect from 15th May.

Example 2:

Circumstances:

- The same as in example 1 except that Y does not apply for registration in the Land Register while the protected period is running.

Consequence:

- Y's application is rejected.

Example 3:

Circumstances:

- X, who is the owner of Scarletmains, grants on 1st May an advance notice in favour of Y in respect of a prospective disposition to Y of that property and on 2nd May an advance notice in favour of Z in respect of a prospective disposition to Z of that property.
- Z's advance notice is entered in the application record of the Land Register on 8th May.
- Y's advance notice is so entered on 9th May.
- X delivers a disposition of the property to Y but also a disposition of it to Z.
- On 15th May, Y's disposition is registered in the Land Register.
- On 16th May, Z applies for registration in the Land Register.

Consequences:

- The Keeper accepts Z's application and on registering Z's disposition replaces Y's name by Z's in the Land Register. Z becomes registered proprietor of the property with effect from 16th May.

Example 4:

Circumstances:

- X, who is the owner of Whitemains, grants an advance notice in favour of Y in respect of a prospective disposition of that property.
- The advance notice is entered in the application record of the Land Register on 1st May.

- X delivers a disposition of the property to Y but also a deed of servitude over it to Z.
- On 8th May, the deed of servitude is registered in the Land Register.
- On 15th May, the disposition is registered in the Land Register.

Consequences:

- The Keeper removes the servitude from the Land Register.

Example 5:

Circumstances:

- X, who is the owner of Greymains, grants an advance notice in favour of Y in respect of a prospective standard security over the property.
- The advance notice is entered in the application record of the Land Register on 1st May.
- X delivers a standard security over the property to Y but also a standard security over it to Z.
- On 8th May, Z's standard security is registered in the Land Register.
- On 15th May, Y's standard security is registered in the Land Register.

Consequence:

- From 15th May, Y's standard security ranks ahead of Z's standard security.

Example 6:

Circumstances:

- X, who is the owner of Purplemains, grants an advance notice in favour of Y in respect of a prospective standard security over the property.
- The advance notice is entered in the application record of the Land Register on 1st May.
- X delivers a standard security over the property to Y but also a disposition of it to Z.
- On 8th May, Z's disposition is registered in the Land Register.
- On 15th May, Y applies for registration of the standard security in the Land Register.

Consequences:

- The Keeper accepts Y's application and Z's land is encumbered with the standard security as from 15th May.

Example 7:

Circumstances:

- X, who is the owner of Greenmains, grants an advance notice in favour of Y in respect of a prospective servitude over the property.
- The advance notice is entered in the application record of the Land Register on 1st May.
- X delivers a deed of servitude over the property to Y but also a disposition of it to Z.
- On 8th May, the disposition is registered in the Land Register.
- On 15th May, Y applies for registration of the deed of servitude in the Land Register.

Consequences:

- The Keeper accepts Y's application and Z's land is encumbered with the servitude as from 15th May.

Example 8:

Circumstances:

- X, who holds a registered lease over Yellowmains, grants an advance notice in favour of Y in respect of a prospective assignation of the lease.
- The advance notice is entered in the application record of the Land Register on 1st May.
- X delivers an assignation of the lease to Y but also a standard security over the lease to Z.
- On 8th May, the standard security is registered in the Land Register.
- On 15th May, the assignation is registered in the Land Register.

Consequences:

- The Keeper removes the standard security from the Land Register.

Example 9:

Circumstances:

- X, who is the owner of Bluemains, grants an advance notice in favour of Y in respect of a prospective disposition of that property.
- The advance notice is entered in the application record of the Land Register on 1st May.
- X delivers a disposition of the property to Y.

- On 8th May, X grants a short lease over the property to Z who enters immediately into possession.
- On 15th May, the disposition is registered in the Land Register.

Consequence:

- The lease is not, by virtue of the registration, avoided.

Example 10:

Circumstances:

- X, who is the owner of Redmains, grants an advance notice in favour of Y in respect of a prospective disposition of that property.
- The advance notice is entered in the application record of the Land Register on 1st May.
- On 2nd May, X is inhibited.
- On 3rd May, missives of sale between X and Y are concluded. Thereafter X delivers a disposition of the property to Y and the disposition is registered in the Land Register.

Consequence:

- The disposition, if so registered while the protected period is running, is not affected by the inhibition.

Section 55: Advance notices

154. This section sets out the criteria for an advance notice. Paragraphs (a) to (c) of subsection (1) set out the requirements for advance notices generally. Paragraph (d) applies just to advance notices where the property is on the Land Register. Paragraph (e) applies for property that is not in the Land Register, most of which will be recorded in the General Register of Sasines. The difference in requirements relates to how the property must be identified.

155. Subsection (2) means mapping is not required for an advance notice relating to a flat in a tenement or in a flatted building when the building is mapped as a single cadastral unit. That is subject to similar exceptions for pertinents as for registration under Part 2 of the Bill.

Section 56: Application for advance notice

156. This section sets out the application process for an advance notice. Subsection (2) provides that such an advance notice may be applied for by the person who may grant the protected deed or any person with their consent. In a house sale, this would allow the owner of the house to apply for an advance notice operating in favour of the prospective purchaser. The purchaser would be able, with the consent of the owner, to apply for an advance notice in favour of the lender who will be providing the standard security (mortgage) for the purchase.

Section 57: Period of effect of advance notices

157. This section provides that the protected period of an advance notice will be 35 days. This period can be shortened if the advance notice is discharged under section 60.

Section 58: Effect of advance notice

158. This section sets out the effect of an advance notice. Subsections (2) and (3) give the principal effect. Where a deed, Y, is registered after another deed, Z, and deed Y is protected by an advance notice, registration of deed Y is to be completed as if deed Z did not exist. When deed Y has been duly registered, deed Z should then be “re-registered” for any effect it may have. In many circumstances Deed Z will be rejected as the person granting it is no longer entitled to do so. However if, for example, deeds Y and Z were both standard securities, deed Z could still be registered but would simply rank lower than deed Y. In the circumstances where deed Y is not, in fact, registered within the protected period, deed Z will be registered normally and have its full effect.

159. The section therefore prioritises deed Y over deed Z. The grantee of deed Z is not disadvantaged as the grantee will know of the existence and potential effect of the advance notice in favour of deed Y as it is on the Register.

160. Subsection (4) sets out the secondary effect of an advance notice. In general, an entry in the Register of Inhibitions means a person cannot sell their property free of the inhibition. Where an entry is added to the Register of Inhibitions during the protected period of an advance notice, the grantee of the protected deed will be able to purchase the property free of any effect of the inhibition.

Section 59: Removal of advance notice etc.

161. This section instructs the Keeper to remove an advance notice from the application record and add it to the archive record where the protected period has ended. Subsection (2) allows Scottish Ministers to make rules relaxing this obligation in certain circumstances. This covers the situation where the advance notice has resulted in the Keeper mapping a new property but the notice has lapsed before the deed is registered. It means the Keeper need not delete the mapping work while there is the possibility it will still be required in the near future.

Section 60: Discharge of advance notice

162. This section provides for the possibility that an advance notice may be discharged by the proposed granter of the protected deed if the potential grantee consents. While advance notices do not freeze the Land Register, they may make a property effectively unmarketable to anyone other than the grantee of the deed referred to in the advance notice. The section allows (where, for example, the sale has fallen through) for the parties to bring the advance notice to an end before the 35-day period has elapsed. Subsections (4)(b) and (5) extend the same rule to the Sasine Register.

Section 61: Application of part to specific deeds

163. This section allows Scottish Ministers to make provision modifying this Part in relation to particular types of deeds which may be protected by advance notices.

PART 5: INACCURACIES IN THE REGISTER

Section 62: Meaning of “inaccuracy”

164. This section creates a new definition of inaccuracy in relation to the entries on the Land Register. Subsection (1) sets out when a title sheet is inaccurate. It may be inaccurate in two broad ways, because it says something that is wrong, or it does not say something when it should. Subsection (1)(d) confirms a title sheet is inaccurate where it contains a provisional marking. This is an inaccuracy of which the Keeper is aware and prescription may be running to cure it, but which cannot be rectified without consent of those affected or judicial determination (as to do so would interrupt the prescriptive period).

165. Subsection (2) sets out when the cadastral map is inaccurate. This broadly mirrors subsection (1) but has no equivalent of subsection 1(d) as provisional markings do not carry onto the cadastral map. The effect of subsection (3) is that the cadastral map is considered accurate as long as the depictions in it are within the tolerances of the base map. The Ordnance Map, by virtue of section 11(6), is the default base map. Currently it has three general tolerances: 0.5 metres for urban areas, 1 metre for rural areas and 4 metres for moorland or mountain areas. These tolerances derive from the three different mapping scales used by the Ordnance Map in these areas.

166. The effect of subsection (4)(a) is that where an entry in the Land Register proceeds from a deed that was voidable and has since been reduced, the decree of reduction is to be given effect to by registration of the decree, and not by rectification. In other words, there is no inaccuracy; there is simply a later registration that changes the Register. This applies only to voidable deeds. Where an entry in the Land Register proceeds from a void deed, the register is to that extent inaccurate from the outset, and should be rectified.

167. The effect of subsection (4)(b) is that where an entry in the Land Register proceeds from a deed that has been rectified under the 1985 Act, the Register does not thereby become inaccurate, but instead the rectified deed is to be given effect to by registration.

Section 63: Shifting boundaries

168. This section provides that adjacent proprietors bounded by a natural water feature may, by registered agreement, provide that subsequent change to the physical boundary by the process of alluvion (i.e. gradual, imperceptible and non-temporary change to the water feature over time) should have no effect on their title boundary. In such circumstances, alluvion will not make the register inaccurate. Subsection (3) makes this clear.

Section 64: Proceedings involving the accuracy of the register

169. This section is self-explanatory.

PART 6: CAVEATS

Overview of Part 6

170. Part 6 provides for a new statutory system of caveats that regulate how litigation affecting titles in the Land Register is brought to the attention of third parties. In essence, a caveat is the publication of a title dispute on a title sheet. The purpose of a caveat is to warn of the ongoing dispute and the effect it might have on the title. A caveat does not prevent parties transacting with land that is subject to litigation, though it does have certain effects on registration as provided elsewhere in the Bill. Therefore, a third party is free to act despite the existence of the caveat. However, for instance, if the Keeper later adversely rectifies a title sheet as a result of the court action, the person would be unable to claim that they were not aware of the litigation and therefore compensation may be less than would be payable had there been no caveat. Caveats are intended to be time-limited but flexible and sections 67 to 70 make provision for their renewal, restriction, recall or discharge.

Section 65: Warrant to place a caveat

171. This section introduces caveats. Subsection (1) sets out the types of court action where caveats may be used. In such cases, one of the parties may apply to the court under subsection (2) for warrant to place a caveat on the title sheet of the plot of land to which the dispute relates. Subsection (3) sets out the court that may grant caveats. Subsection (4) sets out that the court must be satisfied that there is a *prima facie* case, a risk of the applicant being prejudiced by the other party dealing with the property and in all the circumstances it is reasonable to do so when deciding whether to grant a warrant for a caveat under subsection (3). See section 73(2) for the effect of caveats on warranty of title, and Part 9 for their other effects.

Section 66: Duration of caveat

172. Caveats are not open-ended. In the absence of further action, they expire 12 months after being placed on the title sheet.

Section 67: Renewal of caveat

173. A person who has placed a caveat on the Land Register may apply under this section to the court for its renewal. There is no maximum number of renewals the court may make.

Section 68: Restriction of caveat

174. This section makes provision for any person with an interest being able to apply to the court for a restriction of the effect of a caveat.

Section 69: Recall of caveat

175. This section makes provision that any person with an interest may apply to the court for the caveat to be recalled.

Section 70: Discharge of caveat

176. This section is self-explanatory.

PART 7: KEEPER'S WARRANTY

Keeper's warranty

Section 71: Keeper's warranty

177. This section continues the scheme of the state guarantee of title by Keeper's warranty.

178. Subsection (1) provides for the default position, that when an application is accepted, the Keeper's warranty applies to the title sheet to which the application relates. Subsection (2) lists the things that the Keeper's default warranty does not ordinarily cover. Subsection (2)(d) provides that even though a pertinent is registered, if by law it is not a pertinent, the act of registration does not make it so. Subsection (2)(h) ensures that the warranty does not cover the case where by administrative error on the Keeper's part, the terms of the registration are more favourable to the applicant than justified by the deed inducing registration. Subsection (2)(i) means the warranty does not cover the case where a title boundary is tied to a water boundary that has shifted.

179. The effect of subsection (3) is that where a person is given warranty in respect of an application, their successors in title can receive the benefit of that warranty.

180. Subsection (5) ensures there is no warranty in relation to an entry in favour of a prescriptive claimant.

Section 72: Keeper's warranty on registration under sections 25 and 29

181. This section provides for warranty to be granted to a person where their land has been registered in consequence of an application for registration of a subordinate real right under section 25 or by Keeper-induced registration under section 29. Subsection (4) provides that this section is subject to sections 73 and 74.

Section 73: Extension, limitation or exclusion of warranty

182. Subsection (1) allows the Keeper to give any level of warranty to an applicant. The effect of subsection (2) is that the Keeper might exclude warranty for the next owner of property if there is a caveat on the title sheet. Subsection (4) allows warranty to be given to a prescriptive claimant when they have perfected their title by virtue of section 1(1) of the Prescription and Limitation (Scotland) Act 1973.

Section 74: Variation of warranty

183. This section allows the Keeper in certain restricted circumstances to vary the level of warranty that an owner of a registered title has after the registration process has been completed.

Claims under warranty

Section 75: Claims under Keeper's warranty: general

184. This section provides the basis for the payment of compensation for loss incurred as a result of a breach of warranty. Subsection (2) continues the important principle that liability only arises when the register is rectified.

Section 76: Claim under warranty: circumstances where liability excluded

185. This section lists various important limitations to the Keeper's liability. Paragraph (a) means that where the rectification arises from reasonable reliance on the base map (the default map being the Ordnance Map), the Keeper need not pay compensation. Paragraph (b) means that an applicant cannot rely on the warranty where the inaccuracy was known or ought to have been known of by the applicant at the time of registration. The effect of paragraph (c) is that where the rectification arises from a breach of the duty of care to the Keeper by the applicant or the applicant's solicitor, the Keeper need not pay compensation.

Section 77: Claims under warranty: quantification of compensation

186. This section is self-explanatory.

PART 8: RECTIFICATION OF THE REGISTER

Rectification

Section 78: Rectification of the register

187. This section imposes a duty on the Keeper to rectify the Land Register when it contains an inaccuracy. The term "inaccuracy" appeared in section 9(1) of the Land Registration (Scotland) Act 1979, however it was not defined. The meaning of "inaccuracy" is provided for in section 62 of the Bill.

188. Subsection (1) is an important provision that sets a high evidential standard for rectification - that the inaccuracy is "manifest". This means that the position must be beyond dispute, in effect that it is more than simply probable that there is an inaccuracy. It is for the Keeper to determine when an inaccuracy is manifest or not.

189. Subsection (2) maintains the approach, providing that the Keeper must only rectify the register if what is needed to rectify the register is manifest. It is likely that an inaccuracy, and what is needed for rectification of an inaccuracy, will be manifest only where either there is no room for doubt or where the matter has been judicially determined. In the absence of a judicial determination, it is anticipated that the Keeper's awareness of an inaccuracy as manifest occurs on the date of rectification.

Section 79: Rectification where registration provisional etc.

190. This section is a limited qualification to the Keeper's duty to rectify under section 78. Where rectification would interrupt a period of positive prescription (including in the case of a

prescriptive claimant under section 42), the Keeper may only rectify the Register where those who are affected consent or where the fact of the inaccuracy has been judicially determined.

Compensation in consequence of rectification

Section 80: Rectification: compensation for certain expenses and losses

191. This section is self-explanatory.

Section 81: Rectification: circumstances where liability excluded

192. This section provides for the limitations to the Keeper's liability to pay compensation under section 80 in respect of rectification of an inaccuracy. Paragraph (a) excludes liability, for example, where rights have been changed by an off-register event such as long negative prescription (for example where a servitude right of access is dissolved where it is not used over 20 years).

193. Paragraph (c) provides that the Keeper has no liability in relation to rectifications of inaccuracies caused by the fact the title is in favour of a prescriptive claimant. This means, for example, that the removal of a provisional marking would not result in liability.

PART 9: RIGHTS OF PERSONS ACQUIRING ETC. IN GOOD FAITH

Overview of Part 9

194. This part provides for the circumstances in which the Land Register is inaccurate in law or fact, but is not to be rectified. In these cases, the Part provides for the underlying property rights to be transferred to the person in whose name title to land is currently registered. Put another way, instead of the register being changed, property rights are changed.

195. The circumstances where the Bill provides for this transfer of rights are limited and are most likely to operate in the cases of error or fraudulent sale and subsequent registration. Where a property is fraudulently registered or registered in error, the true owner can seek a reversal of that registration in their favour, as long as the property has not been openly possessed since the registration for 10 years, or registered in favour of an innocent third party more than one year after the original registration. However, where the property has been so possessed by a person, or registered in favour of such an innocent third party, the registration cannot be reversed. In such cases, the original owner would be compensated by the Keeper.

Ownership

Section 82: Acquisition from disponent without valid title

196. The effect of subsections (1) to (3) is that if the register shows someone as proprietor, but that person's title is in fact void, then when that person disposes the title to another (and that second person is duly registered as owner), if the requirements in subsection (3) (including regarding good faith and possession for one year) are met, then that second person acquires ownership. In the absence of evidence to the contrary, the awareness of the Keeper referred to in subsection (3)(b) can be deduced from the information on the register.

197. Subsections (4) to (6) provide for the date when ownership is acquired under subsection (2). It is the later of the date of registration and the expiry of the one-year period of peaceful possession.

Section 83: Acquisition from representative of disponent without valid title

198. This section provides that section 82 also applies where the disposition in favour of a good faith acquirer is delivered by a representative of the registered proprietor (for example a trustee or executor).

Leases

Section 84: Acquisition from assigner without valid title

199. This section is the equivalent section to section 82, but for assignation of leases. It applies only to cases where there exists a valid lease but the person who assigns it does not have a title to it.

Section 85: Acquisition from representative of assigner without valid title

200. This section is the equivalent section to section 83 on representatives, but for assignation of leases.

Servitudes

Section 86: Grant of servitude by person not proprietor

201. This section is the equivalent section to section 82, but for servitudes. It provides that in certain cases a servitude granted by someone with a bad title is valid. Like section 82, it requires the proprietor of the benefited property to be in good faith. This section applies only to the grant of a new servitude. It does not cover the case where land is disposed and from the register it appears that there is a servitude benefiting the property (i.e. as a pertinent), but in fact the servitude is invalid. In such a case, the servitude remains invalid notwithstanding the transfer to a good faith acquirer.

Extinction of encumbrances etc

Section 87: Extinction of encumbrance when land disposed

202. Subsections (1) and (2) provide that where an encumbrance (such as a standard security) has been omitted from the register and there is no relevant caveat on the title sheet, a good faith acquirer acquires the land free from that encumbrance. However, where, for example, a property is subject to a standard security and the owner forges and registers a discharge (and the standard security is deleted from the title sheet) the property is still encumbered by the security because the discharge is a forgery. Nevertheless, if in the example the owner disposed the title to another person and that person was in good faith, the security would be extinguished on the day when the second person is registered as proprietor.

203. Subsection (4) lists the types of encumbrances that are not subject to the rule in subsections (1) and (2). Subsections (1) and (2) only have effect where the Keeper should have entered a burden in the burdens section of a title sheet, but has failed to do so. Consequently, subsections (1) and (2) do not apply to any encumbrance which need not be entered in the Land Register either because:

- it cannot be registered (such as in the case of a short lease);
- it relates to an off-register event (such as a servitude acquired by prescription); or
- it relates to an overriding interest (such as a public right of way).

Section 88: Extinction of encumbrance when lease assigned

204. This section is the equivalent of section 87, but for assignation of leases.

Section 89: Extinction of floating charge when land disposed

205. This section protects a good faith acquirer from the risk of an attached floating charge crystallising over their property where the floating charge was granted by a predecessor in title of the person who sold them the property.

Compensation in consequence of this Part

Section 90: Compensation for loss incurred in consequence of this part

206. Where this Part transfers a right to someone (an innocent third party), the original owner of the right will inevitably be deprived of the right. This section makes provision for compensation of such persons.

Section 91: Quantification of compensation etc.

207. This section makes provision about how much compensation is payable under section 90. It is otherwise self-explanatory.

PART 10: ELECTRONIC DOCUMENTS, ELECTRONIC CONVEYANCING AND ELECTRONIC REGISTRATION

Overview of Part 10

208. This part of the Bill amends the Requirements of Writing (Scotland) Act 1995, updating it to allow for electronic documents to have the equivalent status and standards of validity and authenticity as paper documents have now.

Electronic documents

Section 92: Where requirement for writing satisfied by electronic document

209. This section makes changes to section 1 of the Requirements of Writing (Scotland) Act 1995 (the 1995 Act). Subsection (2) makes textual adjustments to section 1 of the 1995 Act to

ensure that where a document is required to be in writing (and many documents do not require to be in writing), the form of that document can be either as a traditional document (for example on paper) or an electronic document (as long as it is a document capable of being electronic and is in the form specified in regulations).

210. Subsection (2)(a)(iv) provides that agreements under section 63 of the Bill (about shifting boundaries of subjects bounded by a water boundary) must be in writing.

Section 93: Electronic documents

211. This section inserts a new Part 3 into the Requirements of Writing (Scotland) Act 1995 (the 1995 Act) comprising seven new sections on electronic documents.

212. The new Part contains powers for Scottish Ministers to carry out two major reforms by subordinate legislation. First, it permits Scottish Ministers to make regulations making documents electronically valid. This will allow, for example, regulations to make contracts relating to transactions over land, known as missives, electronically valid. This will lead to solicitors not needing to exchange paper documents. Second, it permits Scottish Ministers to make regulations allowing electronic registration of electronically valid documents in the Keeper's registers.

213. Consequential amendments to the 1995 Act (particularly to ensure law on paper documents continues to operate) are provided for in schedule 3.

214. Inserted section 9A defines electronic documents.

215. Inserted section 9B allows Scottish Ministers to make regulations in respect of the types of documents under section 1(2) of the 1995 Act capable of being electronically formally valid. Subsection 1 makes provision that in order for an electronic document to reach the threshold of being formally valid, the document needs to be authenticated by the granter or granters. Subsection (2) provides that an electronic document is authenticated if it bears an electronic signature. In this way, authentication can be said to be akin to the wet signature applied to a traditional document. The conditions that the electronic signature must comply with are stipulated in subsection 2(a) to (c). A document must be of a type authorised to be a valid electronic document under subsection (1)(b) and are authenticated in accordance with regulations under subsection (2)(c). Subsection (3) allows a contract mentioned in section 1(2)(a) of the 1995 Act to be constituted by a mix of electronic and traditional documents.

216. Inserted section 9C gives Scottish Ministers a power to specify in regulations what level of authentication and certification is necessary to ensure the document can be presumed to be authenticated. On being authenticated alone, the document can be valid under section 9B. However, in order for an electronic document to have probative status, certain documents may have to have third party certification. Traditional documents receive self-proving status by witnessing. Once electronically signed in accordance with regulations made under section 9C(2), an electronic document is capable of being automatically valid without witnessing (as the equivalent evidence of who signed the electronic document (and when) is securely encrypted into the constituent data of the document).

217. Inserted section 9D makes provision allowing courts to grant decree that an electronic document is self-proving even if there is no presumption in respect of the document under section 9C.

218. Inserted section 9E allows the regulations to make provision in relation to alteration and annexations of electronically valid documents.

219. Inserted section 9F allows electronic documents to be delivered electronically (such as through the internet) or by other reasonable means (such as physical delivery of a DVD or USB memory stick). Subsection (2) is self-explanatory.

220. Inserted section 9G (1) to (3) allows Scottish Ministers to make regulations allowing for electronic registration of electronically valid documents in any of the Keeper of the Registers of Scotland's registers. Such a document must be of a type specified in regulations under subsection (3) and be electronically authenticated under section 9C, 9D or 9E(1). Subsection (6) list the documents to which the regulations need not apply.

Section 94: Amendment of Requirements of Writing (Scotland) Act 1995

221. This section is self-explanatory. See below on schedule 3.

Electronic conveyancing

Section 95: Automated registration

222. This section provides for the Keeper to run a computer system for electronic registration in the Land Register. Currently the Keeper runs an Automated Registration of Title to Land "ARTL" system for generating electronic conveyancing deeds and electronically submitting such deeds to the Keeper. This system was provided for by the Automated Registration of Title to Land (Electronic Communications) (Scotland) Order 2006 and its successors. The 2006 Order was made under the Electronic Communications Act 2000.

223. Subsection (3) allows Scottish Ministers to make various provisions in regulations regarding automated registration. This will allow provision to be made for ARTL or any successor system.

Electronic recording and registration

Section 96: Power to enable electronic registration

224. This section makes provision for Scottish Ministers to make provision in regulations for electronic registration in any of the Keeper's registers (including the General Register of Sasines, the Register of Inhibitions and the Books of Council and Session). Section 95 only makes provision for the Land Register. Subsection (3) allows the regulations to modify enactments in consequence of the power in subsection (1).

PART 11: MISCELLANEOUS AND GENERAL

Deduction of title

Section 97: Deduction of title

225. This section is about uncompleted titles. It continues the rule that clauses of deduction of title are not necessary for deeds relating to property in the Land Register. It extends the current practice to provide that, where a disposition inducing first registration is granted by an unrecorded holder (uninfest proprietor), such a clause is no longer required. However, deeds recorded in the General Register of Sasines will still need such clauses (where appropriate). In order to demonstrate to the Keeper that the deed has been validly granted it will continue to be necessary to submit all links in title even if no clause of deduction of title is required.

Notes on register

Section 98: Note of date on which entry in register is made

226. This section is self-explanatory

Appeals

Section 99: Appeals

227. This section is self-explanatory.

Extracts and certified copies

Section 100: Extracts and certified copies: general

228. Subsection (1) provides for the issuing of extracts of registered documents. Subsection (2) provides for the issuing of certified copies of pending documents. Subsection (7) allows the extract of a certified copy to be sent by e-mail if the person requests that the document be received in that form.

Section 101: Evidential status of extract or certified copy

229. This section ensures that extracts and certified copies can be accepted as sufficient evidence in court.

Section 102: Liability of Keeper in respect of extracts, information and lost documents etc.

230. This section means that the Keeper is taken to warrant extracts, certified copies and certain other information. This ensures that people can be confident about the accuracy of the documents when relying on them in the course of commercial business.

Information and access

Section 103: Information and access

231. This section is self-explanatory.

Keeper's functions

Section 104: Provisions of services by the Keeper

232. This section is largely self-explanatory and places on a statutory footing the Keeper's power to provide services such as the existing pre-registration enquiry service and title examination service.

Section 105: Performance of Keeper's functions during vacancy in office etc.

233. This section ensures that were the office of the Keeper to be vacant or the Keeper be incapable for the time being of acting, the validity of decisions made after that time on the Keeper's behalf by a member of the Keeper's staff are not deemed invalid.

Fees

Section 106: Fees

234. This section provides the fee power under which Scottish Ministers may authorise the Keeper of the Registers to charge fees for services provided in connection with the functions conferred on the Keeper in the Bill.

235. Subsection (1)(a) allows Scottish Ministers to provide for what fees may be charged for. Subparagraph (i) allows for the setting of fees for registration services in relation to any of the Keeper's registers (of which there are 16, including the Land Register, the General Register of Sasines, the Register of Inhibitions and the Books of Council and Session). This power includes power to set the rate at which fees are payable for certain services as well as to set the amount that can be charged for the registration of any particular type of application.

236. Subparagraphs (ii) and (iii) of subsection (1)(a) also apply to all of the Keeper's registers. In the case of sub-paragraph (iii) (the provision of information by the Keeper), subsection (4) makes clear that the fee power can cover extracts and copy certificates provided under section 99.

237. Subsection (1)(b) allows Scottish Ministers to provide for the method of payment of fees. For example, this may be used to facilitate direct debit.

238. Subsection (1)(c) allows Scottish Ministers to delegate the setting of fees to the Keeper within defined parameters. If used, this will allow fees to be increased or reduced between fee orders. This could allow, for example, the Keeper to reduce the fee for a type of application for a period of time.

239. Subsection (2) allows different fees to be set for types of application. It would allow, for example, for the fee for the processing of electronic applications to be set at a lower level than for paper applications or for the fee for voluntary registrations to be different to that for first registrations.

240. Subsection (3) ensures the Keeper is consulted about the Keeper's expenses (which the proceeds of the fees will meet) in advance of making an order under this section.

241. Subsection (4)(b) ensures that the power to provide consultancy services under section 104 is not affected by this section.

Duty to take reasonable care

Section 107: Duties of certain persons

242. This section creates a statutory duty of care on applicants, granters of deeds to be registered and the solicitors of both, in favour of the Keeper. The duty is to ensure that the documentation or evidence submitted with an application or otherwise supplied in the course of an application does not induce the Keeper to make the register inaccurate. The duty extends until the Keeper has made the registration decision.

Offence

Section 108: Offence relating to applications for registration

243. Subsection (1) provides that it is an offence for any party submitting an application to the Keeper to include materially false or misleading statements or to fail to disclose material information in such an application. Subsection (2) makes it clear that the offence can apply to both solicitors and their clients.

244. The effect of the defence in subsections (3) and (4) is that a person will not commit an offence under this section if they give the Keeper information in good faith having taken all reasonable precautions.

245. Subsections (6) and (7) mean a person may only rely on the defence in subsection (2) if they have given the prosecutor prior notice or if the court grants leave.

General provisions

Section 109: Interpretation

246. This section is self-explanatory.

Section 110: References to “registering” etc. in the Land Register of Scotland

247. This section is self-explanatory.

Section 111: Land register rules

248. This section gives the Scottish Ministers power, in consultation with the Keeper to make rules in relation to the Land Register. The rules are to be made by regulations and subsection (1) sets out the range of matters that the rules may cover.

Section 112: Subordinate legislation

249. This section outlines the parliamentary procedures to which the powers for making subordinate legislation by order, regulations or rules under the Bill are to be subject.

Section 113: Ancillary provision

250. This section is self-explanatory.

Section 114: Transitional provisions

251. This section is self-explanatory.

Section 115: Minor and consequential modifications

252. This section is self-explanatory.

Section 116: Saving provisions

253. This section contains savings provisions. Subsection (1) clarifies that the amendments made to the Prescription and Limitation (Scotland) Act 1973 as stated in the subsection do not strike at any a title acquired by prescription prior to the designated day.

254. Subsection (2) clarifies that section 28(1) of the Land Registration (Scotland) Act 1979 (“the 1979 Act”), is still applicable to the sections of the 1979 Act listed in the subsection. See paragraph 19 of Schedule 5 for minor and consequential amendments to the 1979 Act.

Section 117: Crown application

255. This section is self-explanatory.

Section 118: The designated day

256. This section gives the Scottish Ministers power by order to provide for the “designated day”. That day is to fall not less than 6 months after the order is made. The designated day is the day on which the main provisions of the Bill, listed in section 119(2), will come into force.

Sections 119: Commencement

257. This section is self-explanatory.

Sections 120: Short title

258. This section is self-explanatory.

SCHEDULES

Schedule 1: Registered leases tenanted in common

259. As explained in relation to sections 17 to 20 on shared plots, this schedule makes equivalent provision to shared plots for shared lease areas. The shared lease area title sheets provided for correspond to shared plot title sheets but relate to shared lease interests rather than shared ownership interests.

Schedule 2: Amendment of Registration of Leases (Scotland) Act 1857

260. This schedule makes consequential changes to the changes made by section 51.

Schedule 3: Amendment of Requirements of Writing (Scotland) Act 1995

Overview of schedule 3

261. This schedule makes changes consequential on the changes in Part 10 of the Bill to the Requirements of Writing (Scotland) Act 1995.

262. Paragraphs 2 to 17 provide for a new Part 2 of the 1995 Act. The new Part 2 makes provision for the formal validity of traditional documents, which are those documents written on paper (as opposed to being electronic). Most of the paragraphs make consequential amendment on the change of label from “document” to “traditional document”.

263. Paragraph 13 repeals section 6A of the 1995 Act. That section was inserted into the 1995 Act by section 222 of the Bankruptcy and Diligence etc (Scotland) Act 2007 to provide, in the short term, a mechanism by which a creditor could proceed with summary diligence upon a personal bond contained with a standard security created in electronic form within the Keeper’s Automated Registration of Title to Land system, given that the Books of Council and Session were open only to traditional documents. Under new section 9G of the 1995 Act, all types of electronic document become directly registrable in the Books of Council and Session provided that they meet prescribed standards, and so the provision is no longer necessary.

264. Paragraph 19 makes amendments to section 12 of the 1995 Act (the interpretation section). In paragraph (b), inserted subsection (4) provides explanation as to the meaning of certification in relation to electronic documents.

Schedule 4: Transitional provisions

265. This schedule deals with the transition from registration in the Land Register under the 1979 Act to registration under the Bill. Reference in this note to the designated day is to the day that the new scheme comes into force.

Paragraphs 1 to 6

266. Paragraphs 1 to 6 contain provisions about the treatment of existing title sheets. They become part of the Title Sheet Record and as such, title sheets for plots of land, or lease title

sheets. The Keeper is given the power to make existing title sheets conform to the new scheme but is generally not obliged to do so. The C section on new title sheets will be called the “securities section”. The Keeper will have the power to change the name of the C section (currently called the “charges” section) to the securities section and the B section (proprietorship section) of lease title sheets to the tenancy section.

Paragraphs 7 to 11

267. Paragraphs 7 to 11 contain provisions about common areas that are at present included in the title sheet of each of the sharing properties. The new scheme requires that when such areas are created in future they are to have their own title sheet. Paragraphs 7 and 8 allow, but do not oblige, the Keeper to create a separate title sheet for common areas that already exist. Paragraph 9 deals with developments that are part-completed on the designated day. It allows the present practice of including common areas in the title sheets of the sharing properties to continue in respect of the remainder of the development.

Paragraph 12

268. This paragraph provides for the migration of existing documents into the archive record.

Paragraphs 13 and 14

269. Paragraph 13 makes clear that applications for registration that are pending at the designated day will be dealt with as applications under the 1979 Act.

270. Paragraph 14 provides that an application for rectification under section 9 of the 1979 Act, which has not been determined by the Keeper by the designated day, will fall. However, that does not affect the applicant’s rights as the Keeper is under a positive duty to rectify inaccuracies.

Paragraphs 15 and 16

271. Paragraphs 15 and 16 make clear that any claims for indemnity, or for reimbursement of expenses under the 1979 Act that have already vested are not affected by the new scheme.

Paragraphs 17 to 24

272. Paragraphs 17 to 24 deal with what are known bijural inaccuracies. For the concept of bijural inaccuracy, see Part 17 of the Scottish Law Commission Report (Scot Law Com No. 222). In the new scheme, there will be no bijural inaccuracies so provision requires to be made for inaccuracies of that kind that exist immediately prior to the designated day. They must either (i) cease to be an inaccuracy (in which case the rights of the parties are realigned to follow what the Land Register says they are), or (ii) be re-conceptualised as an actual inaccuracy.

273. The test adopted as to whether (i) or (ii) occurs is whether a particular inaccuracy could have been rectified under the rules in section 9 of the 1979 Act. If so, paragraphs 17 to 21 convert the bijural inaccuracy into an actual inaccuracy and make provision for compensation to be paid to a person losing a right if the register is then rectified save where a right to indemnity would not have arisen under the 1979 Act. If, however, the bijural inaccuracy could not be

rectified under section 9 of the 1979 Act, paragraphs 22 to 24 make provision for the inaccuracy to cease to be an inaccuracy (i.e. for the rights of the parties concerned to be realigned so as to conform to what the Land Register says they are). Provision is also made for the payment of compensation to a person suffering loss as a result of such realignment where a right to indemnity would have arisen under the 1979 Act if rectification under section 9 was not possible.

274. In both cases, the practical result is the same as it is under the 1979 Act. A title that was vulnerable to rectification remains vulnerable, while one that was invulnerable (usually due to the protection given to a proprietor in possession) becomes free from the possibility of rectification. As possession is important under the current law, and in order to minimise problems of evidence, paragraph 18 provides that the person registered as proprietor of the land is presumed to be in possession for the purposes of determining whether the Keeper had power to rectify.

Paragraph 25

275. Paragraph 25 applies where the title to a flat in a tenement is already recorded in the General Register of Sasines or registered in the Land Register. In such cases, following present practice the Keeper will be able to continue to depict land further than 25 metres from the tenement building as part of the steading and, where such land is a common area, the Keeper will not be required to quantify the pro indiviso shares of the flats in such land in the proprietorship section of the title sheets of the individual flats.

Paragraph 26

276. Paragraph 26 is self-explanatory.

Schedule 5: Minor and consequential modifications

Overview

277. This schedule makes minor and consequential changes. Most of the changes are either consequential on the repeal of parts of the Land Registration (Scotland) Act 1979 and its replacement with the Bill or consequential on the amendments to the Requirements of Writing (Scotland) Act 1995 and the extension of the means of documents being self-proving from requiring to be “subscribed” (which is a paper only process) to also being capable of being “authenticated” (that is, authenticated as valid electronic documents in accordance with regulations made under the 1995 Act).

Paragraph 1 - Lands Clauses Consolidation (Scotland) Act 1845

278. This amends the note about mode of execution under the Requirements of Writing (Scotland) Act 1995 to take account of documents in electronic form.

Paragraph 2 - Commissioners Clauses Act 1847

279. Subparagraph (2) amends the 1847 Act to take account of the extension of the Requirements of Writing (Scotland) Act 1995 to documents in electronic form. Subparagraph (3) replaces the specific reference to the Requirements of Writing (Scotland) Act 1995 with a more general reference to the Act.

Paragraph 3 - Ordnance Board Transfer Act 1855

280. This paragraph amends section 5(2) of the 1855 Act to take account of the extension of the Requirements of Writing (Scotland) Act 1995 to documents in electronic form.

Paragraph 4 - Transmission of Moveable Property (Scotland) Act 1862

281. This amends the Schedules to the 1862 Act to take account of documents in electronic form under the Requirements of Writing (Scotland) Act 1995.

Paragraph 5 - Land Registers (Scotland) Act 1868 (c.64)

282. The effect of this amendment is to make clear that the provisions of the 1868 Act which are referred to do not apply to the Land Register.

Paragraph 6 - Titles to Land Consolidation (Scotland) Act 1868

283. Subparagraphs (2) and (3), which are about litigiousity, are disapplied in relation to the Land Register. The reason is that the situations they deal with will be dealt with by caveats.

284. Subparagraph (4) amends the form in Schedule B to the 1868 Act to take account of documents in electronic form under the Requirements of Writing (Scotland) Act 1995.

Paragraph 7 - Conveyancing (Scotland) Act 1874

285. Subparagraph (2) amends the note about mode of execution in Schedule M to the 1874 Act to take account of documents in electronic form under the Requirements of Writing (Scotland) Act 1995.

Paragraph 8 - Trusts (Scotland) Act 1921

286. Subparagraphs (2) and (3) amend the notes about mode of execution in the Schedules to the 1921 Act to take account of documents in electronic form under the Requirements of Writing (Scotland) Act 1995.

Paragraph 9 - Conveyancing (Scotland) Act 1924

287. Subparagraph (2) adds a reference to the Land Register of Scotland to section 2(5).

288. Subparagraph (3) is consequential on the repeal of schedule K by the Abolition of Feudal Tenure etc. (Scotland) Act 2000 schedule 13(1) paragraph 1.

289. Subparagraph (4) is similar to the provisions in paragraph 6(2) and (3) above concerning the Titles to Land Consolidation (Scotland) Act 1868. It disapplies the provisions of the 1924 Act in relation to the Land Register, because the matters in question will be dealt with by the caveat procedure.

290. Subparagraph (5) amends schedule B to take account of documents in electronic form under the Requirements of Writing (Scotland) Act 1995.

These documents relate to the Land Registration etc. (Scotland) Bill (SP Bill 6) as introduced in the Scottish Parliament on 1 December 2011

Paragraph 10 - Burgh Registers (Scotland) Act 1926

291. This paragraph is self-explanatory.

Paragraph 11 - Public Registers and Records (Scotland) Act 1948

292. This paragraph repeals a power to prescribe the forms of documents in the Sasines register made redundant by the Bill.

Paragraph 12 - Land Drainage (Scotland) Act 1958

293. This paragraph amends the definition of long lease by adding a reference to the Land Register.

Paragraph 13 - Harbours Act 1964

294. This paragraph amends the definition of long lease by adding a reference to the Land Register.

Paragraph 14 - Succession (Scotland) Act 1964

295. This amendment is consequential on the changes made to the Requirements of Writing (Scotland) Act 1995. The reference to section 4 is replaced by a reference to the equivalent provision in the 1995 Act as amended.

Paragraph 15 - Industrial and Provident Societies Act 1965

296. Subparagraphs (2) and (3) amend the sections mentioned to take account of the extension of the Requirements of Writing (Scotland) Act 1995 to documents in electronic form.

297. Subparagraphs (4) and (5) amend the notes about mode of execution under the Requirements of Writing (Scotland) Act 1995 to take account of documents in electronic form.

Paragraph 16 - Gas Act 1965

298. This paragraph amends the definition of long lease by adding a reference to the Land Register.

Paragraph 17 - Conveyancing and Feudal Reform (Scotland) Act 1970

299. The 1970 Act was not amended by the 1979 Act so as to take account of the introduction of the Land Register. The 1970 Act was instead subject to the "translation" provision in section 29(2) of the 1979 Act under which references to the Register of Sasines and the recording of deeds in that register were deemed to be references to the Land Register or registration. This approach has not made the 1970 Act easy to understand. The majority of amendments in this paragraph are designed to add references (where appropriate) to the Land Register.

300. The amendment to section 28(5) updates the means of describing the security subjects in a decree of foreclosure following the partial repeal of the 1979 Act.

301. The notes that are found in various schedules about mode of execution under the Requirements of Writing (Scotland) Act 1995 are amended to take account of documents in electronic form.

Paragraph 18 - Prescription and Limitation (Scotland) Act 1973

302. Subparagraph (2) saves and consequently amends section 1 of the 1973 Act.

303. Subparagraph (3)(a) and (b) amend section 2 of the 1973 Act by adding references to registration in the Land Register.

304. Subparagraph (3)(c) updates the references in section 2 to section 3(3) of the 1979 Act. The new sections 20B and 20C of the 1857 Act replace section 3(3) in relation to leases.

305. Subparagraph (4) inserts a new section 1A into the 1973 Act.

306. Subparagraph (5) adds a reference to registration in the Land Register to the end of section 15(1) of the 1973 Act.

307. Subparagraphs (6) and (7) make changes to schedule 1 of the 1973 Act to implement the policy that the period of negative prescription should be five years for claims against the Keeper where the Register has been rectified in favour of the claimant and twenty years for claims against the Keeper arising out of breach of warranty or from the operation of the realignment principle.

308. Subparagraph (8) amends schedule 3 to the 1973 Act by adding the obligation of the Keeper to rectify an inaccuracy to the list of imprescriptible rights and obligations.

Paragraph 19 - Land Registration (Scotland) Act 1979

309. *This paragraph specifies the technical changes that constitute the partial repeal of the 1979 Act.*

Paragraph 20 - Education (Scotland) Act 1980

310. This paragraph amends section 16(2) of the Education (Scotland) Act 1980 to take account of the fact that as from the designated day it will not be possible to record a disposition in the Register of Sasines.

Paragraph 21 - Water (Scotland) Act 1980

311. Subparagraphs (2), (3) and (4) amend the provisions referred to by adding a reference to registration in the Land Register.

312. Subparagraph (5) is self-explanatory.

Paragraph 22 - Matrimonial Homes (Family Protection) (Scotland) Act 1981

313. This paragraph replaces the reference to the 1979 Act with a reference to the equivalent provision in the Bill.

Paragraph 23 - Civil Aviation Act 1982

314. This paragraph simplifies and updates the provisions referred to following the partial repeal of the 1979 Act.

Paragraph 24 - Litter Act 1983

315. This paragraph simplifies and updates section 8 of the 1983 Act following the partial repeal of the 1979 Act.

Paragraph 25 - Health and Social Services and Social Security Adjudications Act 1983

316. This paragraph replaces the reference to the 1979 Act with a reference to the Bill.

Paragraph 26 - Telecommunications Act 1984

317. This paragraph, which amended the 1979 Act, is to be repealed following the partial repeal of that Act.

Paragraph 27 - Matrimonial and Family Proceedings Act 1984

318. This paragraph, which amended the 1979 Act, can be repealed following the partial repeal of that Act.

Paragraph 28 - Bankruptcy (Scotland) Act 1985

319. Subparagraph (2) replaces a reference to the 1979 Act with a reference to the equivalent provisions in the Bill.

Paragraph 29 - Housing Associations Act 1985

320. This paragraph adds a reference to registration in the Land Register into the 1985 Act.

Paragraph 30 - Law Reform (Miscellaneous Provisions) (Scotland) Act 1985

321. This paragraph disapplies section 8(7) of the 1985 Act to the Land Register. The reason is that the matter will be covered by the caveat procedure in relation to property in the Land Register.

Paragraph 31 - Electricity Act 1989

322. This paragraph is self-explanatory.

Paragraph 32 - Property Misdescriptions Act 1991

323. This paragraph replaces the reference to *interest* in land, which is the language of the 1979 Act, with a reference to *right* in land, which is the language of the Bill.

Paragraph 33 - Agricultural Holdings (Scotland) Act 1991

324. This amendment adds a reference to registration following the amendment of the 1857 Act to include references to registration in the Land Register.

Paragraph 34 - Coal Industry Act 1994

325. This repeals paragraph 20 of the 1994 Act, which inserted an overriding interest relating to the Coal Authority into the Land Registration (Scotland) Act 1979.

Paragraph 35 - Land Registers (Scotland) Act 1995

326. This paragraph amends the 1995 Act to reference the new fee power contained within the Bill.

Paragraph 36 - Petroleum Act 1998

327. This paragraph amends section 5(9) to take account of the extension of the Requirements of Writing (Scotland) Act 1995 to documents in electronic form.

Paragraph 37 - Public Finance and Accountability (Scotland) Act 2000

328. Section 25 of the 1868 Act is repealed and replaced by section 104 of the Bill. This paragraph makes the necessary consequential change to the 2000 Act.

Paragraph 38 - Adults with Incapacity (Scotland) Act 2000

329. Under the new scheme, there will be no land certificates or office copies but there will be extracts. Subparagraphs (2) and (3) make the necessary changes to the sections mentioned.

330. Subparagraph (4) amends the provisions mentioned to take account of the partial repeal of the 1979 Act. In future, it will not be possible to register an event or death directly in the Land Register. Registration will have to proceed on the basis of a deed such as an interlocutor.

Paragraph 39 - Abolition of Feudal Tenure etc. (Scotland) Act 2000

331. Subparagraph (3) replaces the reference to the 1979 Act with a reference to the equivalent provision in the Bill.

332. Subparagraph (5) replaces the reference to interest in land with a reference to right in land. The amendment also reflects the fact that under the new scheme registration requires to proceed on the basis of a deed.

333. Subparagraph (8) amends section 73 so as to apply the translation provisions to extracts and certified copies issued under the Bill.

Paragraph 40 - Standards in Scotland's Schools etc. Act 2000

334. This paragraph replaces the reference to *interests* in land, which is the language of the 1979 Act, with a reference to *rights* in land, which is the language of the Bill.

Paragraph 41 - National Parks (Scotland) Act 2000

335. This paragraph replaces the references to *interest* in land, which is the language of the 1979 Act, with a reference to *right* in land, which is the language of the Bill.

Paragraph 42 - Housing (Scotland) Act 2001

336. This paragraph amends the two sections mentioned to take account of the extension of the 1995 Act to documents in electronic form.

Paragraph 43 - Title Conditions (Scotland) Act 2003

337. Subparagraphs (3) and (5) replace the reference to the 1979 Act with a reference to the equivalent provision of the Bill. Subparagraph (3) also makes a consequential amendment to section 60 following the repeal of section 15(3) of the 1979 Act.

338. Subparagraph (9) amends section 84(2) to take account of the extension of the 1995 Act to documents in electronic form.

339. Subparagraph (11) makes clear that in the case of a notice of title if a title condition is set out in a midcouple then the midcouple and the notice of title together are to be treated as the constitutive deed.

340. Subparagraph (11) also makes a consequential change to take account of the new title of section 3 of the 1857 Act.

Paragraph 44 - Civil Partnership Act 2004

341. This paragraph replaces the references to the 1979 Act with references to the equivalent provisions in the Bill.

Paragraph 45 - Stirling-Alloa-Kincardine Railway and Linked Improvements Act 2004

342. This paragraph removes the references to the 1979 Act and clarifies the meaning of subsection (3).

Paragraph 46 - Tenements (Scotland) Act 2004

343. The 1979 Act referred to interests in land. The Bill does not use that concept. Subparagraphs (2) and (3) make the necessary consequential changes.

Paragraph 47 - Edinburgh Tram (Line Two) Act 2006

344. This paragraph removes the references to the 1979 Act and clarifies the meaning of subsection (5).

Paragraph 48 - Edinburgh Tram (Line One) Act 2006

345. This paragraph removes the references to the 1979 Act and clarifies the meaning of subsection (5).

These documents relate to the Land Registration etc. (Scotland) Bill (SP Bill 6) as introduced in the Scottish Parliament on 1 December 2011

Paragraph 49 - Waverley Railway (Scotland) Act 2006

346. This paragraph removes the references to the 1979 Act and clarifies the meaning of subsection (3).

Paragraph 50 - Companies Act 2006

347. Subparagraphs (2) and (3) amend the provisions mentioned to take account of the extension of the 1995 Act to documents in electronic form.

348. Subparagraph (4) substitutes a reference to the 1979 Act with a reference to the Bill.

Paragraph 51 - Glasgow Airport Rail Link Act 2007

349. This paragraph removes the references to the 1979 Act and clarifies the meaning of subsection (3).

Paragraph 52 - Bankruptcy and Diligence etc. (Scotland) Act 2007

350. Subparagraph (2) amends the new section 13A of the 1970 Act.

351. Subparagraph (3) replaces the reference to the 1979 Act with a reference to the equivalent provision in the Bill.

Paragraph 53 - Edinburgh Airport Rail Link Act 2007

352. Subparagraph (2) replaces a reference to the 1979 Act with a reference to the equivalent provision in the Bill.

353. Subparagraph (3) removes a reference to the 1979 Act and clarifies the meaning of subsection (6).

Paragraph 54 - Airdrie-Bathgate Railway and Linked Improvements Act 2007

354. Subparagraph (2) replaces a reference to the 1979 Act with a reference to the equivalent provision in the Bill.

355. Subparagraph (3) removes a reference to the 1979 Act and clarifies the meaning of subsection (6).

Paragraph 55 - Energy Act 2008

356. This paragraph amends section 77(7) to take account of the extension of the Requirements of Writing (Scotland) Act 1995 to documents in electronic form.

FINANCIAL MEMORANDUM

INTRODUCTION

357. This document relates to the Land Registration (Scotland) Bill introduced in the Scottish Parliament on 1 December 2011. It has been prepared by the Scottish Government in order to satisfy Rule 9.3.2 of the Parliament's Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament.

BACKGROUND

358. Secure and reliable property rights underpin the economy. The most fundamental economic effect of the work of the Registers of Scotland (RoS) lies in its role in providing clarity of ownership. This is because security over land has a direct influence on the property market, whether commercial investment or domestic through the mortgage market. The United Nations Economic Commission for Europe stated in their report¹ on the Social and Economic Benefits of Good Land Registration that:

“Access to mortgage finance makes possible the development and diversification of large and small businesses, so promoting commercial responsiveness to internal and overseas demand. It increases the scope for inward investment. Importantly it generates employment opportunities that might otherwise be constrained or non-existent. For the homeowner access to finance makes possible decisions about housing that in turn facilitates a fluid housing market. It makes possible the scope to improve and develop existing property so increasing the value of the national housing stock”.

359. The most significant economic benefit to Scotland associated with the Bill will be realised with the completion of the Land Register. For conveyancing solicitors, transacting on a land register title is simpler, and therefore cheaper, than transacting on a property where the title is recorded in the General Register of Sasines. To RoS the unit cost of processing a dealing over a land-registered title is significantly less than the cost of processing an application for first registration, where the plot and land and all the rights and burdens pertaining thereto have to be defined for the first time. Completion of the Land Register is one of the major long-term policy objectives of the Bill and when completion is achieved, the economic benefits will be felt by all those who own and transact with heritable property in Scotland.

360. The main aim of the Land Registration (Scotland) Bill is to implement the recommendations of the Scottish Law Commission report on Land Registration published in February 2010 (the SLC Report). The recommendations of the SLC Report were to reform and modernise the law of land registration in Scotland and to allow for the use of electronic documents.

¹ United Nations Economic Commission for Europe Working Party on Land Administration, Social and Economic Benefits of Good Land Administration (Second Edition) Published by HM Land Registry, London on behalf of UNECE January 2005

361. The primary statute governing the law of land registration is the Land Registration (Scotland) Act 1979. Since the commencement of this legislation, it has become apparent that there are fundamental flaws and deficiencies in it. These deficiencies have manifested themselves in two main ways. The first is that many of the procedures employed by the Keeper of the Registers of Scotland (the Keeper) in running the Land Register do not have a statutory basis. The second is that since the introduction of that Act the Keeper and the registered proprietors have had to resort to litigation in order to clarify the law regarding Land Registration.

362. The Bill supports five broad policy objectives:

- the Bill provides for the eventual completion of the Land Register by increasing the number of triggers for a first registration and providing for voluntary registrations and Keeper-induced registrations;
- the Bill introduces a system of “advance notices” for conveyancing transactions, which will remove the risk of losing title to a property between the settlement date and the registration date (which risk is currently underwritten by insurance);
- the Bill introduces amendments to the Requirements of Writing (Scotland) Act 1995 (the 1995 Act) to allow for electronic conveyancing and electronic registration;
- the Bill seeks to re-align registration law with property law by, for example, adjusting the circumstances in which a person can recover their property rather than only receive compensation from the Keeper;
- the Bill continues and improves the system for land registration in Scotland. It replaces the Land Registration (Scotland) Act 1979 (the 1979 Act). The Bill places on a statutory footing the administrative practices of the Keeper of the Registers of Scotland that have evolved in practice since the passing of the 1979 Act.

GENERAL COMMENTS ON FINANCIAL IMPLICATIONS

363. RoS is a Non Ministerial Department of the Scottish Administration, headed by the statutory office-holder, the Keeper of the Registers of Scotland. Since 1 April 1996, it has operated as a Trading Fund and is currently regulated by the Public Finance and Accountability (Scotland) Act 2000. As a Trading Fund, RoS derives funding solely from the fees it charges for the registration and information services it provides. RoS is expected to ensure that income is sufficient to meet its expenditure and that capital reserves are sufficient to meet its liabilities (including latent liabilities). As a consequence of RoS’ Trading Fund status, the costs of the Bill falling on RoS will not impose any burden on the Scottish Consolidated Fund. Neither will the passage and commencement of the Bill mean that fees will require to be increased.

364. The financial impact of this Bill will mainly fall on RoS. The additional cost to RoS of the Bill is estimated to be £3,902,000. These costs will arise mostly from the extra work required to process additional applications for first registration and Keeper-induced registrations, which has been estimated to be £2,665,000 and the cost of £436,300 associated with processing shared plot title sheets. In addition, there is the costs of processing advance notices, which has been estimated to be £751,000 annually in respect of the Land Register plus an estimated capital cost of £49,500 to modify the computerised Sasine register to accommodate advance notices. RoS will seek to cover the costs of additional first registration applications and shared plot title sheets from efficiency gains from new systems and processes rather than by seeking an increase

in fees. The cost of advanced notices will be met through the fees that will be charged specifically for this new service.

365. The Bill is being introduced at a time when RoS is anticipating that it will completely replace its land registration IT systems in the next three to four years. This process would have happened whether or not the Bill was to be introduced. The opportunity to design the new IT systems incorporating the changes brought about by the Bill should result in the avoidance of additional expenditure on IT arising from the Bill. Furthermore, the development of new systems and processes will generate efficiency gains and RoS intend to use these to fund the remaining additional costs instead of seeking a rise in fees.

366. In addition to the cost of the Bill on RoS, there will be some cost falling on the National Records of Scotland (formerly the National Archives of Scotland), which archives some documents registered by RoS. There should not be any significant financial implications for local authorities as a consequence of the Bill.

367. The Bill will not greatly impact on business except in the case of solicitor firms that are primarily involved in the conveyancing market. There is likely to be some short-term impact on these firms in familiarising themselves with the new legislation. In the medium to long term, there should be benefits to these firms from the provisions within the Bill, which are aimed at simplifying the registration process.

368. The measures included in the Bill which will result in the completion of the Land Register should, in the long-term, result in reduced conveyancing costs. This is so because for solicitors dealing with a transaction of a property registered in the Land Register, less work is involved than if a title were recorded in the General Register of Sasines. Equally, for RoS, the unit cost of processing an application for registration affecting the whole of a property registered in the Land Register is 15% of the unit cost for processing an application for first registration. The completion of the Land Register will also provide greater transparency of the ownership of land in Scotland. The completion of the Land Register will benefit every individual and business that transacts with heritable property in Scotland.

369. The policies in the Bill that will have some cost implications and have been considered in this document can be split into four parts:

- the modernisation of Land Registration legislation;
- completion of the Land Register;
- Advance Notices; and
- electronic conveyancing and electronic registration.

370. The provisions in the Bill for the modernisation and completion of the Land Register may result in additional cost to RoS. As referred to in paragraph 364, RoS will be developing new systems and processes which will result in efficiency savings, therefore any additional costs will be absorbed by RoS and will not be passed on to those who transact with heritable property in Scotland in higher fees for registration.

PART 1: MODERNISING THE LAW OF LAND REGISTRATION

Background

371. One of the main aims of the Bill is to modernise the law of land registration and to bring the law of registration in line with property law.

Costs to RoS

The state guarantee

372. To bring the law governing land registration in line with property law, the Bill changes the way the state guarantee of title to land will operate. Technical changes to the state guarantee will mean that in certain cases a person will get their property back rather than compensation. It will still be the case, as is the case at present, that in most cases where a person has a guaranteed right to land and the law provides that they will be denied title, that person will be able to claim compensation from the Keeper. It is thought that in general terms the number of cases where the Keeper will pay out will decrease by around 10% (see paragraph 386 below).

Shared plot titles

373. Shared plot titles are an innovation of the Bill. Any defined area of land that is held in common shares will under the Bill have its own separate Title Sheet in the Land Register. The Bill introduces the new concept of Shared Plot Title Sheet. This will be a new kind of title sheet that is designed to contribute to the transparency of the information held in the register. Instead of viewing several title sheets to determine who owns a path for example, consulting the shared plot title sheet will inform which properties have a share in the path in question. The creation of the shared plot title sheet will require more work and an initial extra cost to the registration process.

Volume assumptions and staff costs for shared plot titles

374. From analysis RoS has carried out on existing Land Register titles, it is anticipated that there will be around 205 developments per year that will include new, shared plot title sheets. Analysis has shown that, currently the average number of shared plots per development is 4.9, with an average of 74 plots per development.

375. The introduction of Shared Plot Title Sheets will require new processes to be put in place to create them. This will result in resource having to be employed by RoS. The table below gives an indication of the staff resource of implementing these provisions for the projected figure of 205 developments per annum:

Grade	Number of staff	Costs £
Senior Case Worker	0.2	11,195
Registration Officer 1	1.6	65,549
Support Officer 1	12.2	286,820
Total	14.0	363,564
Plus 20% Overhead		72,713
Total RoS Resource Cost		436,277

Table A

Training

376. Training of RoS staff will be needed on the Bill. Specific training will be needed to deliver changes in how RoS deals with: mapping decisions; process impacts on title sheets; prescriptive claimants; shared plot title sheets and shared lease sheets; lease title sheets; closure of the General Register of Sasines; when and how to register the effect of caveats; transitional provisions; the new feeing structure (introduced following consultation); rectification, inaccuracy, warranty; and litigation.

377. The RoS budget for training on registration issues in the financial year 2011-12 is £185,000. RoS envisage that training on the new legislation will be spread over a two-year period around the commencement of the main provisions of the Bill. It is not anticipated that training on the new legislation will result in any additional training cost to RoS.

378. Training represents added cost for RoS both in specialist trainer time and time spent by staff in training that is lost to production. RoS has assessed the costs (in current figures) as follows:

Training resource costs.

Grade	FTE	Cost
Senior Caseworker	0.06	£2,545
Registration Officer 1	0.23	£8,235
Registration Officer 2	0.04	£1,293
Total	0.33	£12,073

Table B

Trainee time and loss of production resource.

Grade	FTE	Cost
Senior Caseworker	0.16	£7142
Registration Officer 1	0.43	£15,155
Registration Officer 2	0.45	£13,170
Support Officer 1	0.32	£6,787
Support Officer 2	0.19	£3,208
Total	1.54	£45,462

Table C

Technical training:

Training resource costs.

Grade	FTE	Cost
Senior Caseworker	0.18	£9,537
Registration Officer 1	1.45	£58,870
Registration Officer 2	0.08	£2,657
Total	1.71	£71,064

Table D

Trainee time and loss of production resource.

Grade	FTE	Cost
Senior Caseworker	0.49	£25,281
Registration Officer 1	2.42	£98,538
Registration Officer 2	1.78	£59,762
Support Officer 1	0.96	£23,149
Support Officer 2	0.21	£4,098
Total	5.86	£210,829

Table E

379. Total cost of training to RoS is therefore estimated at around £340,000 over two years (based on 2010-2011 costs) and will therefore fall within normal training budgets.

Costs of changes to inaccuracy, rectification and Keeper's warranty

380. The majority of litigation cases before the Lands Tribunal are settled and therefore not judicially determined. A claimant may typically spend in the region of £5,000 to £10,000 in legal fees (and RoS £4,000 to £5,000). If the outcome of the case requires the claimant to be compensated by RoS then the compensation includes their legal expenses. However, if the claimant goes on with the case and loses then they may be required to reimburse RoS's legal expenses.

381. In the last ten years, the amounts claimed and the payments made have been as follows:

Year	Amount claimed	Payments made	Number of claims Paid
2001-02	£327,985	£86,076	54
2002-03	£850,291	£76,725	53
2003-04	£709,906	£410,417	86
2004-05	£2,371,912	£446,978	77
2005-06	£619,569	£394,174	83
2006-07	£635,821	£398,492	88
2007-08	£1,495,728	£275,517	80
2008-09	£772,207	£673,557	99
2009-10	£493,794	£444,607	102
2010-11	£796,874	£272,513	87
Last 10 years	£9,074,087	£3,479,056	809

Table F

382. The following table provides information about the costs of disputes under the Land Registration (Scotland) Act 1979 per instance in Scotland.

	Per Instance	Per Month
	£	£
Average Cost of Litigation - claimant	5,000- 10,000	500 - 1,000
Average Cost of Litigation - RoS	4,000-5,000	400 - 500
Cost of Disputes (Average Value of property)	153,623	

Table G

383. As a result of the Bill, unsuccessful litigants, where the Land Register is not rectified in their favour, will no longer be able to claim compensation for costs from the Keeper.

384. Where an inaccuracy is rectified, the person in whose favour the rectification is made continues to be indemnified by the Keeper for loss caused by the inaccuracy. This will continue to be available not just to claimants whose title is in the Land Register, but it will also extend to owners of property registered in the General Register of Sasines where Land Register titles have encroached on their title.

385. The number of cases resulting in a claim against the Keeper is relatively small. The total number of claims in 2010-11 was just 0.03% of the total number of Land Register cases dispatched that year (277,858) and the total amount paid (£272,513) represents 0.8% of the registration fees (£33,277,518) received for Land Register applications for the same period.

386. It is envisaged that the costs to the Keeper in terms of paying out claims under warranty and rectification will be lower after the Bill is enacted. In their Economic Impact Assessment of the Draft Land Registration (Scotland) Bill commissioned by RoS, BiGGAR Economics assumed the changes proposed by the draft Bill would deliver annual savings of 10% of indemnity costs.² Based on the figure for the total amount paid in the year 2010-11, this would result in an annual saving of £27,251.

Costs on other bodies

Solicitors

387. Solicitor firms' case management systems are understood, to varying degrees, to be designed to deal with the application forms required to be completed under the existing 1979 Act. The application forms for land registration will be redesigned as a consequence of the Bill. While it is difficult to assess the specific impact of these changes, it is thought that solicitors will incur a cost in adjusting their individual case management systems.

² The BiGGAR report is reproduced in Volume 2 of the Scottish Law Commission Report on Land Registration (SCOT LAW COM No.222)

Solicitors' training

388. With the introduction of any new legislation, solicitors will have to familiarise themselves with the changes to the law. It is anticipated that at the time the new legislation is commenced there be a range of lectures, seminars, academic papers etc. available to solicitors to facilitate training on the changes. Solicitors holding a practicing certificate in Scotland have to undertake 20 hours of Continuing Professional Development (CPD) a year, consisting of a minimum of 15 hours group study and up to five hours of private study. The training that solicitors undertake on the new legislation will form part of their annual CPD requirement. Any costs that solicitors incur in meeting their CPD requirements form part of the cost of being a solicitor. There should be no additional cost burden placed on solicitors as a result of the training on the new legislation. In fact, it is likely that RoS will provide a series of training events for solicitors free of charge. The cost of this training to RoS would fall within the normal free training costs that RoS provides to solicitors.

389. There are 10,380³ members of the Law Society of Scotland with practicing certificates. The Law Society have estimated that about 35 - 40% of solicitors will undertake training in relation to the Bill and on average they would commit four hours of annual CPD time to the new legislation.

Costs of training on other businesses

390. For businesses other than RoS (including law firms, in-house solicitors and private search firms), the cost of the Bill will be primarily in terms of training costs and the administrative costs of using different forms. Much of the costs to commercial business will be passed on in fees charged to individual house-buying customers.

Scottish Legal Aid Board

391. From the Scottish Legal Aid Board records, there were 20 cases involving RoS in the last five years (19 Court of Session cases and 1 Lands Tribunal case). Of those cases, 16 were granted a legal aid certificate; however, not all cases that are granted a certificate proceed. The average claim would appear to be for between £4,000 - 5,000 per case.

392. In 2008-9, RoS was involved in an average of 60 active cases per year. This involvement can vary from being cited as a defendant to being an expert witness in a procedural case. Not all of these cases go to completion. The total number of cases leading to litigation was 0.8% (2010-11) of the total number of first registration cases processed in that year. Based on the figures given, cases involving legal aid claims would comprise only 5% of that 0.8%.

393. Where a land dispute requires resolution, the court has always been, and will always be, the means of settling a dispute. Whether more cases will be brought to court as a result of the provisions in the Bill is hard to judge. The Keeper only has to rectify inaccuracies in the Register if they are "manifest", i.e. more than merely probably inaccurate. If the test requires court judgments to clarify the test, it is possible there may be a slight increase in cases going to

³ Annual Report of the Law Society of Scotland October 2010

court in the short-term, and subsequently a marginal increase in the cases requesting legal aid. This will though tail off as the system beds in.

Costs on Scottish Government, local authorities, business and individuals

394. The costs on Scottish Government and local authorities are unlikely to change significantly with regard to the changes in provisions for inaccuracy, rectification and the Keeper's warranty. Under the new Bill, RoS will no longer be specifically liable for judicial costs for unsuccessful claimants. As RoS will no longer pay out costs for unsuccessful claims against the Keeper, individuals may be discouraged from seeking recourse to the court or at least encouraged to consider their case more carefully before so doing. However, once a court decree is passed or agreement is settled, then the Keeper will act upon that determination and make the title accurate. There will be greater certainty in law with the new provisions as registration law is brought into line with property law.

395. Under the Bill, manifest inaccuracies will be made accurate without hindrance of the Keeper's so called "Midas touch", meaning that compensation will not be payable for rectifying routine inaccuracies.

PART 2: COMPLETION OF THE LAND REGISTER

Background

396. The completion of the Land Register is one of the principal policy objectives behind the Bill. The process of bringing unregistered land onto the Land Register is currently governed by section 2 of the Land Registration (Scotland) Act 1979. Section 2(1)(a) of that Act sets out five circumstances in which an unregistered "interest in land" must be registered. These are referred to as the "triggers" for first registration (that is transfer of the recording of a title in the General Register of Sasines to registration the Land Register). These existing triggers are:

- on a grant of the interest in land in long lease but only to the extent that the interest has become that of the lessee;
- on a transfer of the interest for valuable consideration;
- on a transfer of the interest in consideration of marriage;
- on a transfer of the interest whereby it is absorbed into a registered interest in land; and
- on any transfer of the interest where it is held under a long lease or udal tenure.

397. In their report, the SLC noted that the following transfer events would not currently trigger first registration:

- transfer of interest by way of succession (intestate or legacy). For example, if James owns a farm and his title is in the General Register of Sasines, and he dies and leaves the farm to his daughter Kate, that is not a trigger, the title remains in the General Register of Sasines;

- transfer by way of gift. In families that hold the same property over many generations, gifts sometimes appear, for example where land is not handed down to the next heir but is donated to another near relative; and
- transfers by virtue of trusts, which are common among landowning families. Title to land may be vested in a family trust, and may remain in that trust indefinitely. If that title is held in the General Register of Sasines, first registration may be an event in the remote future.

398. Since land registration first started in the County of Renfrew in 1981 about 55% of the titles and 21% of the land mass of Scotland have been registered. If changes are not brought in to increase the triggers for first registration, it is likely that the goal of a completed Land Register could not be achieved. The SLC, in their report, argued that if the present system of first registration continued, the coverage of the Land Register would continue to grow but even in another 400 years, it would be unlikely to be completed⁴.

399. The completion of the Land Register will be achieved by the use of different mechanisms. The first is to expand the triggers for first registration from those allowed in the 1979 Act. The second will stem from new powers the Keeper is to be given to instigate the gradual closure of the Sasine Register. The third is the introduction of a power to enable the Keeper to register a plot of land without an application being submitted, “Keeper-induced registrations”. Lastly, the Bill provides that the Scottish Ministers after consultation with the Keeper can remove her discretion to accept or refuse voluntary registrations.

400. The provisions in the Bill will increase the triggers for first registration. On commencement of the Bill, any transfer of interest in land will trigger registration (for example succession, gifts and inter-trustee transfers). The registration of a lease on unregistered land will also go hand in hand with the registration of the plot of land it relates to. It will also be competent to register a notice of title in the Land Register, which was not permitted under the terms of the 1979 Act.

Change of triggers on commencement

401. The Bill seeks to speed up the transfer of titles to the Land Register. A consequence of this is that there will be a higher proportion of first registrations as opposed to Sasine recordings. First registrations are much more expensive for RoS to process. The unit cost for registering a first registration in 2014-15 is predicted to be around £395. The unit cost of recording a deed in the General Register of Sasines in that same year is predicted to be £60. The main cost implication of speeding up of the transfer of titles is therefore an increase in the average processing cost of these applications.

402. The increase in costs associated with increased triggers for first registrations into the Land Register brings forward costs that would have been incurred later. The vast majority of the properties that will be affected would have been first registered anyway in due course.

⁴ Paragraph 33.16, SLC Report on Land Registration

Cost to RoS

Registration of all deeds transferring title

403. Currently, any transfer of title that is not for valuable consideration does not induce first registration. The provisions of the Bill would change this and, accordingly, any disposition in favour of beneficiaries or between partners for a consideration such as "love, favour and affection" will mean the property will have to be registered. Similarly, any Notice of Title, for example local authorities completing title to land that has transferred from a previous entity by virtue of local government legislation⁵, or changes to trustees, will mean the property in question will have to be registered.

404. In 2010-11, there were 6,600 such dispositions and 577 notices of title. While the dispositions will generally relate to an average dwelling-type property, there is scope for the notices of title to affect much larger areas, such as local authority housing estates. Consequently, the resource impact of registering the extent of some of the areas covered by notices of title will be greater than the average first registration application.

Costs of Registration of all transfers of title

405. RoS estimate that on commencement of the Bill there will be an additional 7,000 applications per annum for first registration for dispositions for no value and notices of title. The net increase in the annual cost of registering these applications has been assessed to be around £2.345 million. This is based on the assumption that the cost differential between first registrations and Sasine recordings will be £335 and that the numbers of dispositions and notices of title remain consistent with current intakes of those deed types. As stated in paragraph 364, RoS will seek to cover the cost of this through efficiency gains from new systems and processes and not from fee increases. The table below shows the staff resource impact.

Grade	FTE
Senior Caseworker	6.4
Registration Officer 1	21.3
Registration Officer 2	16.7
Support Officer 1	-2.1
Support Officer 2	2.3
Total	44.6

Table H

⁵ Note that it is at the applicant's discretion whether to register where the change of entity occurred prior to the implementation of the Bill - if the change occurs afterwards, first registration is required.

Registration of landlord's title

406. As the underlying concept of the Bill relates to plots of land being the determinant unit for title sheets, the Bill provides that where a tenant's unregistered interest is assigned or a new lease is granted the plot of land must first be registered. This is different to the current situation where only the tenants' interest must be registered for them to obtain a real right. The registration of the plot of ground will result in some additional work for RoS. Analysing information obtained from the intakes over the last ten years, RoS anticipates that 700 additional first registrations with an estimated unit cost of £395 will be required in the first year after commencement in these cases at an estimated extra cost of £276,500 to RoS. There is no intention for the feeing arrangements currently in place for the registration of leasehold titles to be altered on commencement of these provisions. As a result, there will be no increase in the fee charged for the registration of a lease. RoS will instead seek to cover the cost of this through efficiency gains from new systems and processes. The table below shows the staff resource impact.

Grade	FTE
Senior Caseworker	0.7
Registration Officer 1	2.4
Registration Officer 2	1.9
Support Officer 1	0.3
Support Officer 2	0.1
Total	5.4

Table I

Costs to Scottish Government, local authorities, business and individuals

407. The increase in triggers will mean that 7,000 applications per year will induce registration where under the current law those transfers would be recorded in the General Register of Sasines. In these cases, the fee charged for registering in the Land Register and recording in the General Register of Sasines would be the same. Therefore, no additional fee will be payable as a result of the change of triggers. Equally, it is not thought that the conveyancing costs in relation to a Sasine application or a first registration would generally be different.

Voluntary registration

Cost to RoS

408. Currently, the Keeper has absolute discretion, on an administrative basis, to accept or reject an application for voluntary registration of title to land (which would involve a transfer of the title from the Sasine Register to the Land Register). The Bill puts this onto a statutory footing and it is not expected that this will result in significant additional costs. In some cases,

applications are declined on the basis that the costs to RoS significantly outweigh the fee. The approach to fees for voluntary registrations will be consulted upon and decided after analysis is undertaken. It is important the levels of fees for voluntary registrations strike the right balance between recovery of fees by the Keeper and not making voluntary registration prohibitively expensive for landowners.

Costs to Scottish Government, local authorities, business and individuals.

409. A property registered in the Land Register has the benefit of the state guarantee and certainty on what is included in the title. It is hoped that in order to realise these benefits, local authorities, landed estates and government bodies will work with RoS on a programme of voluntary registration. However, it should be noted that the legal position on commencement of the Bill will be the same as under the 1979 Act and so the Bill itself does not change the position about these costs. Due to the large areas of land and the complexity of titles held by these organisations, it is envisioned the Keeper will negotiate a cost recovery fee for these applications, as the Keeper currently does for voluntary registrations under the 1979 Act. Public bodies have significant and complex land holdings in Scotland. Much of the details of the titles are unknown as they held in the General Register of Sasines. Due to the unknown nature of the titles, and to the fact that fees are and will be determined on a case-by-case basis, it is not possible to provide an estimate of the cost of voluntary registrations all the unregistered public land in Scotland.

Closure of General Registers of Sasines

Cost to RoS

410. The Bill provides for the closure of the General Register of Sasines. The closure will run in phases. The first phase will run in tandem with the opening up of the Land Register to allow the first registration of new deed types and will result in an increase in the number of first registrations being processed onto the Land Register. The first closure step for the General Register of Sasines is outlined above in paragraph 403.

411. The closure of the Sasine Register will be completed in two further steps. The first step is the closure of the register to the recording of new standard securities. In order for a person to obtain a real right in their security, it will have to be registered in the Land Register. Where the plot of the land to which the security will pertain is not registered, the application to register the security will have to be accompanied by an application to register the plot of ground and the title thereto. This will increase the number of first registrations received by RoS.

412. A fee will be charged for the registration of the plot and the security. The closure of the Sasine Register to standard securities will be provided for in an order made by the Scottish Ministers under the Bill. This step will not be taken until RoS has the capacity to undertake the registration of the additional first registration applications (when the number of first registrations has dropped to a level that would release resources to process these additional applications). It is likely that this would not occur for at least 5 years after commencement of the main provisions of the Bill.

413. The second closure step will be the closure of the Sasine Register to all deeds. This step will only be taken when RoS considers it has the capacity to undertake the registration of the

plots of ground that have not entered the Land Register. It is likely that this step will not be taken until most of the titles to land and the land mass of Scotland is registered in the Land Register. The closure of the Sasine Register to all deeds will also be provided for by order.

414. RoS envisage that the final step of closing the General Register of Sasines will not be taken for some considerable time, perhaps 30 to 40 years. This step will only be taken when the majority of the land mass is registered and the fees obtained from all applications to register deeds in the Land Register will be sufficient to cover the additional cost of Keeper-induced registrations. The closure of the General Register of Sasines would result in some cost savings to RoS but these would only be achieved on full closure when RoS would no longer have to administer that register. As this may not be achieved for 30 or 40 years, it would be highly speculative to estimate a figure for these savings.

Costs to Scottish Government, local authorities, business and individuals.

415. After the closure of the General Register of Sasines to standard securities, deeds relating to standard securities will have to be registered in the Land Register. Where the underlying plot of land is not registered, it is a requirement of the Bill that the plot of land to which the standard security pertains will have to be registered. RoS envisage that the closure of the General Register of Sasines to standard securities will be taken as a first step in the final closure of that register. Under the current feeing arrangements, the person applying to record a standard security in the General Register of Sasines only has to pay the fee to record the standard security. Once this closure of the General Register of Sasines to standard securities occurs, a person wishing to re-mortgage their property will require to apply for registration before their lender can obtain a real right in the re-mortgage. Public bodies do not typically grant standard securities so the closure of the General Register to standard securities should not result in any additional costs to them.

416. The full closure of the General Register of Sasines to all deeds should not result in any additional costs to those who apply to register deeds in the Land Register. The decision to close the General Register of Sasines will only be taken when RoS has the resources to register the unregistered plots of land and the income derived from fees charged by RoS is sufficient to pay for the registration of the unregistered land.

417. When the Land Register is completed, there will be no further costly first registration applications to deal with for solicitors and RoS. The prospect of a completed Land Register has the potential to result in a reduction in the cost of conveyancing, as registration in respect of a land-registered title is less costly than first registration for both solicitors and RoS. It has not been possible to obtain estimates for the difference in the conveyancing cost between a first registration and land register transaction. In discussions with law firms in Glasgow it became clear that fees charged for conveyancing where the property is already registered in the Land Register are often fixed (for example at £360). The firms contacted all stated that they did not set a fixed fee for first registrations and instead always charge a fee on a time per client basis. It is thought that solicitors do this due to the high level of variation in the work required for a first registration. It is this degree of uncertainty that prevents meaningful estimates being made of the difference in the conveyancing cost between the two types of case.

Keeper-induced registration

Costs to RoS

418. The provision in the Bill that allows for the Keeper to register a plot of land without an application being made (Keeper-induced registration) is the element of completion of the Register that will have potentially the biggest cost implication for RoS. In these cases, there will be no application, and it is unlikely that the Keeper will be able to recover costs. Costs associated with the registration of the plot will therefore be borne by RoS. The fee power included in the Bill states that one of the contributing factors to be taken into account by the Scottish Ministers when the level of fees is set by order is the expense to the Keeper of completing the Register. Therefore, a portion of the general fees charged by RoS will cover costs to RoS of Keeper-induced registrations.

419. It is not immediately clear that Keeper-induced registrations would be undertaken at the time the Bill comes into force. The use of any such registration is likely to depend upon available resource and other pressures.

420. On the assumption that a decision was made to carry out 100 Keeper-induced registrations per year, the estimated cost would be £39,500⁶, although actual costs would depend on the type of registrations chosen.

Costs to Scottish Government, Local Authorities, Business and Individuals

421. Costs associated with Keeper-induced registrations will be spread among everyone who transacts with property in Scotland and applies to register deeds with RoS.

PART 3: ADVANCE NOTICES

Background

422. The object of a normal conveyancing transaction is that a buyer of land receives a real right in a property from the seller, and the seller receives money, or other consideration, from the buyer. (A real right is a right protected by law against anyone, not just against a particular person.) In most cases there is a single point in the transaction, called settlement, when consideration is given to the seller and the deed is delivered to the buyer (in practice through the parties' solicitors). Delivery of the deed does not of itself confer on the buyer a real right in the property. The real right can only be obtained on registration of that deed in the Land Register or recording in the General Register of Sasines. In practice there is always a period of time between the date the deed is delivered and the registration or recording of that deed.

423. In this period, the buyer who has received the deed is at risk. The risks are that the seller of the deed is made insolvent or that there is the risk of fraud, i.e. the seller grants a fraudulent deed to another party. This is referred to as the gap risk.

424. In Scotland, the traditional way of covering the gap risk is for there to be a "letter of obligation" by the seller's solicitor in favour of the buyer. This is a guarantee, binding the

⁶ RoS estimates an average cost of £395 for FRs in 2014-15 (staff costs and additional overheads).

solicitors firm, which covers the gap period. Law firms insure against the risks they incur in these guarantees. This insurance forms part of the master insurance policy paid by the Law Society of Scotland, to which all solicitors' firms contribute. The system of letters of obligation is unique to Scotland. In most other jurisdictions a system of registered advance notices (or similar) has been developed, which provides a low-cost solution to plug the gap risk. The provisions in the Bill on advance notices provide the necessary protection for a deed before it is registered.

425. The letter of obligation system developed at a time when people had family solicitors who knew their client. When the letter of obligation was granted, the solicitor would have been aware of the risks to which they were exposing themselves. In modern times, the practice of having a family solicitor has fallen away and it is likely that in conveyancing transactions many solicitors will not have had a previous relationship with their clients. This may expose the solicitor to greater risk when granting the letter of obligation.

426. Discussions between the Law Society of Scotland and the SLC resulted in the Commission including provisions for advance notices in their Report on Land Registration. It had become apparent that law firms were becoming increasingly reluctant to grant letters of obligation particularly in commercial transactions. There were also concerns from the Society that insurance would not continue to be available at reasonable rates indefinitely. If problems arose with the system of letters of obligation, this might have a serious detrimental effect on the Scottish conveyancing system.

427. The provisions for advance notices in the Bill will introduce a scheme where person (A) will grant an advance notice to person (B) for a specified deed over a named property: person (A) being the granter of the deed and person (B) being the grantee. The advance notice will be submitted to RoS for noting against the title. The effect will be to give person (B) a 35-day period to submit the specified deed for registration. In this 35-day period, the registration of this deed is protected against another deed or the insolvency of the granter.

428. The scheme included in the Bill will allow for advance notices to be noted on the application record of the Land Register for properties registered in the Land Register and recorded in the General Register of Sasines for properties recorded in that register. Before an application for first registration in the Land Register is made, an advance notice will be recorded in the General Register of Sasines to protect the deed that will be registered in the Land Register.

429. It is anticipated that advance notices will be submitted in respect of the majority of dispositions, standard securities and deeds of servitude. It is highly improbable that they will be used in relation to discharges, notices of title, notices of grants and similar deeds. The numbers being submitted are likely to be substantial, since in a normal house purchase there will be two deeds to be protected: a disposition and a standard security.

430. An analysis of deeds currently recorded in the General Register of Sasines indicates that 44% are likely to be subject to an advance notice. For Land Register transactions, it is envisaged that 53% of deeds will be preceded by an advance notice. The projected intakes of advance notices and generally for all product types for 2014-15, based on current RoS Corporate Plan figures, are shown in the table below:

Product type	Projected Product intake for 2014-2015 (excluding advance notices)	Projected advance notice intake (2014-2015)
Sasine transactions	47,000	21,000
First Registration	26,900	44,000
Transfer of Part	15,600	24,000
Dealing with Whole	220,000	141,000
Totals	309,500	230,000

Table J

431. Taking advance notices into consideration, there would be a 138%⁷ increase in deeds entering the Sasine register (including advance notices relating to first registration transactions) and a 75% increase in Dealing with Whole type applications. (It should be noted that the advance notices relating to Transfer of Part applications would be submitted as applications against the parent title.) The overall increase in deeds registered as a direct consequence of the introduction of advance notices is predicted to be 74%.

Cost to RoS

IT costs

432. The General Register of Sasines and the Land Register use different IT systems to facilitate the recording and registration of deeds in the respective registers. As discussed in the general comments above, it is RoS's intention to replace the IT systems that underpin the Land Register. The new IT systems will be designed to incorporate advance notices for entry on the application record. This new IT system will allow advance notices, along with most applications for registration, to be submitted electronically. Therefore, in relation to the Land Register it is not anticipated that the introduction of advance notices will result in any additional IT expenditure. However, it is expected that advance notices in relation to land where the title is recorded in the General Register of Sasines will rely on the existing Sasine IT system. RoS's IT supplier has estimated that the cost of modifying this system to be £49,500.

Resource costs

433. RoS has estimated the additional annual resource costs that will be incurred to process advance notices at £751,000. This figure includes the cost of the staff required to process paper advance notices and general overhead costs. The figures are based on 2011-12 work rates and the projected intake of applications for 2013-14. The table below shows a breakdown of the

⁷ This is because 20,680 notices related to Sasine transactions will be supplemented by 44,385 advance notices related to FR transactions. Intake estimate will therefore be 112,065 instead of 47,000, which will mean an increase of 138% for Sasine intakes.

annual costs for each product type processed by RoS. It is anticipated that the new IT system will allow for advance notices for dealing of whole applications over registered land to be submitted and processed electronically. We estimate that all dealing of whole advance notices will be submitted electronically, where no RoS staff resource will be required.

434. The paper applications for entry of an advance notice can be split into three categories. The first is those that relate to a dealing with whole. It is anticipated that these will be submitted electronically; therefore, there will no resource cost attached to these. The second type of case is a transfer of part advance notice (which requires mapping). The third type is advance notices that can be recorded on Sasines. We have estimated the time cost of this process to be equivalent (but marginally simpler) to the processing of a P16 application (which is a comparison of a deed plan with the ordnance survey map).

435. The table below gives a breakdown of the estimated RoS resource costs.

Product Type	Process	FTE	Cost £
First Registration	Sasine	15.4	359,000
Transfer of Part	Land Register	3.8	100,000
Dealing with Whole	Land Register - nil	0	-
General Register of Sasines	Sasine	7.1	167,000
Staff Cost Total		26.3	626,000
Plus 20% Overhead			125,000
Total RoS Resource Cost			751,000

Table K

436. RoS will recover the annual costs of running the system of advance notices from fees charged. These fees will be set by Scottish Ministers.

Costs to Scottish Government

437. The cost incurred by parts of Scottish Government other than RoS will be those incurred by them as an owner of land in a conveyancing transaction. The cost incurred will be the fee charged to submit the advance notice to RoS to protect a deed that will be presented for registration. As government bodies generally self insure, it is uncommon for them to grant letters of obligation. Therefore it is anticipated that it will be equally uncommon for advance notices to be granted in sale of government land.

Cost to local authorities

438. The primary cost incurred by local authorities will be those incurred as an owner of land in a conveyancing transaction. The cost incurred will be the fee charged to submit the advance notices to RoS to protect a deed that will be presented for registration. As local authorities are thought to self insure, it is uncommon for them to grant letters of obligation. Therefore it is anticipated that it will be equally uncommon for advance notices to be granted in sale of local authority land.

439. An additional cost that may be incurred by local authorities will be when an advance notice would be required to protect a charging order under sections 21 to 24 of the Health and Social Services and Social Security Adjudications Act 1983. Charging orders are used to recover the cost for residential accommodation from the assets of residents. When a person enters residential care and they are the owner of a property, there is a 12-week period during which the local authority cannot place a charging order on the property in order to recover the cost of their care. A local authority may wish to submit an advance notice to the Keeper before the end of this disregard period in order to protect a charging order they intend to place over a property at the end of the 12-week period from the effect of a competing deed.

440. In the financial year 2010-2011, RoS received 1,182 applications to register or record charging orders in the Land Register and General Registers of Sasines. If local authorities chose to register an advance notice in respect of each of these, there would be a cost implication for them. Based on the estimates on the volumes and costs for advance notices, it is expected that the cost to RoS per advance notice would be less than £5. The final fee for advance notices is not yet settled and will be consulted upon in advance of the making of the relevant fee order by Scottish Ministers under section 106 of the Bill. However, it is expected that the fee for advance notices will not be less than cost recovery or more than £10.

Cost to other bodies, individuals and businesses

441. As with other parts of Scottish Government and Local Authorities, the costs associated with advance notices that will be borne by the other bodies, individuals and businesses will be the fee charged by RoS for applying for an advance notice.

442. A standard conveyancing transaction for a house purchase will usually result in a disposition and standard security being submitted for registration. We anticipate that an advance notice will be submitted to RoS for most house purchases. It may become practice for lenders to insist that an advance notice will be required for re-mortgaging transactions. Currently, letters of obligation are not granted in this type of transaction therefore the fee incurred for the advance notices would be an additional cost.

443. Letters of obligation are rare in commercial conveyancing transactions or in the transfer of high value properties. The introduction of advance notices will allow for the gap period to be protected against in these transactions. This could prove to be a benefit to commercial conveyancing in Scotland. There may be a small additional cost for these transactions being the fee for applying for the advance notices, although this cost will form an insignificant percentage of the overall conveyancing cost incurred.

444. The provisions for advance notices are designed to replace the guarantee contained in letters of obligation covering the gap risk. As discussed above, solicitors insure against the risk incurred in giving this guarantee. Consumers currently pay for letters of obligation. The cost associated with the letters reflects both the work involved for a solicitor and the underlying insurance which the letter offers. The insurance cost associated with a letter of obligation for any individual transaction is minimal. The Law Society has informed RoS that in the last five years there have been 37 claims made in connection with letters of obligation and that the total amount paid or reserved in this regards was £1.97 million. It is assumed that the premiums solicitors currently pay reflect this level of risk.

445. There is no requirement in law for solicitors to grant letter of obligation but it is a long established part of conveyancing practice that selling agents provide such letters. The potential liability that the profession is exposed to in granting the letters is covered by the Law Society's master insurance policy. The professional indemnity insurers have been pressing on the Law Society to take steps to minimise claims against the master insurance policy which are the result of letters of obligation. Both the Law Society and their insurers are keen to see the introduction of advance notices which would effectively mean the demise of letters of obligation for dealing with the gap risk and the liabilities which they include.

PART 4: ELECTRONIC CONVEYANCING AND REGISTRATION

Background

446. The provisions within the Bill for electronic documents are included in the amendments to the Requirements of Writing (Scotland) 1995 (the 1995 Act). They will allow for subordinate legislation to prescribe that certain electronic deeds or documents (for example, missives in conveyancing transactions) can be legally valid if they are authenticated to a standard set out in the subordinate legislation. In addition, the amendment to the 1995 Act includes provisions that amend the legislation to allow subordinate legislation to provide for electronic registration in the General Register of Sasines, the Register of Deeds in the Books of Council and Session and the Register of Inhibitions (all of which are under the management and control of the Keeper).

Costs to RoS

Electronic documents

447. The cost to RoS in relation to electronic documents is likely to be minimal. The provisions on the validity of electronic documents do not relate to registration as such, and detailed policy on electronic documents to be implemented in the subordinate legislation will be developed over time by officials within Scottish Government. However, RoS does have expertise in the field of electronic signatures (which it provides in connection with the system of Automated Registration of Title to Land (ARTL)) and there is likely to be a degree of information sharing between RoS and the Scottish Government.

Electronic registration

448. The provisions in the Bill amending the 1995 Act contain a subordinate legislation power to allow for electronic registration in registers the Keeper administers. RoS has experience of electronic registration in the Land Register with the ARTL scheme. While there are no

imminent plans to change the form of documents that can be registered in, for example, the Books of Council and Session, the legislation (proposed by the Scottish Law Commission) is seen as enabling technological development in due course. These provisions of the Bill should therefore be seen as future-proofing.

449. As there are no immediate plans to make provision for electronic registration in other registers, it is difficult to assess what the cost implications will be. It is anticipated that no rollout of electronic registration of, for example, documents in the Register of Deeds in Books of Council of Session would take place until a system of electronic exchange of valid electronic documents is established.

450. Any use of the subordinate legislation power to allow for electronic registration would be consulted upon widely and costed in advance of the making of the relevant regulations. Any such regulations would be subject to affirmative resolution procedure.

451. It is anticipated that any cost incurred by RoS will be covered by the fees charged for registration in the register to which the regulations relate. The fees will be set on a cost recovery basis in line with RoS current fee policy.

Savings associated with electronic registration

452. There would inevitably be costs associated with electronic registration in, for example, the General Register of Sasines and the Register of Inhibitions (ROI). The purpose of the reforms is - in part - to enable these registers to be held, in the longer term, on a solely electronic form. The current legislation prescribes that these registers must be held in paper form.

453. The General Register of Sasines and the ROI are currently compiled on computer systems run and managed by the Keeper. Paper copies of the registers are printed out and transmitted to the National Records of Scotland for preservation. An aim of the reforms where they apply is to remove the obligations to retain and provide paper copies.

454. There is no additional cost to RoS from these provisions. All the registers are currently held in an electronic form. These reforms should result in cost savings for RoS through the elimination of certain practices currently required by law. The two principal costs to RoS of the current legislation are the cost of producing the Sasine Minute book and the ROI Minute Book. The cost of producing the Sasine Minute book in 2010-2011 was £53,000 (including staff time and paper printing costs). The cost of producing the Minute Book in the same year for the ROI was £44,000.

Cost to Scottish Government

455. It is expected that the Scottish Government will develop policy in relation to the types of document to be allowed to be constituted as electronically valid documents as well as policy on the standards of certification that should be required for such documents.

456. The provisions in the Bill enabling electronic conveyancing do not compel the use of electronic deeds and documents. There is pressure from the legal profession to allow for the

electronic transfer of missives and it is likely that this is the part of the electronic conveyancing provisions that will be commenced first. The Bill provides that the Scottish Ministers can prescribe that a particular type of digital signature can be used in such circumstances as may be prescribed and meet such requirements as may be prescribed. This will accordingly be enabled through secondary legislation. The role of the Scottish Ministers will be to lay out the requirements by order. It would not be necessary for the Scottish Government to run the digital signature scheme. There should not be a significant cost burden on the Scottish Government in relation to these matters.

Cost to National Records of Scotland

457. In addition to the cost that may fall on Scottish Government in relation to digital signatures, there will be additional cost to National Records of Scotland (NRS). NRS is a Non Ministerial Department of the Scottish Administration responsible for the archiving of the General Registers of Sasines, the Register of Inhibitions and the Register of Deeds in the Books of Council and Session. NRS is partly funded from the Scottish Consolidated Fund.

458. The provisions that amend the 1995 Act will have an impact on NRS as they will have to archive the electronic deeds and documents with digital signatures once the provisions in the Bill that allow for their registration have been commenced. Deeds for archiving in those registers are currently produced in paper form by RoS and transferred to NRS.

459. The NRS have indicated that there will be a one-off cost to them to research, understand and implement any solution that will allow for them to receive and archive electronic deeds and documents. This is principally a staff cost⁸, which can be broken down as follows:

- B3 archivist - 3 months (£22,817)
- B3(IT) - 3 months (£24,296)
- B2(IT) - 2 months (£13,706)
- TOTAL estimated cost = £60,819

460. In addition, for each new record type generated in electronic form, NRS have said there will be a requirement for in-depth analysis before the records can be transferred to them. The maximum number of new types of electronic record that could result from the provisions of the Bill is eight (Sasine minute books, Sasine presentment books, register of inhibitions, register of inhibitions minute book, register of inhibitions presentment book, register of deeds etc in books of council and session, register of deeds etc minute book, register of deeds etc presentment book). The cost associated with this can be broken down as follows:

- B3 archivist - 2 months per type (£15,211)
- B2(IT) - 1 week per type (£1,713)
- B1(IT) - 1 month per type (£6,249)
- Estimated cost per type = £23,173

⁸ All NRS staff costs have been calculated using a table provided by NRS Corporate Services.

- TOTAL estimated cost = £23,173 x 8 = £185,384

461. It is not known at this time when the provisions to allow the electronic preservation of deeds for the different registers will be commenced therefore it not possible to state when the cost outlined in paragraphs 459 and 460 will be borne by NRS. The decision to allow electronic registration will only be taken by Scottish Ministers after consultation with the Keeper of the Registers of Scotland the Keeper of the Records of Scotland. It is expected that the enabling of electronic registers of deed types would be done on a phased basis over a number of years. If on commencement of the Bill the decision was taken to allow the General Register of Sasine to take a fully electronic form this would result in additional cost to NRS in that financial year of £107,165 (the one-off cost detailed in paragraph 459 and cost of two record types outlined in paragraph 460).

462. When the provisions that allow for the registration of electronic deeds are commenced, this will lead to an increase in the volume of digital records transferred from RoS to NRS. NRS consider that the costs associated with additional storage are likely to be minimal, as the cost of storage devices is relatively low and seems to be falling. With more data being transferred from RoS to NRS, a strong business case may develop for the installation of a fixed link for data transfer between the two organisations. NRS have stated that the costs associated with this are not quantifiable at this stage. The option to install a fixed link would only be considered when the benefits outweighed the costs. Currently, electronic deeds are transferred using a physical data storage device. This solution would continue for the foreseeable future.

463. Electronic registration may lead to savings in archiving costs due to a reduction in NRS' requirements to bind physical materials transmitted by RoS. This saving would largely accrue only if the provisions of the Bill relating to the creation of the Register of Inhibitions in electronic form were activated. Currently, NRS incur a staff cost of £62,322 per year (one B1 conservator) in binding physical records transmitted by RoS. It is anticipated that this post would be allocated to other duties. With a decrease in the volume of physical documents being transferred from RoS to NRS, the rate at which the NRS will need additional storage capacity for physical records would slow.

464. In the future, with increased electronic registration, there would be a much-reduced requirement for NRS to produce physical objects in their public search rooms to satisfy access requests. NRS will, however, need to ensure that access to authentic electronic records is maintained over time (which could lead to additional costs). NRS will also need to be in a position to provide both plain copies and extracts of digital records. A technological solution to this issue has not yet been developed and therefore NRS is unable to estimate a cost for this. NRS have indicated that the costs associated with access will be neutral.

465. The provisions within the Bill for electronic conveyancing and registration are in effect future proofing legislation against technological developments; the current legislation that governs the form of conveyancing documents and the registration of those documents would bar technological developments in this field. The provisions in the Bill with regard to these matters prescribe that the form of electronic documents, digital signatures and certification will be prescribed by the Scottish Ministers in a statutory instrument after consultation with the Keeper of the Registers of Scotland and the Keeper of the Records of Scotland. It is not possible to

provide an estimate of the full costs to NRS until the technological solution to implement these provisions has been developed.

Cost to local authorities

466. The provisions in the Bill for electronic conveyancing should not impose any additional costs on local authorities. The provisions for electronic conveyancing do not compel the use of electronic deeds therefore it will be up to the each Local Authority to decide if they wish to take advantage of the provisions. If they were to use the provisions, they are likely to have to invest in a digital signature in due course. It is perceived that to carry out business electronically is more efficient and less costly than using paper, as it brings savings in time, paper and post. In the case of conveyancing, electronic documents may also make the process less risky (as electronic conveyancing has the potential to remove the gap risk referred to in the section on advance notices). Therefore, the cost of obtaining digital signatures could be outweighed by the cost savings incurred through their use. As there is currently no established retail market for digital signatures, it is not possible to estimate the costs of obtaining a digital signature.

Cost to other bodies, individuals and businesses

467. It is anticipated that bodies in the private sector will seek to provide electronic signatures to those who wish to constitute electronically valid documents. That electronic signature would require to be of a security standard at or above the standard specified in the subordinate legislation, which may involve an investment cost to any such person.

468. Once a marketable electronic signatures product is certified, individuals (such as solicitors) wishing to constitute electronically valid documents could purchase the product (and associated services) from that private sector provider. It is not predictable how much solicitors will have to pay for this service.

469. If the Scottish Ministers later decide to allow electronic registration in, for example, the Books of Council and Session or the Register of Inhibitions, it is anticipated that the electronic signatures used for electronic documents could be used for those registrations (meaning there would be no additional costs to business in using such a system).

Savings from electronic registration

470. Since the introduction of ARTL, RoS has charged a lower fee for registering deeds using ARTL than applications received in paper. It is likely that applications for electronic registration in other registers will also incur a lower fee than paper applications. Below is the table for the current fee order, which shows the price differential between paper and ARTL applications for registering a disposition. As fees for registration are paid by the person transacting with a property, be it an individual, business or local authority, this is a direct saving to them.

These documents relate to the Land Registration etc. (Scotland) Bill (SP Bill 6) as introduced in the Scottish Parliament on 1 December 2011

Consideration/value £	Paper Fee £	ARTL Fee £
Not exceeding		
£50,000	60	50
£100,000	120	90
£150,000	240	180
£200,000	360	270
£300,000	480	360
£500,000	600	450
£700,000	720	540
£1,000,000	840	660
£2,000,000	1,000	800
£3,000,000	3,000	2,500
£5,000,000	5,000	4,500
Exceeds £5,000,000	7,500	7,000

Table L

SUMMARY

471. The following table provides a summary of the known additional initial costs associated with the Bill (under the costs head set out above):

Part of the Bill	Costs to RoS	Cost to Scottish Government (including NRS)	Cost to local authorities	Cost to others
Modernising the Law	nil	nil	nil	nil
Completing the Land Register	nil	nil	nil	nil
Advance Notices	£49,500 (paragraph 432)	nil	nil	nil
Electronic documents and electronic registration	Unknown	£246,000 (paragraphs 459 & 460)	Unknown	Unknown

Table M

472. The following table provides a summary of the known additional annual costs associated with the Bill (under the same cost heads):

Part of the Bill	Costs to RoS	Cost to Scottish Government	Cost to local authorities	Cost to others
Modernising the Law	£436,277 (Cost of Shared plot title sheets, paragraph 375)	nil	nil	nil
Completing the Land Register	£2,661,000 (cost of processing additional first registrations - paragraphs 405 and 406 and Keeper Induced Registrations paragraph 420)	nil	nil	nil
Advance Notices	£751,000 (paragraph 435)	Fee for advance notices (to be set by Scottish Ministers)	Fee for advance notices (to be set by Scottish Ministers)	Fee for advance notices
Electronic documents and electronic registration	nil	nil	nil	nil

Table N

473. The following table provides a summary of the potential cost savings associated with the Bill:

Part of the Bill	Savings to RoS	Savings to Scottish Government	Savings to local authorities	Savings to others
Modernising the Law	£27,251 (paragraph 386)	not quantifiable	not quantifiable	not quantifiable
Completing the Land Register	nil	not quantifiable	not quantifiable	not quantifiable
Advance Notices	nil	not quantifiable	not quantifiable	not quantifiable
Electronic documents and electronic registration	£97,000 (paragraph 454)	not quantifiable	not quantifiable	not quantifiable

Table O

SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE

474. On 1 December 2011, the Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney MSP) made the following statement:

“In my view, the provisions of the Land Registration etc. (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

475. On 30 November 2011, the Presiding Officer (Tricia Marwick MSP) made the following statement:

“In my view, the provisions of the Land Registration etc. (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

These documents relate to the Land Registration etc. (Scotland) Bill (SP Bill 6) as introduced in the Scottish Parliament on 1 December 2011

LAND REGISTRATION ETC. (SCOTLAND) BILL

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