

## SUBMISSION FROM THE SCOTTISH PROPERTY FEDERATION

1. The Scottish Property Federation is a voice for the property industry in Scotland. We include among our members; property investors and developers, landlords of commercial and residential property, and professional property consultants and advisers. We have some 120 corporate members. The SPF understands the Committee may publish our comments and share our views with other public authorities.
2. We provide brief comments to the Committee based on its call for evidence. We understand that our previous comments to the Registers of Scotland on the draft Land Registration Bill have been considered by officials at the Scottish Parliament and therefore we reproduce the substance of these views in an annex at the end of this submission.

### **Proposals for Completion of the Land Register & Registration Issues**

3. The Committee may be aware that during the Scottish Law Commission's consultation on the draft Bill we expressed our support for the intention to facilitate, over time, completion of the Land Register (and replacement of the Register of Sasines). We confirm our support for the Bill's intention to deliver this objective.
4. On the practical measures to reform certain registration procedures again we are largely supportive. Advance Notices are welcome although we draw the Committee's attention to our earlier comments we made seeking to align the period of Advance Notice to England's 30 **business** days. Our reasons for this is that as the majority of Scottish commercial property is owned and invested in by UK institutions or trusts it would be helpful to avoid differences where they may not appear to be absolutely necessary.
5. The Committee may be aware that we previously expressed concern with the measures for prescriptive acquisition of property, typically by means of registration of an *a non domino* disposition (or adverse possession as it is sometimes more colloquially known). We repeat these concerns as we feel the periods involved, namely evidence that the owner has not been in possession for 7 years, followed by 1 year's possession by the applicant, will significantly inhibit the non-abusive adoption of this process by developers as a device to facilitate property development by curing glitches in site assemblies (see annex) and may be an impediment to investment in some circumstances.

### **Proposals for Electronic documents**

6. We have always supported an early introduction of measures to encourage further development of e-conveyancing. As the SPICe paper correctly asserts, the Bill is itself largely a provider of framework legislation for e-conveyancing with the key detail to follow at secondary legislation stage depending on the Bill becoming an Act. As an enabling measure we support the Bill's proposals therefore but it will be important to ensure safeguards and examine lessons to be

learned from the ARTL process, which our members report has perhaps had less of a take up than might have been expected thus far.

## **Any Other Aspects of the Bill**

### *Registration Fees*

7. An additional point we would make here is the significant difference between Registration fees north and south of the border where Scottish Land Registration fees are sometimes considerably higher than their English counterparts. The maximum Scottish fee is some £7,000 whereas in England HM Land Registry charge at a maximum £920 for properties in excess of £1mn. This negative differentiation is hardly an incentive to investors in Scottish commercial real estate. We note that the Registers of Scotland have argued that the impact of the Bill should not lead to an increase in Land Registration fees and we believe this is an important commitment. Ideally fees should be coming down to encourage investors.

### *S108 – new criminal offence*

8. Our members have drawn our attention to the introduction of s108 where a legal adviser could potentially face criminal charges in the event of professional negligence. We understand the measure is intended to be a deterrent to fraudulent registrations but we are concerned about professional advisers becoming inadvertently charged with this offence in cases of erroneous rather than intentional false registration. We understand that the Law Society of Scotland will be raising similar concerns which we would support. The Law Society of Scotland argues that there are sufficient existing criminal law provisions which make this new offence unnecessary; if the Parliament does adopt the proposed new offence then we would, at the least, propose that it should be linked to fraudulent intent.
9. The SPF will be pleased to answer further questions on these comments or those previously provided below to the Registers of Scotland.

## **Annex – Substance of comments made to the Registers of Scotland by the Scottish Property Federation (opening formal remarks removed) - November 2010**

The SPF supports the aims of the Land Registration (Scotland) Bill and we welcome the work of the Scottish Law Commission and the Registers of Scotland in bringing the Bill to this stage. In reply to Question 8 therefore we unequivocally say ‘yes’. It is clearly nonsensical to continue to maintain two separate land registers and we welcome the aim of the Bill in bringing the process of updating the new Land Register forward and the eventual end of the use of the Sasine Register.

The Bill picks up from the reforms of the 1979 Act and we acknowledge and agree with the description of the consultation paper that these new provisions bring into statute the good practice that has been established since 1979 – or “pumping concrete into the foundations”.<sup>1</sup> We also welcome the wider considerations that RoS have introduced to the consultation paper regarding expanding, with appropriate safeguards, ecommerce in the property industry.

Turning to specific points in the consultation paper.

Under Question One we agree that it should be possible through due process for a proprietor of unregistered land to achieve voluntary registration and that at the appropriate time the Keeper should no longer have the discretion to refuse such registration (aside from considerations of the probity of the application of course!).

First Registration should be compulsory for transfers of unregistered land – we agree with both SLC and RoS that this will not cause undue burdens.

Questions 6 and 7. Our members have reported some concerns about the proposals for the Keeper to register without the consent of the proprietor. One concern is where the Keeper fails to identify a proprietor -would this facilitate what one member described as ‘title raiders’ seeking to claim title to the previously unregistered land - this would not we assume be the purpose of the Keeper. And what if it was subsequently discovered that the title registered was inaccurate? The consultation paper explains the process whereby inaccurate registration is uncovered where the owners are known but not in the situation where title inaccuracy becomes apparent yet there remains no known proprietor.

Questions 9 and 10 - advance notice. Our members suggest that the Bill’s Advance Notices should be reconciled with the similar provision under the English system to period of 30 days. This would help to achieve welcome consistency for property investors across the UK.

Questions 12-15. We are keen to see progress towards greater use of ecommerce, so long as appropriate safeguards and rights can be maintained. Therefore we support the move towards the enablement of e-missives. Indeed in this context we hope that the Scottish Parliament will find time to progress these set of mostly uncontroversial measures sooner rather than later.

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<sup>1</sup> Consultation paper: Paragraph 1.8, p2

Questions 16 and 17 – mapping and cadastral units. We agree there should not be registration without adequate mapping. The RoS also propose to replace the term 'Title Plan' with the more internationally recognised definition of 'cadastral plan'. Paragraph 5.3 explains that: 'A Cadastral Map is a map showing the boundaries and ownership of land parcels. This term is in common usage around the world for land register maps.' This global view may be true, but not we think in our nearest neighbour and largest market south of the border in England!

While we do welcome moves to ensure appropriate information in the registration system and to adopt certain forms of internationally recognised terminology and the adoption of the term cadastral units, but we ask whether this is helpful if our largest investors remain of a different view and we would wish to forestall any potential for confusion between title sheets and cadastral units. Also, we question whether the RoS proposals really deliver what is understood as a cadastre by those jurisdictions that currently employ the term. It is our understanding that the cadastre is normally something more than straightforward title plan information and on this basis RoS may wish to reconsider if the use of this terminology is appropriate in this context.

Question 20. We have some practical reservations about the practicality of the proposals regarding common areas in new developments. We certainly support the principle of ascertainment maps to afford greater certainty to new title owners with an interest in a common area, but we are concerned that the proposals do not fully appreciate potential circumstances whereby a relevant developer will fall into insolvency for example. This is a matter that SPF corresponded on with the SLC team and therefore we do reiterate that we are supportive of measures to bring forward greater certainty for new owners with interests in a new development's common areas.

Questions 23 and 24. Further concerns have been raised by members regarding the principles relating to adverse possession. Members have pointed out the difficulties of proving a seven year period of possession which when added to a ten year title 'cleansing' period means a 17 year process in total! This is surely too long and will not benefit the Registration system, or speed up the process of title coverage.

Although we have raised some practical and a few principled concerns above, we would like to reiterate our support for the Bill's wider objectives and the need to quicken the process of Land Registration from its current level of 55% coverage.

The SPF would be pleased to discuss our comments with the draft Bill team.

Scottish Property Federation  
20 January 2012