

## SPICe Briefing

# Land Registration etc. (Scotland) Bill: Stage 3

29 May 2012

12/35

Sarah Harvie-Clark

The Land Register was created under the Land Registration (Scotland) Act 1979 (c 33) and since 2003 has been operational across the whole of Scotland.

The [Land Registration etc. \(Scotland\) Bill](#), introduced in the Scottish Parliament on 1 December 2011, is a lengthy, technical and complex piece of legislation designed to address difficulties which have arisen with the land registration system as it is operating at present. It is based on a [report](#) of the Scottish Law Commission.

Stage 3 proceedings on the Bill are scheduled for 31 May 2012. This briefing summarises some of the key proposals in the Bill and considers some of the issues focused on by the [Economy, Energy and Tourism Committee](#) at Stage 1 and how these issues were addressed during the Stage 2 proceedings associated with the Bill.

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## INTRODUCTION AND BACKGROUND

The [Land Registration etc. \(Scotland\) Bill](#) (plus accompanying documents)('the Bill') was introduced in the Scottish Parliament on 1 December 2011 by John Swinney MSP, Cabinet Secretary for Finance, Employment and Sustainable Growth. The Bill is based on recommendations of the Scottish Law Commission ('SLC') in its Report on Land Registration ([Volume 1](#) and [Volume 2](#))(SLC 2010).

The Parliament's [Economy, Energy and Tourism Committee](#) was designated the lead committee for the parliamentary consideration of the Bill. Its [Stage 1 Report](#) (Scottish Parliament Economy, Energy and Tourism Committee 2012g) was published on 6 March 2012. The Bill completed Stage 1 (consideration of the general principles) with the Stage 1 debate on [14 March 2012](#). The Scottish Government (2012) published a [written response](#) to the Stage 1 Report on 25 April 2012.

Stage 2 consideration of the Bill took place on [2 May 2012](#); thereafter [the Bill \(as amended at Stage 2\)](#) was published.

Key dates in the Parliament's consideration of the Bill are set out in Table 1 below:

**Table 1: Summary of parliamentary consideration**

Bill introduced	1 December 2011
Stage 1: Economy, Energy and Tourism Committee evidence sessions	<a href="#">11 January</a> , <a href="#">18 January</a> , <a href="#">25 January</a> , <a href="#">8 February</a> , <a href="#">22 February</a> , <a href="#">29 February</a> 2012
Stage 1: Finance Committee	<a href="#">21 December 2011</a>
Stage 1: Subordinate Legislation Committee	<a href="#">10 January 2012</a> and <a href="#">24 January 2012</a>
Stage 1: Economy, Energy and Tourism Committee's report published	6 March 2012
Stage 1: Plenary Debate	<a href="#">14 March 2012</a>
Stage 2: Economy, Energy and Tourism Committee	<a href="#">2 May 2012</a>

The remainder of this briefing provides some background to the Bill, a summary of the key proposals in the Bill and consideration (in table format) of some of the main issues arising during both Stage 1 and Stage 2 consideration of the Bill. The briefing does not seek to outline all of the issues raised or all of the changes made at Stage 2.

An earlier SPICe Briefing entitled [Land Registration etc. \(Scotland\) Bill](#) (Harvie-Clark and Wakefield 2011) provides information and analysis associated with the Bill as introduced.

## BACKGROUND TO THE BILL

Scotland has a long history of operating a system of public land registration, with the 'Register of Sasines, the original national register of property deeds dating back to 1617. In 1979, the 'Land Register of Scotland' was set up under the Land Registration (Scotland) Act 1979 (c 33) as a replacement for, and improvement on, the original register. The Land Register was brought into operation gradually across Scotland and since 1 April 2003 has applied throughout the country.

Because the principal way that a property enters the Land Register for the first time is on its sale, a significant amount of property in Scotland remains on the old Register of Sasines. There are 2.6 million units of property in Scotland for the purposes of the land registration system and, so far, 55% of these units have been switched to the Land Register. However, in terms of area the figure is much lower; only 21% of Scotland's land mass is on the Land Register.

The [Registers of Scotland](#) (RoS) is a non-Ministerial government department, headed by the Keeper of the Registers of Scotland, a statutory officeholder in the Scottish Administration. The Keeper maintains and controls a number of registers, including the Land Register and the Register of Sasines, supported by the staff at RoS.

## KEY PROPOSALS IN THE BILL

Part 2 of the Bill contains four measures designed to facilitate the gradual and phased completion of the Land Register (and associated closure of the Register of Sasines) which the Scottish Government estimates will take a further 30 to 40 years. The first measure that will be implemented is that *all* transfers of property, including those not for money, will result in the requirement to register the transfer in the Land Register (section 47(1)(a)).

The law relating to the rectification of 'inaccuracies' in the Land Register and the operation of the state guarantee of title (given in respect of properties registered in the Land Register) is currently thought to be too complex. Also, as most inaccuracies cannot be rectified where there is a 'proprietor in possession', the current law is thought to give too great a weight to the interest of the person purchasing the property in reliance on the Land Register, over the interests of the 'true' owner if the property.

Various parts of the Bill (Parts 3, 5, 8 and 9) aim to make it less likely that the 'true' owner will be deprived of his or her property as a result of an inaccuracy on the face of the Land Register. The requirement of one year's possession (by either the seller or the seller in combination with the buyer) before a buyer in good faith is protected from the possibility of rectification (section 82) is designed to give the 'true' owner an opportunity to discover the inaccuracy and apply for rectification of the Land Register. If the requirement of one year's possession is not satisfied the buyer in good faith will receive financial compensation (not the property) for losses incurred if the Land Register is rectified.

Part 4 of the Bill introduces a new system of 'advance notices', designed to protect the buyer of the property from the risks he or she is exposed to in the short gap between handing over the purchase price (at 'settlement') and receiving legal title to the property via registration. The current system of 'letters of obligation' (backed up by the [Law Society of Scotland's](#) master insurance policy which all solicitors pay premiums towards) is recognised as being under strain.

Part 10 of the Bill contains a range of proposals designed to facilitate (but not require) the use of electronic documents for the transfer of land and, in a departure to the Bill as consulted on, the use of electronic wills and trust deeds (where desired). Part 10 also provides for the Keeper to run a computerised system for electronic registration, whether the current 'members only' system of Automated Registration of Title to Land (ARTL), in respect of which there has been limited take-up amongst the legal profession, or, as is more likely in the long term, a successor system.

## ISSUES ASSOCIATED WITH THE BILL AT STAGE 1 AND STAGE 2

Table 2 below outlines some of the issues associated with the Bill which received attention at Stages 1 and 2.

**Table 2: Issues raised at Stage 1 and Stage 2**

Issue	The Bill as introduced	The Economy, Energy and Tourism Committee's recommendations and the Scottish Government's response	Stage 2
<p><b>Targets for completion of the Land Register</b></p>	<p>As mentioned above, the Bill makes provision for four measures, designed to ensure the eventual transfer of all property in Scotland to the Land Register (and the associated closure of the old register, i.e. the Registers of Sasines) (sections 27, 29 and 47).</p> <p>No targets for completion of the Land Register appear on the face of the Bill. In the Financial Memorandum to the Bill (at para 414) it is stated that the final step resulting in the completion of the Land Register will not be taken for some considerable time,</p>	<p>The Committee recommended the setting of a target for completion of the Land Register, as well as interim targets, even if these were aspirational, on the face of the Bill (Scottish Parliament Economy, Energy and Tourism Committee 2012g, para 58).</p> <p>The Scottish Government (2012, pp 5–6) did not support statutory targets on the face of the Bill. It stated it was committed to consulting prior to the closure of the Register of Sasines and did not want to pre-empt the outcome of that consultation by including targets on the face of the Bill.</p>	<p>Amendments 53–55, in the name of Patrick Harvie MSP, aimed to introduce statutory targets on the face of the Bill, with some degree of discretion for Ministers regarding the setting of such targets (amendments 53 and 55), as well as a requirement to report at regular intervals on progress towards such targets (amendments 54).</p> <p>Amendments 53 and 54 were disagreed to (by division). Amendment 55 was not moved.</p> <p>Amendments 14, 34 and 38, Scottish Government amendments, responded to a</p>

	perhaps 30 to 40 years.		recommendation by the Subordinate Legislation Committee in its Stage 1 Report (Scottish Parliament Subordinate Legislation Committee 2012c, para 31(a)) and introduced a requirement to consult prior to closure of the Register of Sasines on the face of the Bill. These amendments were agreed to (without division).
<b>Keeper-induced registration: fees</b>	<p>Section 29 makes provision for 'Keeper-induced registration', i.e. registration of property in the Land Register regardless of whether the owner or anyone else consents to this. This is one of the four steps referred to above, designed to bring about the eventual completion of the Land Register.</p> <p>Section 106 of the Bill provides the 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 under the Bill.</p>	<p>The Committee stated that it was unclear whether there will be a fee for Keeper-induced registration and asked the Scottish Government to make its intentions in this regard clear during the Stage 1 debate (Scottish Parliament Economy, Energy and Tourism Committee 2012g, para 38).</p> <p>In the <a href="#">Stage 1 debate</a>, the Minister for Energy, Enterprise and Tourism confirmed that although the fee power in the Bill would allow a fee to be charged for Keeper-induced registrations, there is no intention to charge a fee for such registrations during this parliamentary session.</p> <p>In its response to the Stage 1</p>	<p>Amendment 1, in the name of Murdo Fraser MSP, sought to amend section 106 of the Bill to clarify that a fee could not be charged in relation to a Keeper-induced registration under section 29. This amendment was disagreed to (by division).</p>

		<p>report the Government (2012, p 2) stated that it has not yet determined its policy in relation to any fee rate that could subsequently be proposed but would not rule that out. There would be full consultation on any such proposal.</p>	
<p><b>Additional information about proprietors</b></p>	<p>Section 22 provides the general conditions with which all applications for registration of property must comply.</p> <p>In respect of each title sheet of a registered property, section 7 sets out the information which must be contained in the 'proprietorship section' of the title sheet. This comprises the name and designation of the proprietor and, in case of ownership in common, the respective shares of the proprietors.</p>	<p>The Committee heard evidence that the Land Register was at present insufficiently transparent in relation to ownership of land in Scotland and this lack of information can assist money laundering and tax evasion.</p> <p>The Committee rejected the specific proposal given in evidence that companies needed to be registered in the EU to register land in Scotland. However, it considered that the Scottish Government should reflect further on options for ensuring that the land registration system reduces the scope for tax evasion, tax avoidance and the use of tax havens and explain its intentions in this regard prior to Stage 2 (Scottish Parliament Economy, Energy and Tourism Committee 2012g, paras and 219).</p>	<p>Amendments 4 and 6, in the name of Rhoda Grant MSP, sought to add a new provision to the Bill and amend sections 7 and 111 to enable or require additional information about proprietors to be included in the proprietorship section of individual title sheets of registered properties.</p> <p>Amendment 48, in the name of Patrick Harvie MSP, had the same policy objective but sought to modify section 22 to require the additional information to be provided at the point of application for registration of a property.</p> <p>Amendments 4–6 and 48 were disagreed to (by division).</p>

		<p>In its response to the Stage 1 report, the Scottish Government (2012, pp 25–26.) stated that it had reflected on the Committee’s concerns but indicated that it believed that possible solutions raised issues of company law (reserved to the UK Parliament) and conceptual difficulties in Scots law because of the lack of a clear concept of what constitutes “beneficial ownership”. Ultimately the Government felt that the Bill’s provisions aimed at completing the Land Register were the best way of providing information about who owned particular pieces of land.</p>	
<p><b>Prescriptive claimants</b></p>	<p>Sections 42–44 relate to the acquisition of title to property by ‘positive prescription’, i.e. the acquisition based on possession for a specified period of time. Specifically, these provisions provide a process for prescriptive claimants to provisionally register their title in the Land Register. The provisional registration is necessary to allow the ten year period of possession required by the Prescription and Limitation (Scotland) Act 1973 to begin to run (after which, if the possession</p>	<p>The Committee recommended that the Scottish Government consider the inclusion of a more public process of advertising land where there is an application for prescriptive acquisition of title. The Committee considered that where multiple claims to land are regarded as being of equal merit the general principle should always be that land should be put to the use which creates the greatest benefit to the community. It recommended that the Scottish Government consult on options</p>	<p>Amendments 49–52, in the name of Patrick Harvie MSP, sought to amend sections 42 and 44 to introduce a more public process of advertising land subject to a prescriptive claim. Specifically, amendment 50 required notification to local elected members at all levels including members of community councils. Amendment 52 entitled those who are notified, in addition to the Crown, to raise an objection to a prescriptive claim.</p>



	<p>has been uninterrupted, the claimant receives legal title to the property).</p> <p>Section 42 sets out the main conditions which must be met for an application for provisional registration to be accepted by the Keeper. These requirements relate to possession of the property and notification of the existing owner of the property (who may be the Crown as the ultimate owner of “ownerless” property).</p>	<p>for putting this principle into practice (Scottish Parliament Economy, Energy and Tourism Committee 2012g, para 132).</p> <p>In its response to the Stage 1 report, the Scottish Government (2012, pp 12–13) noted that the Bill sought to introduce a scheme for provisional registration of title by prescriptive claimants, rather than restating or re-examining the policy decisions on which existing legislation on the law of prescription is based. The Government also stated that it did not think that advertising of land would be in the public interest and that the approach taken in the Bill was correct.</p>	<p>Amendments 49–52 were disagreed to (by division).</p> <p>Amendments 11–13 were Scottish Government amendments. They responded to concerns raised by stakeholders during Stage 1 that the requirement in section 42 for a prescriptive claimant to satisfy the Keeper that the owner of a property has not possessed it for the seven years preceding the application by prescriptive claimants for registration of provisional title was too onerous on such claimants. The amendments removed this requirement and were agreed to.</p> <p>(Section 42 still retains the requirement that the prescriptive claimant applying for provisional registration must be able to demonstrate that he or she has possessed the property for one year preceding the application, as well as the requirement relating to notification of the owner of the property.)</p>
<p><b>Statutory duties and offences</b></p>	<p>Section 107 creates statutory duties of care on applicants for</p>	<p>The Committee noted the concerns from some</p>	<p>Amendment 2, in the name of Murdo Fraser MSP, sought to</p>

	<p>registration, granters of deeds to be registered and the solicitors of both, in favour of the Keeper. The duties involve ensuring that the documentation or evidence submitted with the application or otherwise supplied in the course of an application does not induce the Keeper to make the Register inaccurate. The duties extend until the Keeper has made the registration decision.</p> <p>Section 108 provides that it is a criminal offence for any party submitting an application to knowingly or recklessly include materially false or misleading statements or intentionally or recklessly fail to disclose material information in such an application. The offence can apply to solicitors and their clients.</p>	<p>stakeholders that the duties of care imposed by section 107 lasted too long (given the length of time it takes to complete the registration process) and asked the Scottish Government to consider these issues at Stage 2 (Scottish Parliament Economy, Energy and Tourism Committee 2012g, para 154).</p> <p>In its response to the Stage 1 report the Scottish Government (2012, p 17) remained of the view that the duties of care should continue until the registration decision is made.</p> <p>In relation to section 108, the Committee was content for it to remain in the Bill but welcomed the Minister's commitment to look again at the wording to make it clear it covers fraud, not genuine mistakes (Scottish Parliament Economy, Energy and Tourism Committee 2012g, para 154).</p> <p>In its response to the Stage 1 report, the Scottish Government (2012, p 16) indicated that it was considering the wording of the provision and possible amendments at Stage 2.</p> <p>The Committee also</p>	<p>restrict the duration of the duties of care on the granter of a deed and his or her solicitor under section 107 to the date of delivery of the relevant deed to the other party in the transaction. Likewise amendment 2 sought to restrict the duration of the duties on the applicant for registration and his or her solicitor to the date the application for registration is delivered to the Keeper. Amendment 2 was disagreed to (by division).</p> <p>Amendment 31, a Scottish Government amendment, sought to clarify the steps which must be taken to ensure that no criminal offence was committed under section 108. It, along with associated technical Government amendments (amendments 32 and 33), were agreed to without division.</p> <p>Various amendments were brought in the name of Murdo Fraser MSP relating to section 108: Amendment 3 sought to remove section 108 entirely. It was not moved. Amendments 44 and 45 sought to remove the word 'reckless' from section 108. Amendment 44 was disagreed to (by division), amendment 45 was not moved. Amendment 46</p>
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		<p>recommended that commencement of the section 108 powers should be subject to the affirmative procedure (Scottish Parliament Economy, Energy and Tourism Committee 2012g, para 155) but the Scottish Government (2012, p 16) rejected this recommendation in its response to the Stage 1 report.</p> <p>The Committee also recommended that the Scottish Government issue guidance to solicitors on what is expected of them; that section 108 is consulted on and a report of the consultation is made to the Committee; and the statistics should be kept of land registration offences (Scottish Parliament Economy, Energy and Tourism Committee 2012g, paras 155 and 156).</p> <p>The Scottish Government (2012, p 16) indicated that it would provide guidance to solicitors and was looking at the best way to collect statistics, although it thought the Keeper and the <a href="#">Crown Office</a> were the more appropriate bodies to keep such statistics, not the <a href="#">Scottish Legal Complaints Commission</a> (as suggested by the Committee).</p>	<p>sought to provide a defence where a solicitor had followed legal advice and regulations that the Law Society, or another approved regulator, had provided. Amendment 46 was disagreed to (by division). Finally, amendment 47 sought to introduce a yearly review of the operation of section 108. It was disagreed to (by division).</p>
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<p><b>Referral of questions to the Lands Tribunal</b></p>	<p>Section 99 mirrors the current law by providing that any decision of the Keeper may be appealed to the Lands Tribunal for Scotland on a question of fact or point of law.</p>	<p>The Committee supported the need for a dispute resolution process affecting title to registered property short of the ordinary courts and regarded the Lands Tribunal as “uniquely positioned” to undertake this role (Scottish Parliament Economy, Energy and Tourism Committee 2012g, para 179).</p> <p>The Scottish Government (2012, p 20) agreed with the Committee about the benefits of a greater role for the Lands Tribunal.</p>	<p>Amendment 43, in the name of Mike MacKenzie MSP, sought to strengthen the role of the Lands Tribunal by inserting a new section in the Bill to allow referral of questions relating to the accuracy of the Land Register or questions about what is needed to rectify an inaccuracy in the Land Register to the Lands Tribunal.</p> <p>Amendment 43 was agreed to (without division). The amendment attracted the support of the Scottish Government in principle, subject to the possible need to make further technical amendments at Stage 3 (Scottish Parliament Economy, Energy and Tourism Committee 2012h, col 1397).</p>
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## RELATED BRIEFINGS

[SB11-88 Land Registration etc. \(Scotland\) Bill](#)

[SB12-11 Long Leases \(Scotland\) Bill](#)

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