POLICY NOTE

THE REGISTERS OF SCOTLAND (FEES) AMENDMENT ORDER 2021

SSI 2021/XXX

The Registers of Scotland (Fees) Amendment Order 2021 ("the Amendment Order") is made in exercise of the powers conferred on Scottish Ministers by section 110 of the Land Registration etc. (Scotland) Act 2012 ("the 2012 Act"). The instrument is subject to the affirmative procedure.

Purpose of the Instrument

The purpose of this instrument is to amend the Registers of Scotland (Fees) Order 2014 (as amended by the Registers of Scotland (Voluntary Registration, Amendment of Fees, etc.) Order 2015) ("the 2014 Order") which prescribes the fees payable in respect of all statutory products and services provided by the Keeper of the Registers of Scotland ("the Keeper").

The setting of and reviewing of fees complies with the requirements of the Scottish Public Finance Manual by ensuring full cost recovery. The Keeper has been consulted on the proposals in compliance with section 110(3) of the Land Registration etc. (Scotland) Act 2012.

Policy Objectives

Increase in most statutory fees

1. In order to maintain the principles of transparency, value for money and equality for citizens, the Amendment Order retains the overall fee structure for registration and recording fees while raising most statutory fees in order to enable RoS to return to a cost-recovery basis.

2. As before, no differential has been made between fees for a first registration of a property in the Land Register, a dealing with whole of a property already on the Land Register, a transfer of part of a property on the Land Register or a Register of Sasines application. This protects customers from the higher costs to the Keeper associated with registration in the Land Register for the first time.

3. The fees for applications for registration of a deed such as a disposition and applications for registration of a plot through voluntary registration also remain based on the amount of the consideration or value of the property transferred or affected, whichever is the greater.

4. As before, to encourage voluntary registrations to the Land Register, the fees for applications for registration of a plot through voluntary registration will continue to be lower than fees for applications of registration of a deed such as a disposition. Voluntary registrations enable owners whose title remains recorded in the General Register of Sasines to obtain the benefits of land registration, including a state-backed warranty, at a lower cost. This incentive to register helps RoS towards its aim of completing the Land Register.

5. As before, the fee for applications for registration of discharges through the Digital Discharge Service (DDS) will continue to be lower than for applications for registration received through other channels. The lower fee reflects lower registration costs for deeds entering the Land Register through the DDS and encourages its use.

6. As before, whilst the fees have been raised, the existing flat fee approach for heritable securities is retained.

7. Search fees and copy deeds fees have also been raised.

Fees retained at current levels and fees which have been removed

8. Registration fees for the Crofting Register and the Register of Community Interests in Land have not been increased.

9. Rejection and withdrawal fees have been removed because rejections are now fewer in number and the cost to the Keeper in administering these is lower following introduction of the Digital Submission Service.

Authorisation for the Keeper to vary fees by a maximum of £10

10. As provided for in the 2014 Order, the Keeper will retain the authority to vary statutory fees by up to £10 in certain circumstances including unexpected major fluctuations in the level or conduct of business or revenues which would materially damage the Keeper's financial position. The authorisation in the 2014 Order has been limited to a maximum increase or decrease of £10 and subject to certain conditions. Since its introduction in 2014, the power has been used once, in October 2020 to help mitigate the impact of the pandemic on the Keeper's finances.

Consultation

11. On behalf of Scottish Ministers, Registers of Scotland consulted on the proposed fees as provided for in the Amendment Order between 26 October and 24 December 2020. The consultation document was published on the websites of both the Scottish Government and Registers of Scotland with publicity provided on the RoS website and through social media channels. The policies consulted on was:

    i. Increasing most statutory fees to return Registers of Scotland to a cost-recovery basis as required by the Scottish Public Finance Manual.
    ii. Removal of the rejection fee.
    iii. Continuation of the existing practice of charging lower fees for voluntary registration and registration through a digital registration system.
    iv. Retaining the ability to vary fees on a temporary basis by £10.
    v. Not increasing fees for the Crofting Register and the Register of Community Interests in Land.
    vi. Charging for information on a cost recovery basis.
    vii. Reviewing our fees on an annual basis.

12. Respondents were supportive of the proposals.
13. 44 responses to the consultation were received and they have been taken into account when finalising this instrument. Where respondents gave permission for their responses to be made public, these were published on the Scottish Government website at https://consult.gov.scot/registers-of-scotland/registers-of-scotland-fee-review-2020/consultation/published_select_respondent.

Financial Effects

14. A final partial Business and Regulatory Impact Assessment (BRIA) has been completed. Whilst the Amending Order will increase costs to businesses, no evidence has been received to advise that these increases will have an effect on the market.

Impact Assessments

15. In addition to the BRIA, the following Impact Assessments were carried out:-

    i. Equality Impact Assessment - screening
    ii. Children's Rights and Welfare Impact Assessment – screening
    iii. Islands Communities Impact Assessment – partial

16. Additionally, a Fairer Scotland statement was also produced. These are published on the Registers of Scotland website at https://www.ros.gov.uk/about/publications/consultations-and-surveys/2020/fee-review-2020

Registers of Scotland on behalf of the Scottish Government

January 2021