POLICY NOTE

THE REGISTERS OF SCOTLAND (VOLUNTARY REGISTRATION, AMENDMENT OF FEES, ETC.) ORDER 2015

SSI 2015/xxx

Introduction

The Registers of Scotland (Voluntary Registration, Amendment of Fees, etc.) Order 2015 is made in exercise of the powers conferred on Scottish Ministers by sections 27(6), 48(2), 110(1) and (2) and 116(1) of the Land Registration etc. (Scotland) Act 2012 ("the 2012 Act") and all other powers enabling them to do so. The Order is subject to the affirmative procedure, combining powers exercisable in accordance with both sections 116(2) and 16(3) of the 2012 Act by virtue of section 33(3) of the Interpretation and Legislative Reform (Scotland) Act 2010.

Purpose of the Order

The main purpose of this Order is to make provision related to voluntary registration under section 27 of the 2012 Act, including changing the fees charged for such registration. The Order also amends two other fees in relation to the Land Register and introduces a small number of fees for copy documents from other registers maintained by the Keeper of the Registers of Scotland ("the Keeper").

Policy Objectives

A key policy objectives of the 2012 Act was to provide a scheme for completion of the Land Register; following a recommendation to that effect by the Scottish Law Commission. A completed register brings many benefits, from simpler conveyancing for citizens to providing government and others with more complete information about land ownership. As part of Scottish Government's work on land reform, the Scottish Ministers asked the Keeper to use the 2012 Act framework to complete registration of all land within a period of ten years from the designated day on 8th December 2014 when the 2012 Act took effect.

The 2012 Act envisages a three-limbed approach to completion. Firstly, it provides for additional trigger points for registration and gives Ministers the powers to create new triggers by closing the Register of Sasines to specified deeds other than standard securities. Secondly, it provides for the continuation of voluntary registration. Ministers can encourage and require voluntary registration by closing the Register of Sasines to new standard securities and by removing the Keeper's discretion to refuse voluntary registration. Thirdly, it provides for the Keeper to complete registration of a plot of land without the need for any underlying transaction (Keeper induced registration). This Order is concerned with the second limb of the completion strategy only, and the objective is to incentivise the uptake of voluntary registration.

This is to be achieved in two ways. Firstly, by reducing the fee for voluntary registration by 25% across each range of consideration or value used to calculate registration fees. Secondly, by closing the Register of Sasines to new standard securities from 1 April 2016. The effect of that closure is that a person who owns land recorded in the Register of Sasines would first be

required to voluntary register their land in the Land Register, in order that the standard security could also be registered in that register. Where a voluntary registration is required in order to facilitate registration of a new security in this way, the fee is removed altogether for the voluntary registration. The Keeper's discretion to refuse a voluntary registration is also removed at the same time.

Following the consultation detailed below and further stakeholder engagement, the long lead-in time is to allow mortgage lenders and others sufficient time to adjust processes and systems to the change. It is anticipated that these changes will, subject to fluctuations in market conditions, result in an upturn of around 5000 applications per year. Over the period in which the register is to be completed that would equate to around 5% of total remaining unregistered titles.

The Order also makes two other changes to Land Register fees. The first is to provide that a disposition for the sole purpose of evacuating a survivorship destination is charged at £60 per title sheet affected, rather than by value. Survivorship destinations are common where two people purchase a property together and agree that their half share should pass to the other (the survivor) on death. Where circumstances change people may wish to remove this destination from the title. Under the 2012 Act that can only be achieved by a disposition and it is considered that the fee should not be based on value in such cases as it may be prohibitive. The second change is to provide that the £30 fee where an application is rejected or withdrawn does not apply where the sole reason for rejection or withdrawal is a result of a related application being rejected or withdrawn. The £30 fee is still applied to the primary application, e.g. where an error in a disposition leads to it being rejected and a subsequent standard security must also be rejected then the disposition attracts the £30 fee but the standard security does not.

Some minor changes are also made to allow the Keeper to charge for extracts or copies of documents from other registers (such as a copy search sheet from the Register of Sasines).

Before making the Order, the Keeper was consulted about the expenses in relation to administering and improving the systems of registration, providing access to and information from the registers and also the costs associated with extension of the Land Register.

Consultation

On behalf of Scottish Ministers, Registers of Scotland consulted on the proposals related to voluntary registration. A combined Analysis and Report of the consultation can be found on the Registers of Scotland website following this link

Forty seven responses to the consultation were received and have been taken into account when finalising this Order. Where respondents gave permission for their responses to be made public, these were published on the Registers of Scotland website at the following link

Registers of Scotland also undertook further stakeholder engagement after the consultation process with the Law Society of Scotland, the Council of Mortgage Lenders and a number of individual mortgage lenders and solicitors firms. Nine responses were received and were taken into account when finalising this Order.

Impact Assessment

An Equalities Impact Assessments (EQIA) was carried out for the Land Registration etc. (Scotland) Act 2012 (which formed part of the SLC report (No. 222)). No equality issues were identified. An EQIA was not prepared for this instrument given that the fees set by these Rules will apply equally to all persons. It is not considered that there is any differential impact on those affected which raises equality issues.

Financial Effects

A final Business and Regulatory Impact Assessment has been completed and is attached. The Order will lead to a modest increase in costs to business in some cases. However, Registers of Scotland will work with stakeholders to ensure that processes and products are in place to support operation of the mortgage and re-mortgage markets, to make registration applications as straightforward as possible and to minimise the costs to business. Additional costs associated with increased voluntary registration will be partly offset when properties are next transacted upon because the conveyancing will be more straightforward. In addition, both the homeowner and the lender may have the benefit of warranty from the Keeper which would not be available if the standard security was recorded in the Register of Sasines.

Registers of Scotland on behalf of the Scottish Ministers
May 2015