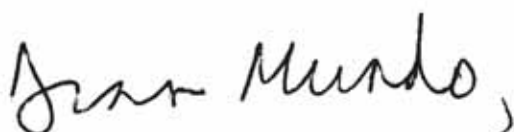


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30 March 2012



I would again like to thank you and the members of the Economy, Energy and Tourism Committee for its thorough and collaborative stage 1 scrutiny of the Land Registration etc. (Scotland) Bill. I would also like to thank you and the members for their contributions to the Stage 1 Debate.

I will respond to the recommendations made in the committee's Stage 1 report in my official response but I would like to take this opportunity to address a number of the issues that were raised in the debate that I was unable to address at that time.

I note that in your opening statement you asked some specific questions on the provision in the Bill for Keeper-induced registration. You asked what land would be subject to Keeper-induced registration. In theory, any land that is unregistered could be registered by the Keeper using this power. In practice, the Keeper could only register a title where the information required to map the title and construct the title sheet is readily available, for example from the Sasine Register. This would prevent the power being used in some circumstances; most notably, titles where the description of the property in archived deeds does not meet the requirements for registration, or where the archived deeds do not contain plans.

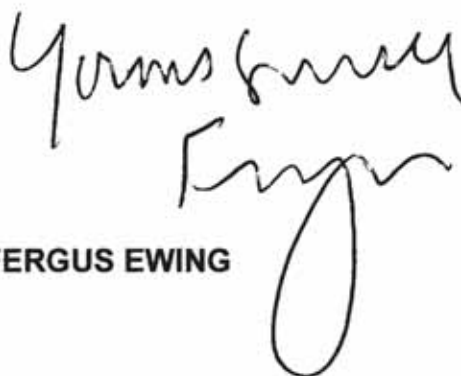
The Keeper could start to use this power as soon as the main provisions in Bill are commenced, assuming that the Bill becomes an Act. The Keeper and I have agreed that the power will not be used to register any large estates during the course of this parliament. As the Keeper indicated in her evidence, she is investigating the use of the power to register titles within research areas and I would commend this. The Keeper has estimated that using the power in this way has the potential to extend land registration coverage to about 80% of titles.

The final question you asked was whether a fee would be payable for Keeper-induced registration. The fee provision in the Bill would allow for a fee to be charged but it does not prescribe that a fee will be charged. I do not envisage that a fee will be charged in most cases but I think it is prudent for the legislation to allow for a fee to be charged at some point in the future. It should be borne in mind that the use of the fee power is subject to affirmative

procedure and the Keeper will consult stakeholders on behalf of Scottish Ministers before any fee order that includes a fee for Keeper-induced registrations is brought before the Scottish Parliament.

I note the comments made in the debate regarding section 108. I would like re-affirm my commitment to re-examine the wording to ensure that genuine error is not caught by the offence. I will ensure that my officials continue to liaise with the Law Society in advance of Stage 2.

I am aware that in the debate there were some comments regarding the reserves held by RoS. I think it would be useful for me to clarify the position. The RoS reserves currently amount to £73 million; however, they are projected to fall to £53 million by 31 March 2015. This is because RoS is still incurring losses as a result of the downturn in the property market. RoS is forecasting a return to a break-even position in 2014-15. As you are aware RoS is a trading fund and must recover its costs from fees charged for its services. RoS has set its ideal reserves position as having £75 million at the start of the next down-turn in the property market. Reserves are maintained to enable RoS to meet a number of pressures. These include market fluctuations and claims upon the Keeper's indemnity as well as funding for investment in registration and information systems.



FERGUS EWING

Land Registration etc. (Scotland) Bill

Economy, Energy and Tourism Committee

Stage 1 Report

Scottish Government Response

25 April 2012

The Scottish Government welcomes the Economy, Energy and Tourism Committee's Stage 1 report on the Land Registration etc. (Scotland) Bill. We have considered the Committee's recommendations and respond to each point as follows;

No.	Recommendation	Response
Completion of the Land Register		
1.	The Committee appreciates that voluntary land registration is a key part of the policy aim of increasing the amount of registered land and towards the eventual completion of the Land Register. Given that the Registers of Scotland currently has reserves of approximately £75 million, we ask the Scottish Government to consider possible ways of incentivising voluntary land registration, such as the introduction of reduced fees in more complex cases. Paragraph 28	<p>The Scottish Government is of the view that the registration fees charged by the Registers of Scotland (RoS) already act as an incentive to landowners when they are considering applying for voluntary registration. Indeed, the Scottish Government notes that fees for voluntary registration are currently well below cost recovery levels. The Scottish Government can confirm that it is considering the following fee arrangements for voluntary registration:</p> <ul style="list-style-type: none"> • <i>ad valorem</i> fees (related to the value of the property) for the majority of cases (as is the case at present); • the ability to agree an overall fee prior to work beginning with large organisations such as the Forestry Commission; and • time and line charging for complex, high-value voluntary registrations.
2.	It is unclear to the Committee, partly as the detail will follow in subordinate legislation, whether there will be a fee for Keeper-induced registration. We therefore ask the Minister to make the Scottish Government's intentions clear during the Stage 1 debate. Paragraph 38	In the Stage 1 debate, the Minister for Energy, Enterprise and Tourism, Fergus Ewing MSP, 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. The Government has not yet determined its policy on any fee rate that could subsequently be proposed, but would not rule that out. The Government and the Keeper would consult fully on any such proposal.

No.	Recommendation	Response
3.	<p>The Committee is unclear how the Keeper can achieve the inclusion of research area titles within the Land Register when it would appear that Keeper-induced registrations have been ruled out in this Parliamentary session and how this approach would be consistent with a priority of completing the Land Register. The Committee would appreciate clarity on this and on how prescriptive Ministers intend to be in making decisions on Keeper-induced registrations. We therefore recommend that the Scottish Government clarify when it intends to begin Keeper-induced registrations and also how they will work in practice. Paragraph 39</p>	<p>The Scottish Government can confirm that the commitment given by the Minister to Parliament was that there will be no Keeper-induced registrations <i>of large complex titles</i> in this session of Parliament. This does not preclude the Keeper from using this power to register titles that fall within research areas. A research area is an area, often a housing development, tenement or group of tenements, where all the properties have a similar route of title. They were set up by the Keeper to facilitate the registration of titles within these areas. As much of the work in setting up a title sheet in these areas has already been undertaken by RoS, properties that fall within these areas lend themselves to Keeper-induced registration. We estimate that using the power to register titles within these areas could increase title coverage by approximately 720,000 titles. If resources permit, the Keeper anticipates that she would start Keeper-induced registrations of research titles shortly after the commencement of the main provisions of the Bill.</p> <p>Keeper-induced registrations will only be used where the Keeper can clearly meet her obligations under Part 1 of the Bill. In most cases, this will mean that where details of the title cannot be derived from the Land Register, Sasine Register and the National Archives, the Keeper could not meet these obligations.</p>

No.	Recommendation	Response
4.	<p>The Committee considers that the powers contained within the Bill for increasing land registration will assist in securing the desired objective of a complete Land Register. The Committee appreciates that these powers will have significant resource implications for the Registers of Scotland and therefore asks the Scottish Government to consider how they can be implemented to ensure the correct balance is struck between incentives, fees and costs to the Keeper. Paragraph 43</p>	<p>As a trading fund, RoS has to ensure that fees that are paid for applications cover the costs of running the registers under the management and control of the Keeper. The Scottish Government is confident that RoS will continue to operate sound financial management to ensure that fees cover costs.</p>
5.	<p>The Committee notes the level of fees is to be dealt with in future subordinate legislation. It believes that the level of fees set is central to the success of completion of the Land Register. The Committee considered 2 issues: the level of fees in general and the fees incurred due to new triggers and powers in the Bill. Paragraph 50</p>	<p>The Scottish Government will take the Committee's view into account when developing and making any future fee orders. Additionally, any fee order will be subject to the affirmative procedure, allowing the Parliament to scrutinise fully the level of fees set.</p>

No.	Recommendation	Response
6.	<p>The Committee believes that the setting of fees will have an impact on land registration and that, if these are set too high, this could act as a disincentive. There is a balance to be struck between the benefit of registration and the cost to the Keeper. The Committee notes the particular proposal to move to “time and line fees” that are not necessarily limited to the value of property and asks the Minister to clarify the Scottish Government’s position during the Stage 1 debate. Paragraph 51</p>	<p>The Minister confirmed in the Stage 1 debate that the Scottish Government is not considering moving to time and line charging for the majority of registrations. However, time and line charging may be considered for complex registrations of high value properties. Time and line charging is also under consideration in relation to services such as pre-registration title investigation.</p> <p>As stated, the Scottish Government are considering introducing time and line charging for complex voluntary registration, where currently the cost of registration is not covered by the fee charged on the <i>ad valorem</i> scale. The Scottish Government can assure the Committee that it will consult widely with stakeholders before the introduction of a fee order which will introduce time and line charging for registration.</p>
7.	<p>The Committee agrees that maintaining one land register is a more efficient system. Given the very slow progress of land registration since the 1979 Act was introduced, the Committee recommends the setting of a target and interim targets, even if aspirational, on the face of the Bill. Paragraph 58</p>	<p>The Scottish Government understands the importance of completing the Land Register but does not favour the suggested approach of setting targets on the face of the Bill.</p> <p>On one issue, one of the main ways of controlling the rate of registration, provided for in the Bill, is the phased closure of the Register of Sasines, first to Standard Securities, and thereafter to all deeds. The Scottish Government intends to consult stakeholders before taking such steps and has, in response to a recommendation of the Subordinate Legislation Committee, indicated an intention to bring forward a Stage 2 amendment including the requirement to consult on the face of the Bill. A copy of the Scottish Government response to the SLC is annexed to this response. The</p>

No.	Recommendation	Response
		<p>Government's view is that the result of this consultation should not be pre-judged by setting targets on the face of the Bill.</p> <p>Aside from the extra triggers for registration in the Bill, there are two ways in which the Government could speed up the pace of registration - by Keeper-induced registration and by promoting voluntary registration.</p> <p>The Minister and the Keeper are already doing a great deal to promote voluntary registration and the Government's view on the use of Keeper-induced registration has been set out at No. 3 above.</p>
Accuracy of the Land Register		
8.	<p>Despite the shortcomings of the Ordnance Map, the Committee accepts that, due to cost implications and the lack of a suitable alternative, it will continue to be used by the Keeper. It is clear that maps are a key part of the information kept and are not being used simply as "reference material". The Committee feel that if there is to be confidence in the content of the Land Register, it is essential that it contain the most accurate and reliable information possible and therefore it asks that the Keeper take all necessary steps to ensure that the information is both accurate and</p>	<p>The cadastral map requires to be based on a single national map to ensure that the rights of neighbouring properties across Scotland are taken into account. The Ordnance Survey map is the only large-scale map that provides coverage for the whole of Scotland.</p> <p>The Law Society of Scotland and the Royal Institution of Chartered Surveyors have both said that in their view the OS map is fit for purpose. The OS map has been the base map since the introduction of the Land Register in 1981. For the vast majority of titles, there has not proved to be any problem with basing titles on the OS map</p> <p>The Bill makes the cadastral Map formally part of the Land Register for the first time. The Bill also requires the Keeper to ensure the Land Register is</p>

No.	Recommendation	Response
	reliable. Although there are continuing issues with the scale of the maps, the Committee is of the view that there are steps that the Keeper should take, such as taking a more involved approach to mapping mountain and moorland areas, making more use of supplementary plans as well as the facility to map rural areas in more detail, to increase confidence in the mapping information in the Register. Paragraph 78	accurate.
9.	The Committee recommends that supplementary plans, where they provide more accurate mapping information, should be used as a matter of course. This should include maps from the Register of Sasines when property switches from it to the Land Register. Plans on Sasine deeds which are to a larger scale than the OS map should be routinely preserved and appear as supplementary plans on the title sheet. Paragraph 79	Supplementary plans are often used already, where appropriate, and are always archived. The Keeper recognises the value of supplementary plans and will continue to use them and, in consultation with stakeholders, will consider where more extensive use of supplementary plans can be made.
10.	The Committee is concerned that the mapping of rural areas to a larger scale is continuing to cause difficulties and disputes and therefore recommends that the Keeper use supplementary plans and map rural areas to a	See the response to No. 9. The Ordnance Survey has a programme to remove much of the generalisation from 1:10,000 mapping and to upgrade pockets of rural-type landscapes in 1:10,000 areas to rural specifications. Supplementary plans are often used and are always archived. Under the Bill, the Keeper's archive will officially become part of the Land Register for the

No.	Recommendation	Response
	greater degree of detail as much as possible. Paragraph 80	first time.
11.	The Committee also recommends that the Keeper, as a matter of course, include the dimensions of the map on the title deed where there is a marked difference between the horizontal and the true slope distance. Paragraph 81	Ordnance Survey benchmarks indicating height above sea level are currently shown on title plans. Plans officers take these into consideration when making the title plan. The Government considers this is an appropriate and proportionate method that enables these issues to be taken into account.
12.	The Keeper should also take all necessary steps to include the use of the latest technology to ensure accuracy of the Land Register. Paragraph 82.	<p>The Keeper already considers the use of new technologies as a means to improving quality.</p> <p>For example, the Registers of Scotland can and do use information based on geo-spatial data (as well as a variety of other sources of information) in the course of registration of titles to land. However, the use of new technology must be balanced by considerations of efficiency and effectiveness. To switch to using information exclusively based on geo-spatial data would mean many titles already in the Land Register would overlap with new titles, creating competition between titles due to the different mapping criteria used in each case.</p>
13.	Property on the Land Register is to continue to be identified by means of a plan. As there is no longer a requirement for that plan to be based	The Scottish Government notes the Committee's recommendation in this area and will keep the matter under active consideration. The Bill does not require the Ordnance Survey Map to be the base map precisely to allow the Keeper

No.	Recommendation	Response
	on the Ordnance Map, the Committee recommends that the Keeper should be proactive in continuing to seek better mapping methods and alternatives. Paragraph 83.	flexibility to utilise better alternatives where they become available.
14.	The working group on mapping issues is asked to take the Committee's mapping recommendations into consideration in its deliberations on how to improve the mapping information within the Land Register. The Committee also asks the Scottish Government to provide feedback on the progress of the working group as soon as possible. Paragraph 84	<p>The Scottish Government thanks the Committee for their interest in this matter and their request for feedback will be passed on to the working group. The working group on mapping issues consists of RICS, Ordnance Survey, Law Society and RoS staff, who are looking into these issues and recommendations.</p> <p>The Committee has a copy of the Keeper's report of December 2011, which addresses these matters in greater detail. An example of the work of the mapping group is, in advance of the commencement of the Bill, to develop criteria for plans that are submitted with applications for First Registration. The Keeper will keep the Committee informed of developments.</p>
Electronic conveyancing and documents		
15.	The Committee heard evidence that making the use of ARTL compulsory would exclude lay people from undertaking their own conveyancing, and on this ground rejected this idea. Paragraph 100	The Scottish Government has no intention of making ARTL compulsory.

No.	Recommendation	Response
16.	The Committee acknowledges the widespread support for the proposal for e-registration and welcomes the opportunity for Registers of Scotland to make registration easier and more accessible. The Committee agrees, however, that the ARTL system in its current form is inadequate for the task and welcomes the Minister's commitment to discuss the ARTL upgrade with the Keeper. Paragraph 102	The Minister will discuss the ARTL system with the Keeper.
17.	The Committee is aware that the uptake of the ARTL system has been disappointingly low and believes that to ensure value for money, and the success of any future system, user "buy-in" will be essential. To harness the current enthusiasm for e-registration, the Committee recommends that before the introduction of an upgraded or new system, the Keeper should from the very start of the design process both consult and test widely. Paragraph 103	RoS will ensure an appropriate level of consultation and testing with stakeholders and end-users is undertaken in the development of new or upgraded electronic registration systems.
18.	The Committee is concerned about the associated risks and costs of the proposed upgraded IT system to support e-registration	The Committee's concerns are noted and the Scottish Government and the Keeper give the reassurances sought.

No.	Recommendation	Response
	and would seek reassurances from the Keeper that any new IT contract would contain the necessary obligations to protect the public purse from future losses. The Committee agrees with the Auditor General's view that ARTL be kept under review for value purposes and awaits the outcome of the Public Audit Committee's inquiry with interest. Paragraph 104	
19.	The Committee supports the move towards electronic documents as long as the necessary safeguards are in place. Paragraph 106	The electronic safeguards currently in place with ARTL system are among the strongest in the world. The Government will ensure the safeguards in any successor system and safeguards relating to electronic documents more widely are equally robust.
Prescriptive Claimants		
20.	Given the strength of the arguments heard against its inclusion, the Committee welcomes the Minister's commitment to removing section 42(3)(a) from the Bill. Paragraph 118	The Scottish Government thanks the Committee for its evidence gathering in this area. On reflection, the seven-year period would have been overly onerous on those seeking to take prescriptive title to land.
21.	The Committee is of the view that, if a <i>non-domino</i> dispositions are to continue to be allowed, then there is a clear need for them to	The Government notes that this is why the power in 42(8) of the Bill has been provided for. The Government intends to keep the period under review and to consider the use of that power if experience shows the one-year period to be

No.	Recommendation	Response
	<p>be put on a statutory basis. It is satisfied that 1 year is a sufficient length of time to be in possession of land prior to registration. However, it would recommend that the Registers of Scotland keep this timescale under review and if in practice it was not long enough, we would ask the Scottish Government to consider extending the period by exercising its powers under section 42(8) of the Bill.</p> <p>Paragraph 120</p>	<p>unsuitable.</p>
22.	<p>The Committee agrees that it is not in the public interest for areas of land to lie unused. Land should not be given to the first claimant through prescriptive acquisition as there may be others who have a legitimate interest. Therefore we recommend that the Scottish Government consider the inclusion of a more public process of advertising land when there is an application for prescriptive acquisition. We consider that where multiple claims to land are regarded as having equal merit the general principle should always be that land should be put to the use which creates the greatest benefit to the community. We recommend that the Scottish Government consult on the options for putting this principle into practice. Paragraph 132</p>	<p>The Scottish Government has carefully considered the view of the Committee here and all of the evidence submitted on this topic. However, we remain of the view that the approach in the Bill is correct.</p> <p><i>A non domino</i> dispositions and the concept of prescription regularising irregular titles has long been a part of Scots property law. The Bill introduces a statutory scheme outlining when the Keeper should accept an <i>a non domino</i> disposition for registration. It does not seek to restate or re-examine the policy decisions on which successive enactments on the law of prescription have been based.</p> <p>Prescriptive acquisition can be used in two categories of case:</p> <ul style="list-style-type: none"> • it can be used to regularise title where, for example, a property has been owned by a family for generations but the formal legal links in title do not exist or are missing; and

No.	Recommendation	Response
		<ul style="list-style-type: none"> • it can be used to take title to an area of land that has been abandoned. <p>A system of advertising land in the first category of cases is not, in the Government's view, in the public interest. The family should be able to complete title, following the scheme in the Bill, without the threat of a third party bidding for their home.</p> <p>Neither is the Government convinced that requiring advertising would be beneficial in the second category of cases. If such a scheme was to be considered it would then require two separate schemes for the different categories of case. This would not be simple to devise, use or administer. There would be difficult cases, for example a large area of garden ground which one party claimed fell into the first category of case and another party claimed fell into the second category. Inevitably these could end up in lengthy and expensive court action while the land in question remained out of use.</p> <p>For these reasons the Scottish Government thinks the approach taken in the Bill, and designed by the Scottish Law Commission, including notification where appropriate, is correct.</p>
Common Land		
23.	The Committee agrees with the objective sought by Mr Wightman, namely the protection of common land. However, the Committee also notes the alternative view that commonlands are a	The Scottish Government believes that all forms of land ownership require protection. The Land Register does this by offering a State-backed guarantee of title. Title to land owned in common, including commonlands, can be registered currently and will continue to be registrable under the Bill. As such

No.	Recommendation	Response
	<p>form of private land, and that an alternative means of securing Mr Wightman's objective may be more appropriate. The Committee calls on the Scottish Government to respond to the basic principle that there is a need to achieve legal protection for common land, and examine possible options for achieving this. Paragraph 136</p>	<p>there is already legal protection in place for common land.</p> <p>The law of prescription is based on the principle that those who, in effect, abandon their land to others cannot reasonably expect that the title to the land in which they show no interest should be protected forever. Accordingly, as well as the role of the Land Register, there is a role to be played by common owners in protecting their own title to land by continuing to occupy or use the land in question as appropriate.</p>
24.	<p>In particular, the Committee asks the Scottish Government to express a view on:</p> <p>a) whether there is merit in the Bill being taken as an opportunity to repeal the Division of Commonties Act 1695;</p> <p>b) whether a duty should be placed on local authorities to identify and register a title to all commonties in the area for which they are responsible; and</p> <p>c) how each commonty could be held for a public use which is consistent with its nature Paragraph 137</p>	<p>In response to these particular questions:</p> <p>a) The Scottish Government does not think there is merit in doing so. The Division of Commonties Act allows an area of commonty to be divided amongst the owners either (1) where holding the land as Commonty no longer suits the parties or (2) to allow enclosure and cultivation of the land. In modern common ownership, a similar end may be achieved by an action of division or sale. It is not desirable to remove this right from the owners of Commonty.</p> <p>b) A local authority cannot register a title to an area of Commonty in the Land Register. The Land Register shows ownership rights. If property is owned exclusively by a local authority then it cannot, by definition, be a Commonty.</p> <p>Local authorities can register a title to land which they own and including land held by them as common good land. This is not the same as land held as Commonty.</p>

No.	Recommendation	Response
		c) Commonty is private land owned by private individuals, despite the fact it is land owned in common. The Government considers that owners of any remaining areas of Commonty have the same right to the benefit of that land as any other owner of property. Similarly, they will be subject to the same restrictions on how their land may be used as any other owner of land.
Offence relating to application for registration		
25.	The Committee notes the firm view given by both the Minister and the Solicitor General for Scotland that this new offence is required to combat fraud. However, the Committee also notes the strong objections from the legal fraternity to the inclusion of this offence on the grounds that it is disproportionate, it is unclear what steps solicitors would need to take to avoid committing this offence and that it is unnecessary as the offence is already covered by existing legislation. Paragraph 153	The Government notes the Committee's comments on the evidence but remains firmly of the view that fraud involving the Land Register is extremely serious and the Government is obliged to do all it can to disrupt such fraud. The Solicitor General and the Registers of Scotland have agreed to work with the legal profession to make it clear the scope of the offence and what conduct the offence is likely to capture. Officials from the Crown Office and Prosecutor Fiscal Service and Scottish Government have met with representatives from the Law Society to discuss the scope of the offence.
26.	Whilst the Committee is content that section 108 remains in the Bill, the Committee welcomes the Minister's commitment to look again at how it is worded and the Committee recommends that the Scottish Government amends the section to	The Government welcomes the Committee's support for section 108 remaining in the Bill in principle. Officials from the Scottish Government have met again with representatives from the Law Society to discuss further the wording of the offence provision.

No.	Recommendation	Response
	make it clear that it relates to fraud and does not cover genuine mistakes. Paragraph 154	The Scottish Government is currently considering whether an amendment would be appropriate, and will bring forward amendments at stage 2 if so.
27.	Furthermore, the Committee recommends that the Scottish Government makes the commencement of the powers in section 108 subject to the affirmative procedure in order to allow Parliament the means for further scrutiny and that, in any case, he provides guidance to solicitors on what is expected of them, consults on the section 108 provisions and reports back to the Committee after the consultation has been completed. Paragraph 155	<p>The Scottish Government is happy to undertake to develop and provide guidance relating to the offence and applications for registration, together with the Keeper, the Law Society and Crown Office as appropriate, and to do so prior to the offence coming into force. The Government will keep the Committee up to date on the development of that guidance.</p> <p>However, the Government does not consider it appropriate to make the commencement of section 108 subject to the affirmative procedure. To do so is unnecessary in light of these commitments and would be highly unusual. The preference is for insofar as possible bringing the Bill into force as a package.</p>
28.	Should the Parliament decide that the new offence is to remain in the Bill, the Committee recommends that the Scottish Legal Complaints Commission be asked to provide statistics on land registration offences in its annual report. Paragraph 156	The Government is looking into the best way to keep statistics on the offence. However, it is considered that the appropriate body to keep track of any prosecutions is the Keeper, together with Crown Office.

No.	Recommendation	Response
Duty to take reasonable care		
29.	<p>Section 107 of the Bill provides the Keeper with the power to claim compensation if the Register was to contain inaccurate information as a result of the content of an application being wrong. Legal practitioners agreed with this in principle, but raised concerns about the 'duty of care' lasting until completion of the registration process, which can sometimes be years. Fiona Letham, Dundas & Wilson suggested that the time period be reduced. She said—</p> <p>"I understand that the proposal now is that the duty of care should last until completion of the registration process. Given the length of time that some applications can take to be processed, that could be many years after the solicitor has dealt with the transaction, which would put quite an onerous duty on a solicitor."</p> <p>Ms Letham recommends that the time period be reduced to that outlined in the Commission's original proposal—</p> <p>"... the duty of care to end either at the time of</p>	<p>It is in the public interest for the Land Register to be accurate and for solicitors and others to be required to provide accurate information throughout the registration process and not just up to the point of submission of an application.</p> <p>The Scottish Law Commission's report states that one of the Commissioners favoured the continuation of the duty to the date the registration decision is made. The Bill takes this approach.</p> <p>It is important to note from the applicant's point of view that the duty is one to take reasonable care. If an application is submitted and an issue with the title becomes apparent to the applicant or submitting solicitor, we would expect them to inform the Keeper. We think that is reasonable and the correct approach to take to maintain the accuracy of the Land Register.</p> <p>While it has been known in the past for applications for registration to take a number of years, this is now highly unusual. In addition, the Bill provides that Land Register Rules may prescribe the period within which the Keeper must make registration decisions. Accordingly, solicitors and applicants will know the maximum time period for the registration decision and, as a result, the maximum length of the duty.</p>

No.	Recommendation	Response
	<p>settlement of the transaction on the part of the grantor of the deed and their solicitor, or when the registration application is submitted, if it is the purchaser and their solicitor who are making the application."</p> <p>159. The Committee notes the issues raised and asks the Scottish Government to consider these during Stage 2 of the Bill. Paragraph 159</p>	
Errors in the Land Register		
30.	<p>The Committee appreciates that there will be errors in any system of land registration. However, given the importance of accuracy in the Land Register and the potential impact on consumers, it feels that every measure should be taken to ensure that errors are kept to a minimum. It agrees that both practitioners and the Registers of Scotland have a responsibility to ensure registration and land certificate information is accurate and therefore recommends that the Keeper put in place appropriate measures to improve quality control.</p> <p>Paragraph 170</p>	<p>The Scottish Government and the Keeper note the Committees recommendation and are committed to reducing errors wherever possible. Some of the ongoing work in this area is detailed at No. 32 below.</p>

No.	Recommendation	Response
31.	<p>The Committee recommends that to reduce basic errors at first registration related to the description of properties, shared properties and the existence of servitude rights, the Keeper should review current procedures and consider whether introducing a policy of checking adjoining properties for all registrations would be appropriate. Paragraph 171</p>	<p>The Scottish Government notes the Committee's concerns and assures the Committee that when there is a discrepancy with the legal title and an adjoining boundary, it is currently the Keeper's policy to check the archives for the plan of the affected adjoining property or properties. Sometimes this plan has to be ordered from the National Archives, which can take one to two days. Checking adjoining properties for all registrations, where there does not appear to be any problem, would make the process much longer and more expensive. We are not of the view that checking all adjoining properties for all registrations would be an efficient way of working.</p>
32.	<p>The Committee believes that it is essential that the public has confidence in the accuracy of land certificates and would therefore caution not to increase the pace of completion of the Land Register at the expense of its quality. Paragraph 172</p>	<p>The Scottish Government notes the Committee's concerns and can assure the Committee that these are being addressed. In March 2010, RoS adopted a new policy to manage quality, based on internationally-recognised best practice standards.</p> <p>In the latter half of last year (2011), RoS started a process of sampling "dealing with whole" applications (that is properties already on the Land Register). This sampling focuses on the B and C section of Land Certificates. The aim is to ensure Land Certificates are correct when they are issued. More fundamentally, it is designed to pick up trends and establish where polices and practices have to be developed to ensure inaccuracies do not enter the Register.</p> <p>It is hoped that by the time the new triggers for First Registrations come into effect, these new polices and practices will be well-embedded and the accuracy and quality issues that practitioners may feel are currently an issue</p>

No.	Recommendation	Response
		will have been addressed.
Rectification and dispute resolution		
33.	The Committee agrees that there is a need for a resolution process short of the courts so that disputes affecting title to registered land can be dealt with more quickly and possibly more cheaply. The Committee believes that the Lands Tribunal for Scotland is uniquely positioned to undertake this role and welcomes the Minister's commitment to consider how it can be used to adjudicate over such disputes. Paragraph 179	<p>The Scottish Government agrees with the Committee about the unique position of the Lands Tribunal for Scotland. The Government is considering the possibility of amendments on this point, in relation to the Tribunal's powers in this area.</p> <p>This has the potential to offer a quicker mechanism to resolve property disputes, especially those brought to light as a consequence of Land Registration. That would depend though on the number of cases taken to the Tribunal, and the process would not necessarily be cheaper.</p>
Withdrawal and amendments etc. of application		
34.	The Committee believes that it is essential that the information contained within the Land Register is accurate. In light of this, it feels that it is reasonable for the Keeper to reject applications only where there is a serious error	The Committee's view is noted and the Scottish Government confirms the intention is for the Keeper to continue her current approach. Where significant work has been undertaken to register a complex title, it is in no-one's interests for that to be lost (by virtue of a rejection) as a consequence of a minor error.

No.	Recommendation	Response
	or omission and to continue to apply an informal approach to resolve minor issues. Paragraph 183	
Advance notices		
35.	<p>The Committee welcomes the introduction of the advance notice provisions. However, the Committee notes that whilst the explanatory notes provide examples of how these will work in practice, there still seems to be some confusion and therefore we recommend that the Scottish Government provides further guidance to assist understanding. It would also be helpful if the Minister was able to provide the clarity required by some of those who gave evidence on whether one or two advance notices would be required. Paragraph 195</p>	<p>The Scottish Government is happy to commit to publishing further guidance on advance notices before they come into use.</p> <p>The Committee ask for clarity on many advance notices will be required. In a purchase and standard security transaction, if both the purchaser and the lender wish to have the full protective effect of an advance notice, then two will be required. One for the disposition and one for the standard security.</p> <p>This is because the scheme, devised by the Scottish Law Commission, is based on one advance notice for one deed.</p> <p>The scheme has been devised by the SLC to work specifically with Scots property law. In the view of the Scottish Government, it is not appropriate to amend the fundamental basis of the scheme that one notice protects one deed. This risks complicating and undermining the scheme.</p> <p>The current letters of obligation system does not normally protect a standard security. As advance notices are optional it will be for lenders to take a view whether they consider registering a separate advance notice would be in their interests.</p>

No.	Recommendation	Response
36.	<p>The Committee is aware that the Scottish Law Commission considered using the term “working days” and decided that “days” was a simpler concept. The Committee agrees that it would be helpful to avoid inconsistencies with systems used elsewhere in the UK and asks the Scottish Government to review the period of 35 days. Paragraph 196</p>	<p>The Scottish Government understand the concern that the differing periods may cause difficulty for individuals or companies who deal with property in both Scotland and England. However, there are already significant differences in this area, not least separate systems of property law and registration of title.</p> <p>The Scottish Government consider the time period of 35 days to be appropriate. Simplicity and certainty are key in the advance notice system and the 35-day period is simple and certain. The issue of determining what is or is not a business day would add unnecessary complexity to the system. Moreover, there are different public holidays in Scotland and England, which would make any attempt to align the systems around working days extremely complicated.</p>
Tenements and other flatted buildings		
37.	<p>The Committee agrees that a standard description of tenement properties would be a simple way to help avoid future conveyancing disputes. It recommends that the Scottish Government provides description guidance for flats and tenements and also considers the inclusion of plans when registering these types of properties. Paragraph 201</p>	<p>Whilst the Scottish Government recognises the desirability of having a plan for tenement properties, they should not be required. Many old Sasine plans do not have a floor plan; some do not have a plan at all. To require a plan would mean the applicant would need to provide one at their expense. Floor plans can (and are) registered now but are not compulsory. This permissive approach will continue under the Bill.</p> <p>The conventional way for describing a flat within a tenement in a title sheet is to provide a verbal description of the location of the flat and the rights. A</p>

No.	Recommendation	Response
		<p>practice was developed which meant that the overall footprint of the tenement was mapped instead of the individual flats. This practice is known as the “steading method” of mapping.</p> <p>The Bill makes provision for the steading method to continue. In their report, the Scottish Law Commission noted that the steading method was a sensible approach to the realities of urban property in Scotland. In breakaway deeds recorded in the Register of Sasine, it is rare for the deeds for individual flats to include floor plans showing the location of flats within the tenement building and the rights pertaining thereto.</p> <p>For the future, the Bill includes a provision that allows the cadastral map to show the boundaries of cadastral units on a vertical plane. This will allow in the future for the Land Register to incorporate 3D mapping, which would show the true location of tenement flats.</p>
Shared plots		
38.	<p>The Committee notes the views both for and against the inclusion of this provision and recommends that the Minister respond at the Stage 1 debate to the concerns raised.</p> <p>Paragraph 209</p>	<p>Shared plot titles are an innovation of the Bill and are a result of the cadastral concept of any area of ground being represented by one, and only one, cadastral unit. At present, the Keeper includes common areas in the titles of all sharing title sheets. Whilst this works for the Land Register as it is, it is not compatible with the cadastral concept.</p> <p>Shared plot title sheets allow the Keeper to reflect the ownership with reference to title numbers of the sharing plots without having instead to create</p>

No.	Recommendation	Response
		<p>a full title sheet listing all the co-proprietors and any securities they may have over their property.</p> <p>One advantage of having a separate shared plot title sheet for land owned by more than one person is that there will be less scope for mapping errors, as the area will only be mapped and referenced once, rather than with the current situation where the same area is reflected on many title sheets, with margins of error with each Title's version of the common area.</p> <p>Another advantage is that in searching one registered property (a sharing plot) the reference to any shared plot title will be apparent. The shared plot will give details of all the registered titles that share in the ownership of the plot, making it much easier for people to determine who their co-owners are, for example, in a large new-build estate. Miller & Bryce gave evidence to the committee that this would be an improvement, aiding searches for their customers.</p> <p>With regard to Brodies' concerns over the revocation of shared plot titles: under the Bill, the creation of shared plot titles is at the Keeper's discretion. Revocation of a shared plot whilst sharing plots exist would require the Keeper to show the shared area in all affected titles, as is currently the case.</p> <p>If the shares in the shared plot all come to be owned by one owner then it ceases to be a shared plot and so the Keeper would convert the title to an ordinary title. All references to the shared plot in former sharing plot titles would be removed. The Bill allows for this. When shared plots have been abandoned they will still be shared plots until ownership is given up to one owner. Abandoned shared plots still have owners and that ownership will be reflected in the Land Register. Whilst shares exist in a shared plot, they can</p>

No.	Recommendation	Response
		<p>continue to be reflected that way in the register.</p> <p>Ultimately, the legal status of owners in common is unaffected by how the Keeper chooses to represent those ownership rights in the register.</p>
Rights of person acquiring etc. in good faith		
39.	<p>The Committee feels that in the majority of circumstances, 1 year's possession is sufficient. However, we feel that it may not be long enough in all circumstances, especially where large amounts of land or pieces of land spread out across the country are owned, for example by utility companies, and would therefore ask the Scottish Government to consider increasing the timescale. Paragraph 213</p>	<p>The Government has reflected on this matter but remains of the view that the one-year period strikes the right balance between protection of rights and facility of transfer. It should be borne in mind that the one-year period is not the only criterion to be fulfilled in order for the realignment provisions in Part 9 of the Bill to have effect. There must also be a transfer from a registered disponer without valid title to a third party in good faith and at no time can the Keeper become aware of the invalidity in title.</p> <p>The scheme in the Bill is a significant improvement from the 1979 Act, which deprived true owners instantly of their ownership. It is also important to note that the Bill provides for compensation to those negatively affected by the provisions in Part 9 of the Bill.</p>
Beneficial interests and ownership		
40.	<p>The Committee notes the comments made by some of those who gave evidence that there</p>	<p>The Government has reflected on the Committee's comments. While recognising the concerns in this area, it considers that any proposal</p>

No.	Recommendation	Response
	needs to be greater transparency of ownership and the proposal for companies to be registered in the EU before they can register land in Scotland. We have some sympathy with the principle that it should be possible in most circumstances to find out who has ownership of a particular piece of land. Paragraph 217	<p>surrounding transparency of ownership of land by companies would be difficult to develop, as there is no clear concept of beneficial ownership in Scots law. There are also issues of company law that would be reserved to the UK Parliament under the terms of the Scotland Act.</p> <p>The Bill provides for completion of the Land Register. A completed Land Register is the best way to ensure that it is possible to find out who owns particular pieces of land.</p>
41.	However, we are not convinced that companies should need to be registered in the EU to register land in Scotland. Paragraph 218	The Government shares the Committee's view.
42.	We consider 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 that the Government should explain prior to Stage 2 what additional provisions can be included, whether in the Bill or otherwise, to achieve this objective. Paragraph 219	The issues the Committee raises are important ones. However, the Government's view is that the function of land registration is to facilitate the creation of real rights in property and provide information on land ownership and encumbrances etc. The Bill makes no provision in relation to the tax matters raised, which would appear to relate to reserved matters. Nevertheless, officials from Scottish Government will be contacting officials from HMRC to determine if and how these issues may best be addressed.

No.	Recommendation	Response
Accessibility of the Land Register		
43.	<p>The Committee believes that a policy intention of the Bill should be to make access to information on land ownership easier for members of the public. It recommends that the Scottish Government considers how the information held by the Registers of Scotland can be made more publicly accessible, including the use of an on-line facility. The Committee suggests that if there is to be a fee for public access that it is kept as low as possible.</p> <p>Paragraph 223</p>	<p>Currently, members of the public can access all information held by Registers of Scotland through its customer service teams. This can be done either in person by visiting one of the Customer Service Centres in Edinburgh or Glasgow, or by phone, fax or email. Searches can be requested via ros.gov.uk, which also provides a free House Price search facility. All these services are provided on a cost recovery basis as outlined in the fee order. Business users, such as solicitors, private searchers and local authorities, have access to RoS' information through Registers Direct, which is an online business-to-business facility. Fees for RoS' information services are set by Scottish Ministers via a Fee Order.</p> <p>While the Sasines Register exists, interpreting information contained within it requires a degree of familiarity that is difficult to deliver digitally to the consumer. This is much easier for land and property information contained in the Land Register, as there is less interpretation required. An aim of the Bill is to speed up the extension of the Land Register, which will ultimately lead to the closure of the Sasines Register.</p> <p>As the Keeper explained in Stage 1 evidence, RoS's intention is to provide access to information to as wide an audience as possible, including members of the public. RoS is in the process of reviewing its digital strategy with a view to providing cost effective products and services for both business users and consumers through the most appropriate delivery channel. A key objective of that strategy will be making low-cost access to information on land</p>

No.	Recommendation	Response
		ownerships digitally available when appropriate to members of the public.
Miscellaneous Issues		
44.	Section 1(5) outlines the steps the Keeper should take to protect the Register. The Committee was asked if the list could be extended to include "(d) inaccuracy, and (e) fraud." Paragraph 225	<p>The Bill deals with the Keeper's role in relation to dealing with inaccuracy in Parts 5 and 8. The Scottish Government takes the accuracy of the registers extremely seriously. Section 78 specifically requires the Keeper to rectify a manifest inaccuracy where it is beyond doubt what is required to correct the inaccuracy. The Government's view is there is no benefit in confusing the clear statutory tests by changing section 1(5) in relation to inaccuracy as suggested.</p> <p>Fraud affects the Land Register by registration of a fraudulent deed. Section 1(5) already requires the Keeper to protect the register from interference and damage. These include interference and damage by fraud.</p>
45.	Section 39 provides the Keeper with the discretion to decide who to notify when an application is accepted, rejected or withdrawn. In its written submission the Law Society of Scotland recommends that— “... notice of rejection or withdrawal of an application should be given to any other applicants affected by such a rejection or withdrawal and that this should not be at the	<p>Notification by the Keeper is desirable in most instances, within reasonable limits. To require notification in all cases without exception would be administratively burdensome and very possibly unworkable.</p> <p>Where the effect of withdrawal or rejection of one application is to cause other applications to be cancelled, section 39(1)(a) and (b) will apply and the Keeper will notify that applicant of the other applications and notify the granter of the relevant deed (provided the Keeper considers it reasonably practicable to do so). Currently, the Keeper will notify the applicant in the majority of such</p>

No.	Recommendation	Response
	Keeper's discretion." Paragraph 226	<p>cases and it is not anticipated the Bill will alter this.</p> <p>An example of where notification is not appropriate is where the effect of withdrawal or rejection of one application on another is short of rejection (for example, where two standard securities are registered and rejection of the first merely means the second has prior ranking). In these cases notification would serve no real purpose. In any event, the rejection of the first security will be clear from the application and archive records.</p>
46.	In written evidence to the Committee, the Crown Estate requested a number of additions to the Bill which the Committee asks the Scottish Government to consider. Paragraph 227.	<p>The Scottish Government has considered the points raised by the Crown Estate and responds as follows.</p> <p>The Crown Estate sought the addition of a presumption to section 42(3)(a) that, in relation to the 7-year abandonment period for prescriptive claimants, the Crown continued to possess foreshore, seabed or salmon fishings unless it can be expressly shown another party has been in active possession. As the Government is bringing forward a Stage 2 amendment to remove the seven-year period, there is, in the Governments view, no need for the suggested presumption that is related to the period.</p> <p>The Crown estate also requested there is added to section 42(4)(c) the following: "declaring there shall be a presumption that the proprietor of any part of the territorial seabed is the Crown unless the application contains within it details of a Crown grant of the area to which the application relates". In the view of the Scottish Government, this is unnecessary. The provisions, as drafted, ensure the Crown will always be notified of an application over the seabed unless another proprietor (or person with right to complete title) can</p>

No.	Recommendation	Response
		<p>be identified. Additionally, the purpose of these provisions is to regulate applications to the Land Register, not to make presumptions about property law.</p> <p>The Crown Estate ask that "where notice is to be given to the Crown, it shall be given to the Crown Estate Commissioners in respect of any land forming part of the regalia and it should be given to the Queen's and Lord's Treasurer's Remembrancer in respect of land falling within either bona vacantia or ultimus heares". The Scottish Government consider reference to the Crown to be sufficient but, in light of the view expressed, are considering whether the provisions could be clarified.</p> <p>The Crown Estate ask for clarification that "nothing in this Act has the effect of extending or restricting any statutory rights to buy under the Land Reform (Scotland) Act 2003 as applicable immediately before the date of this Act coming into force". The Scottish Government consider this to be clear without express provision in the Bill. Indeed to do so may result in an adverse inference being drawn in relation to similar enactments not expressly provided for.</p> <p>The Crown Estate suggest the following amendment "section 1(4) of the Prescription and Limitation (Scotland) Act 1973 shall be amended by inserting before the word "foreshore" where it appears in line 1 the words "seabed or". The Scottish Government are continuing to consider whether this amendment is possible or desirable.</p>

No.	Recommendation	Response
47.	<p>The Law Society of Scotland requests in its written submission the inclusion of the following 2 provisions within the Miscellaneous and General Section of the Bill to address particular problems which have arisen—</p> <p>"Firstly, there should be clarification that s.160 of the <i>Bankruptcy & Diligence etc (Scotland) Act 2007</i> does not alter the common law position and accordingly that Inhibitions registered against a seller after missives are concluded remain ineffective as the seller is already contractually bound to dispose of the property. This would remove the uncertainty caused by the Keeper's current policy of excluding indemnity in these circumstances.</p> <p>Secondly there should be clarification that s.26 of the <i>Conveyancing and Feudal Reform (Scotland) Act 1970</i> will operate to remove from the Title Sheet any remaining prior ranking or <i>pari passu</i> securities following a sale on repossession, even if the calling up procedure did not comply with the interpretation of the statutory requirements in the Supreme Court decision of <i>RBS v Wilson</i> in November 2010."</p> <p>Paragraph 228</p>	<p>Officials from the Scottish Government recently met with the Law Society regarding these two issues.</p> <p>The Government notes the position of the Law Society on these issues but also notes that these issues are primarily about the laws of inhibition and the law of standard securities respectively rather than the law of land registration.</p> <p>One of the purposes of the Bill is to realign registration law with property law by, for example, removing the complex structure of bijuralism created by the Land Registration (Scotland) Act 1979. Any amendment that seeks to place a duty on the Keeper to complete a title sheet in a way that may be contrary to the underlying legal position would risk reintroducing the confusing principles of bijuralism that the Bill seeks to eliminate.</p> <p>In relation to the first issue, the Government's view is that the scheme of advance notices provided for in the Bill goes some way towards solving the problem in a practical sense. An advance notice will protect a named deed from, amongst other things, competing entries in the ROI. An advance notice granted on conclusion of missives (or a day or two before) will protect the grantee from an inhibition registered before registration of the disposition for 35 days. As such, the grantee of such a disposition will be protected by the advance notice and will not be subject to the uncertainty that the Law Society highlights.</p> <p>In relation to the second issue, the Law Society appears to be asking for retrospective legislation to a problem in property law. The Government's view is that this is not an appropriate solution because it potentially removes the rights of those who might be adversely affected by the retrospective</p>

No.	Recommendation	Response
		<p>legislation to seek redress. We do not think the case has been made that there could be no adverse impact on any lender. If the Keeper makes a decision that is wrong in law then that may be appealed, under the 1979 Act and the Bill. The Government views this as the appropriate way to deal with instances where there is disagreement with the Keepers interpretation of the law. To make such retrospective provision may be contrary to ECHR.</p>
48.	<p>In its written submission, Scottish Land & Estates requests the following change— "Sections 42(8), 42(9), 44(7) and 44(8). If the Scottish Ministers are to make an Order changing the number of days within which a Notice of Objection can be received, it is recommended that landowners (perhaps through stakeholder bodies) should be consulted as well as the Keeper." Paragraph 229</p>	<p>There are many landowners in Scotland, large and small, and, in the Government's view, imposing an obligation in the Bill for all of them to be consulted would be unduly onerous. Nevertheless, in advance of making an order under the Bill, the Government would seek to consult relevant stakeholders. In advance of making the Land Register Rules under the Bill, all relevant stakeholders, including Scottish Land and Estates, will be consulted.</p>
49.	<p>In its written submission, Brodies recommends the following change to section 36 of the Bill. It asked whether the Scottish Government would— "... welcome a similar facility to that used in England whereby the time of registration is noted in a title as well as the date of registration. This would assist with any issues relating to order of presentment." Paragraph 230</p>	<p>To a large extent, linking registration to a particular time is dependent on technology systems and processes allowing for it. There is provision in the Bill for the Scottish Ministers to amend section 36(2) so as to make different provision as regards time of registration. Any such different provision will be dependent upon factors such as available technology and systems. In the Government's view this is the right approach to take.</p>