



Law Society  
of Scotland

# Consultation Response

## The Public Services Reform (Registers of Scotland) Order 2020

January 2020



## Introduction

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The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Property Law Committee welcomes the opportunity to consider and respond to the Scottish Government consultation: The Public Services Reform (Registers of Scotland) Order 2020. The Committee has the following comments to put forward for consideration.

## General Comments

We note that the Order being sought is, to repeal section 9 of the Public Finance and Accountability (Scotland) Act 2000 following the reclassification of RoS to central government by the Office of National Statistics, to bring Registers of Scotland's (RoS) finances and budgeting regime in line with other central government departments. Should the order be granted RoS will also require to pay their accumulated reserves into the Scottish Consolidated Fund. We note that the accumulated reserves at 31 March 2019 was approximately £65m.<sup>1</sup>

While we appreciate that the effect of the Order is that the organisation's full income and expenditure will fall within the Scottish Government's budgeting boundary and RoS will no longer be able to maintain and manage their reserves, it is essential that RoS are given adequate funding to ensure appropriate resource in order to comply with their statutory functions, achieve their ambitions as set out in their [Corporate Plan for 2019 to 2024](#) and plan for the longer term, i.e. post 2024 following Land Registration Completion.

As such our response focuses on the concerns we would have should RoS not have the requisite budget to maintain business as usual, meet the objectives in their Corporate Plan and plan for the future.

<sup>1</sup> RoS Annual Plan for 2018/2019

## **Business as usual**

In terms of business as usual, we are pleased to note that the Explanatory Note to accompany the order states that the Order “need have no impact on the day to day activities of RoS or its delivery of services to the public”. We are also pleased to note that there is no change to the Keeper’s status as a Non-Ministerial Office Holder who is not subject to the direction of Scottish Ministers. This is important to maintain a separation of powers and independent decision making.

We note that there will be a short transition period as the Order is due to come into force on 31 March 2020. This is inconsistent with the approach in England and Wales where Her Majesty’s Land Registry (HMLR) having been reclassified in October 2018 have been afforded at least a transitional period of 18 months as it is expected that their trading fund status will likely be revoked from April 2020. We would have hoped that a longer period of say six months to one year would have been appropriate to allow RoS to plan for a smoother transition.

RoS actively engage with their stakeholders. We have enjoyed a collaborative approach and have inputted on discussions on improvement of services and deliver of new services, all to the benefit of our members and the public. It is of paramount importance that RoS are able to continue to have ongoing dialogue with us and other stakeholders.

## **Corporate Plan**

We understand that RoS published their Corporate Plan, prior to receiving notification of the proposed Order and, on the basis that they would utilise funds from their reserves. We would be disappointed if RoS were unable to achieve what they set out to in their Corporate Plan due to budget constraints.

We will focus on the following Corporate Plan objectives: clearing the arrear, Land Registration completion, new services and future services.

## **Clearing the arrear**

Registration is the core function of RoS. In June 2018, the Keeper of the Registers of Scotland gave a commitment to clear their backlog of outstanding registration applications. RoS developed a programme of work to tackle the arrear including the introduction of an expedite process to fast track cases. RoS are also taking steps to prevent any future arrear. We support the work that RoS are doing in this area and it is vital that they have adequate resource to continue this work for the benefit of our members and in the public interest.

## **Land Registration Completion**

Scottish Ministers have tasked RoS with completing the Land Register by 2024. We are aware that RoS have progressed Land Registration completion by way of Keeper Induced Registration and by encouraging public sectors bodies and landowners to undertake Voluntary Registration. They have relied on their reserves in part to fund this initiative. A complete Land Register should bring efficiency to current practice

and processes by providing a single, comprehensive register which would be valuable to Scotland's economy and is fundamental to a modern system of land ownership.

It is therefore important that RoS have the requisite funding if they are to achieve Land Registration Completion by 2024.

### **New Services and Future Services**

The introduction of new services such as ScotLIS (Scotland's Land Information System) with improved features and functionality than Registers Direct facilitates easy access to information on land and property in Scotland and has improved efficiency. Similarly, the DDS (Digital Discharge Service) is proving to be a more secure, efficient and cost-effective solution than paper Discharges.

RoS have engaged stakeholders as to how these systems should operate on a practical level. We have ongoing engagement with RoS on the development of their digital registration proposals. This work has been of benefit to RoS, our members and the public and it is important that there is adequate resource to continue these discussions. We would support the introduction of further digital systems and it is likely that significant longer term investment will be required to continue to offer digital improvements to existing and new services to continue to improve efficiency in property transactions and to add value to the Scottish economy.

### **Statutory function to maintain new Registers**

From June 2018, RoS have maintained the Register of Applications by Community Bodies to Buy Land. This register consists of two parts. The first part is currently operational and deals with abandoned, neglected or detrimental land. The second part deals with applications for the right to buy for further sustainable development. While, there is currently no fixed date for the second part of the register to be delivered, we understand that it is expected to be delivered around March 2020.

The Scottish Government will be launching the Register of Controlled Interests in Land which will be held and operated by the Keeper of RoS. The Regulations are expected to come into force in April 2021. The UK Government are also introducing the Register of Overseas Entities which is expected to come into force in October 2021. This will also create a statutory function for the Keeper as will the register relating to Moveable Transactions.

Scottish Government must provide RoS with adequate funding to ensure that they have proper resource to administer these Registers.

### **Unplanned considerations**

During the 2008 housing market downturn, RoS relied heavily on their reserves to cover costs during this time and for a period thereafter. Consideration should be given to ensure that there is adequate funding in place to maintain services and allow for appropriate resource should we experience similar market conditions in the future.

At the end of their last financial year, RoS reported that they settled 446 claims for loss, arising from errors made either in the Sasines recording process or under the indemnity provisions of the Land Registration (Scotland) Act 1979 and the Land Registration etc. (Scotland) Act 2012, at a cost of £865,000.<sup>2</sup> We understand that to date RoS have effectively self-funded any claim by way of their reserves. Scottish Government should therefore give consideration as to how they will fund any successful claim for loss including claims for breach of the Keeper's warranty.

### **Budget and long-term planning**

We do not know what RoS' budget will be for the upcoming financial year however we suggest that it would be prudent to allocate a budget in line with their proposed budget as set out in their Corporate Plan.

We believe that it is likely to be difficult for RoS to plan a longer-term strategy, i.e. beyond 2024 if they do not have early visibility of what their budget is likely to be year on year or the ability to access their reserves. It is important that there is close working between RoS and Scottish Government to ensure that a long-term strategy is considered and is achievable.

<sup>2</sup> RoS Annual Plan for 2018/2019



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