



Law Society
of Scotland

Consultation Response

Registers of Scotland Digital Submissions 2020

February 2021



Introduction

The Law Society of Scotland is the professional body for over 12,000 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 Registers of Scotland's (RoS) Digital Submissions 2020 Consultation. The Committee has the following comments to put forward for consideration.

Response

We will respond to the specific questions as set out in Consultation paper as follows:

Question 1a: Do you agree that the ability to submit applications to the property registers via the Digital Submission Service (DSS) should be put on a permanent footing?

We agree that the ability to submit application to the Property Registers via the DSS should be placed on a permanent footing. As is set out in the Consultation paper, RoS introduced the DSS as a response to the COVID crisis where it was impossible for paper applications to be processed in line with UK and Scottish Government guidance and restrictions. The DSS has not only created efficiencies for RoS but also for our members who have also had to adapt to the current situation, e.g. working from home etc. Many of our members have indicated to us that they would be concerned if RoS were to revert back to the original paper process, i.e. if the DSS process was not put on a permanent footing. We therefore fully support a move to a permanent DSS.

Question 1b: Do you agree there should be a presumption in favour of use of the DSS?

We agree that there should be a presumption in favour of the use of DSS. We note from the Consultation paper that this will create further efficiencies at RoS as otherwise they would require to offer two different registration processes which would increase operational costs and likely result in higher registration fees. Our view is that the majority of registrations can be dealt with via the DSS. Particularly now as they have introduced the non-digital document functionality, and therefore it is a sensible, efficient, and cost-effective suggestion to have a presumption in favour of the DSS.

Question 1c: Do you agree with the exceptions criteria (where applications would be accepted by post/courier)?

We agree with the exceptions criteria where applications could be accepted by post or courier as are set out in the Consultation paper. We welcome the recognition that exceptional circumstances may arise where applications could be accepted by post or courier within the proposed 48-hour period. We do anticipate that there will be some transactions where registration is so time critical that a 48-hour period would be detrimental to the transaction or would preclude the transaction from settling. We would therefore suggest that the guidance around exceptional circumstances would include such scenarios.

Question 1d: Do you agree that extracts and certified copies produced from copy deeds submitted digitally to RoS should be treated as any other and, for Land Register cases, covered by section 106 of the Land Registration etc. Scotland (Act) 2012?

We agree that the Keeper's liability under section 106 of the Land Registration etc. Scotland (Act) 2012 should extend to extracts and certified copies produced from copy deeds submitted digitally to RoS. We agree that by limiting the use of the system to our members (and their firms) that this will provide further certainty.

Question 1e: Do you agree that digital extracts and certified copies should be the default format, with paper available only on request?

We agree that digital extracts and certified copies should be the default format with paper copies available only on request. The current crisis has resulted in more digital working and working from home and therefore this is a sensible approach.

Question 1f: Do you have any other comments or suggestions in relation to the DSS as it currently exists?

The DSS has been a significant enhancement to the process of submitting applications to the Land Register and to the resilience of the property industry. The process could be enhanced further, particularly in the context of oversized plans, if a process for submitting unsigned plans could be formalised, whether on a standalone basis, linked to an Advance Notice, or otherwise.

Question 2a: Do you agree that ability to submit applications to the ROI and ROJ in electronic form should be placed on a permanent footing?

We agree that the ability to submit applications to the ROI and ROJ in electronic form should be placed on a permanent footing. Similar to the Property Registers, this ability again has created efficiencies beyond the response to the current crisis. We agree, as is set out in the Consultation paper, that if court proceedings are increasingly conducted digitally that it is sensible for recording in the ROI and ROJ to be similarly made available.

Question 2b: Do you agree that there should be a presumption in favour of this method of submission?

We agree that there should be a presumption in favour of this method of submission for the reasons set out in the Consultation paper.

Question 2c: Do you agree with the exception criteria set out (where applications would be accepted by post/courier)?

We agree with the exceptions criteria where applications could be accepted by post or courier, as are set out in the Consultation paper, which we note are the same criteria as the Property Registers. As above, we would also suggest however that there should be a recognition that the exceptional criteria could include a situation where deeds must be registered within a period of 48 hours (or longer) if there would be a detrimental effect should registration be unable to be effected.

Question 2d: Do you agree that extracts from the ROJ should presumptively be in electronic form, with paper available on request?

We agree that digital extracts from the ROJ should be presumptively in electronic form with paper copies available on request.

Question 2e: Do you have any other comments on submission to the ROI or ROJ?

We have no further comments.

Question 3a: Do you agree that registering electronic documents in the ROD should be enabled?

We agree that registered electronic documents in the ROD should be enabled. The ability to register missives and leases in electronic form in the ROD, as is suggested in the Consultation paper, would be of particular benefit to our members and their clients.

Question 3b: Do you agree that the Keeper should be able to declare, in consultation with Ministers, when certain deed types can be registered?

We agree that the Keeper should be able to declare when certain deed types can be registered, in consultation with Ministers. We note that there will be a significant amount of work required to enable and introduce systems to support electronic submissions and therefore it is sensible that the Keeper has the flexibility and is able to control when such deeds can be introduced rather than this being prescribed. This was worked well in relation to Discharges of Standard Securities.

Question 3c: Do you agree, for deeds which go into both Land Register and Register of Deeds, the Keeper should consider “authorising” them together?

We strongly agree that for deeds which require to be registered in both the Land Register and the Register of Deeds that the Keeper considers authorising these together. This creates efficiency and avoids any unnecessary delay in having to register the deeds in the respective Registers. At the moment the presumption is to register it in the Land Register first and this can cause unnecessary delays which could cause difficulties in relation to enforcement of leases in particular.

Question 3d: Do you have any other comments on the Register of Deeds?

We have no further comments.

Question 4: Do you agree that RoS should continue, along with stakeholders and customers, to pursue a transition from the Digital Submission Service towards fully digital land registration?

We agree and fully support a transition from the DSS towards fully digital land registration. Throughout the last year, our Property Law Committee have worked closely with RoS in regard to their response to the pandemic and supported the digital advancements they have introduced throughout this time. The permanence of the DSS is a welcome and very significant step however as we look to the future and navigate post COVID there is further work to be done towards a fully digital land registration to support Scotland as a digitally-enabled economy. We look forward to working with RoS in this regard.



For further information, please contact:

Gillian Alexander

Professional Practice

Law Society of Scotland

gillianalexander@lawscot.org.uk