

Consultation Response

UK Government

Home buying and selling reform

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Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

We welcome the opportunity to consider and respond to the UK Government's consultation: Home buying and selling reform. We have the following comments to put forward for consideration.

Consultation Questions and Responses¹

[Question 5 - Do you agree with the proposed objectives for reforming the home buying and selling system?](#)

Scotland has a distinct legal system, separate from England & Wales, which is a unique mixed system blending both civil law and common law traditions.

Any reform should take into account the existing Scottish home buying and selling system and avoid any unintended adverse impact on that. Subject to that, and to our comments below, we are supportive of the proposed objectives.

[Question 6 - Are there any objectives you think should be changed, removed, or added?](#)

Please see our answer to Question 5 above.

¹ Please note that questions 1 to 4 are administrative.



Question 7 - Do you agree that there should be a mandatory requirement for sellers and estate agents to provide comprehensive upfront information?

We agree in principle but, although we note the examples given, what exactly is meant by “comprehensive upfront information” is not clear.

In Scotland, upfront information is already provided via the Home Report. The Home Report comprises three parts: a Single Survey (which includes a valuation figure), Energy Performance Certificate (EPC) and Property Questionnaire. The information provided by the Home Report is prescribed and is listed in Schedules 1 and 2 to the Housing (Scotland) Act (Prescribed Documents) Regulations 2008. The Home Report covers the example key facts mentioned in the consultation, i.e. it includes information regarding (amongst others) council tax band, EPC rating, and the property type (e.g. flat, semi-detached house etc). Most Home Reports also include a mortgage valuation report in a format acceptable to most UK lenders. The tenure of the property is typically covered in that mortgage valuation report. Where a property is to be sold on the open market, the estate agent (which could be a solicitor or non-solicitor estate agent) arranges for the Home Report to be carried out and instructs the surveyor on the seller’s behalf. The seller will complete the Property Questionnaire. Once all parts are available, the property is placed on the open market, and the Home Report can be made available to potential buyers.

Turning to the examples of *legal and transactional information*, if more detailed information than is currently provided in the Home Report is to be provided upfront, consideration should be given as to (i) whether this could inadvertently increase the possibility of fraud (e.g. frauds carried out once a property has been identified as being free from any standard security (i.e. mortgage) because in Scotland there is no equivalent of the HM Land Registry Property Alert System) and (ii) how this would affect the expectations of clients and solicitors at this earlier stage and the costs associated with this. Certain **title information** is already provided via the Property Questionnaire in the Home Report. For example, a seller must confirm if they have the right to walk over their neighbours’ property and, so far as they are aware, if (i) their neighbours have a right to walk over the seller’s property or (ii) there is a public right of way over the seller’s property. If more detailed **title information** is to be provided at the upfront stage, as opposed to during the conveyancing process, this is likely to increase costs. Title information is available in Scotland via ScotLIS, at minimal cost, and therefore, subject to our comments below regarding complexity, it may be more appropriate to signpost individuals to this as a resource instead of including title information at additional cost to parties.



Further, if more detailed title information is to be provided at an earlier stage, who will be responsible for obtaining that and explaining its significance to a potential buyer? Title information can be complex – for example, some properties in Scotland are not registered in the Land Register of Scotland and so title to them can comprise several title deeds, often without a plan. We therefore query how useful it is for consumers to be given such title information at a point in time when they may not yet have instructed a solicitor. In our view, providing such title information at an early stage is likely to increase the risk of (non-solicitor) estate agents inadvertently giving legal advice which they are not qualified to give, making it vital that prospective buyers are warned about the need for independent legal advice. If a potential buyer's solicitor will require to carry out significantly more due diligence at the outset than is currently required, this is likely to result in increased costs to the potential buyer.

We are unsure as to what is meant by "**seller ID verification**". There are already legal requirements on property professionals to identify parties and so question why there would be any additional requirements here. We also have concerns, for reasons of privacy and security, if the seller's details were to be made publicly available.

As for **building safety data**, the Building Safety Act 2022 applies minimally in Scotland and certain aspects covered by that Act are dealt with separately in Scotland. For example, Scotland has the Housing (Cladding Remediation) (Scotland) Act 2024, which confers on the Scottish Ministers powers to identify external wall cladding systems on residential buildings that create or exacerbate risks to human life and to address those risks. Within the Home Report, for an affected flat property, the surveyor will reference cladding within the *Main Walls* section and make comment on whether further investigation is required. In practice, our understanding is that most estate agents (solicitor and non-solicitor) obtain an EWS1 Report at an early stage and provide it to potential buyers along with the Home Report.

We understand that an EWS1 Report usually covers the *whole building* in other parts of the UK, however, due to the way in which title is held, in Scotland each flat property requires their own individual report.

We assume that building safety information is mentioned in the consultation because in other parts of the UK flat properties are typically leasehold properties. This does not apply in Scotland, and so we would wish to avoid any duplication in process or costs for parties and would suggest that if provisions are introduced that there are no unnecessary changes made to the well-established position in Scotland.



With reference to the professional validation of “critical data”, we are unsure as to what will constitute critical data. However, we cannot envisage a scenario which does not involve some reliance on seller declarations, as certain information about a property is likely to be known only to the seller and it is difficult to understand how that information could be professionally validated. For example, the information disclosed within the Property Questionnaire section of the Home Report cannot be professionally validated as that information is only known by the seller.

If there is a concern as to the integrity of the seller providing the information, consideration should be given as to what remedies may be open to a buyer if that information proves to be false. For example, in Clause 31 of the Scottish Standard Clauses (please see our response to Question 8 below for more details about the Scottish Standard Clauses), the seller confirms that the information in the Property Questionnaire section of the Home Report is true and correct to the best of the seller’s knowledge and belief and that the information provided in the Property Questionnaire remains the same at the date of the buyer’s offer as at the date of issue of the Property Questionnaire. Any breach of those contractual confirmations would be enforceable, as a matter of contract law.

Question 8 - Do you agree that this should include a requirement to order property searches and undertake a property condition report?

Home Reports have been beneficial to the Scottish market. The availability of the Single Survey, which forms part of the Home Report is accepted by most lenders, means fewer surveys are carried out. Energy performance information is readily available (via the EPC within the Home Report) and information on matters relating to the property is shared at the earliest stage (via the answers to the Property Questionnaire in the Home Report). Home Reports work well in practice, and we would recommend a similar approach is taken across the rest of the UK. We are aware that the Scottish Government is currently undertaking a review of Home Reports.

In Scotland, we also have the [Scottish Standard Clauses](#), produced by the Scottish Conveyancers’ Forum, which is a standardised offer to purchase a residential property, designed to reduce the time spent on negotiation, and so ease and speed up the conclusion of missives (i.e. the exchange of contracts) for the sale/purchase of that residential property. The Scottish Standard Clauses include clauses regarding, amongst others, the delivery of a standardised set of searches within standardised periods of time. The Scottish Standard Clauses are accompanied by a [Client Guide](#) which explains the terms of the Clauses to clients,



and provides background information on their introduction. The Scottish Standard Clauses are used in the vast majority of residential transactions in Scotland.

Searches in Scotland are instructed by the seller (not the buyer), and we understand that searches are typically produced much more quickly in Scotland than in England. For example, a Property Enquiry Certificate (**PEC**) can be obtained within 3-4 days from private searchers. A PEC can be obtained from the local council or from specialist search providers and typically encompasses: planning and building control information, whether there is any publicly adopted road(s) immediately adjacent to the property, whether the local council has served any statutory notices, whether the property is on the contaminated land register and, whether the property is connected to the mains water and sewerage.

Amongst other searches, the Scottish Standard Clauses require the seller to provide the buyer with:

- a PEC dated not earlier than 3 months prior to the date of entry under the missives (i.e. under the contract of sale/purchase). The UK Finance Handbook further requires that a PEC must not be more than three months old at completion.
- a legal report (i.e. a title search) dated not more than 3 working days prior to the date of entry.

The suggested six-month period for the validity of searches would therefore be inappropriate in Scotland and it also does not seem to consider other requirements, such as those under the UK Finance Handbook.

Question 9 - What steps should government take to ensure that conveyancing lawyers, estate agents and surveyors have the capacity and capability to implement this change?

We note the reasons that Home Information Packs were not successful in England and Wales and so would suggest that those challenges must be properly understood and addressed before implementing similar changes.

We would also suggest that there is engagement with relevant stakeholders at an early stage to ensure that the market supports any changes.



Question 10 - What resources and additional training would be needed in order to implement these changes?

Without knowing what the precise changes are to be, we are unable to comment on what resources or training would be required.

Question 11 - Do you agree that we should intervene to drive up standards amongst, and improve trust in, property agents?

It is important to highlight that solicitors in Scotland can carry out estate agency services, i.e. there are solicitor estate agents and non-solicitor estate agents. Solicitors in Scotland are regulated by the Law Society of Scotland.

As the professional body for Scottish solicitors, we have a statutory duty to work in the public interest, a responsibility we are committed to maintaining through a stringent, proactive and effective regulatory regime which places the protection of the consumer at the centre. We therefore agree that there should be consistently high standards for agents providing property services.

We note that the proposed Code of Practice is intended for "property agents" which will include estate, letting, and managing agents. In Scotland, [letting agents](#) are already regulated and require to follow the Letting Agents Code of Practice and to register before offering letting agency services. Solicitors in Scotland offering letting agency work are subject to [The Letting Agent Registration \(Scotland\) Regulations 2016](#). Similarly, property factors, who manage the common parts of residential properties in Scotland and the land associated with them (in tenements and developments), are subject to the [Property Factors \(Scotland\) Act 2011](#), must follow the [Property Factors Code of Conduct](#) and must [register](#) before offering factoring services. As such, our comments below are restricted to estate agency services.

The current main regulatory framework for Scottish solicitors is provided under the provisions of the Solicitors (Scotland) Act 1980, and related regulation. Although, under the provisions of the 1980 Act, there are only a small number of legal 'activities' which are reserved to solicitors holding a current practicing certificate, the solicitor is regulated to the extent of all work undertaken in the course of their business; this includes where that solicitor offers estate agency services. The statutory regulatory regime is underpinned by strict professional service and conduct rules which are aimed at ensuring a robust level of consumer protection.

Scottish solicitors are expected to work to standards which reflect the legal, moral and professional obligations solicitors owe to clients. The standards are divided



into standards of service and standards of conduct. Standards of service set out the quality that clients should expect from solicitors, for example being competent, delivering on commitments and ensuring communications can be easily understood by clients. Standards of conduct covers the behaviour of solicitors, for example setting out that solicitors must act with integrity, maintain client confidentiality and should not act where there is a conflict of interest.

However, we are concerned that the consultation appears to give little regard and fails to explain or propose what approach will be taken to those, such as solicitors, who are already robustly regulated to the extent of any estate agency services work they may undertake in the course of their business or how any new proposed Code of Practice will recognise existing regulation so as to avoid duplication, contradictory, overlapping or inconsistent provisions. We have previously experienced and highlighted similar issues in regard to other sectors where regulation and codes of practice have been introduced which has overlapped with the regulation of Scottish solicitors. For example, in relation to the regulation of letting agents, issues were identified relatively early and, through engagement with ourselves, the resultant regulations provide for when existing professional requirements will be recognised as superseding the regulations. We suggest that the Ministry of Housing, Communities & Local Government may find it helpful and informative at an early stage to refer to these regulations and engage with the Scottish Government to understand the approach taken where the individual is a solicitor and already subject to stringent oversight.

We recognise the benefits of a Code of Practice for estate agency services in order to promote consumer protection. However, if a new Code of Practice is to be brought forward, it is crucial that due regard is given to the existing regulation which Scottish solicitors are already subject to. We believe that solicitor estate agents should continue to be regulated by the Law Society of Scotland and that the dual regulation of solicitor estate agents should be avoided because, in our opinion, dual registration would increase complexity and risk.

We are concerned that dual regulation would also increase costs for solicitors providing estate agency services which, if the cost proved to be too prohibitive to continue to operate, would likely result in fewer solicitor estate agents and so less consumer choice. There can be efficiencies for clients if they are able to instruct their solicitor to carry out estate agency and also conveyancing services, and so, if it was not financially viable for a solicitor to continue to offer estate agency services, this may reduce efficiencies for clients and impact on consumer choice, particularly in rural areas.



Question 12 - Do you agree with our proposal to bring forward a Code of Practice on a non-statutory basis, and to legislate to put this on a statutory footing in future if necessary?

Standards should be consistent. To be the most effective, our view is that any Code of Practice should have a statutory basis.

As mentioned in our response to Question 11, it is important to highlight that solicitors in Scotland can carry out estate agency services, i.e. there are solicitor estate agents and non-solicitor estate agents. Solicitors in Scotland are subject to the Law Society of Scotland Practice Rules, specifically [Standards of Conduct](#), which must be complied with in all and any matters a solicitor undertakes. The Standards of Conduct apply to all solicitors carrying out estate agency work. A Code of Practice which applied to solicitor estate agents (as well as non-solicitor estate agents) and so duplicated the regulation of solicitor estate agents would therefore be neither necessary nor desirable.

Question 13 - Do you agree with our proposal to consult on mandatory qualifications for estate and lettings agents?

We agree that any mandatory qualifications should be consulted on.

As mentioned above, letting agents are already regulated in Scotland. As solicitors in Scotland are already subject to a regulatory regime, we consider that it would not be necessary to impose further requirements on solicitor estate agents.

Question 14 - Are there additional interventions you think government should take to drive up standards amongst property agents?

Please see our responses to Questions 11 and 12 above.



Question 15 - Are there any other areas across the property agent sector that needs to be monitored or regulated in order to improve the customer journey?

We are aware of the UK Government's proposals to transfer AML regulation for all professional services in the UK to the Financial Conduct Authority (FCA). This will be a significant departure from the current position. This change is likely to be challenging, and therefore consideration should be given as to how this will impact on any changes introduced to the home buying/selling process following this consultation. It is not clear what costs will be incurred, as a result of this transfer to the FCA, by those providing property services and so any changes to the home buying/selling process should not be disproportionate, as significant changes could result in those currently offering property services no longer doing so.

Question 16 - Do you agree that government should aim to support the wider use of digital property logbooks and packs?

We are unsure as to whether this question relates to the format of property logbooks or the introduction of logbooks as a whole.

Our view is that a property logbook or pack is a good idea. We are not clear on how this would differ from the existing Home Report, which works well in Scotland, and so would support a consistent approach which avoids duplication.

Having such a logbook/pack in a digital format would support the general move towards digitalisation and promote wider use, however it is important to ensure that those who cannot access information digitally are not excluded.

We note that in the Case Study example given, services are provided by a private company. Our view is that consistency is key here and we question whether this could be achieved by any means other than a Government platform, or a standardised product such as the Home Report which can be shared digitally. If private products/platforms are to be used, market forces are likely to dictate the process. It may be beneficial to have a government initiative of a central repository of information. In Scotland, we understand that ScotLIS was originally designed to be a *one-stop shop* for accessing information about land and property and so, if logbooks or something similar is to be introduced, we would suggest that this is considered.



Question 17 - If yes, what do you think would drive their wider adoption? How could government support this and do you think that legislation might be needed to bring about this change?

Please see our response to Question 16 above, specifically, that we consider that a government initiative to create a central repository of information would support wider adoption.

Question 18 - What risks would need to be considered when creating and storing digital logbooks?

Consideration should be given to data protection for individuals who may feature in the digital logbooks in respect of their privacy, safety and security. It is essential that any requirements providing transparency must not cause harm to individuals at risk. Cybersecurity risks must also be considered.

Question 19 - Do you agree that government should support mechanisms to make property transactions more binding at an earlier stage?

We agree that it is beneficial for transactions to be binding at an early stage as this creates certainty for buyers and sellers.

We do have “chains” in Scotland, and sometimes missives are not concluded until later in the transaction. This can be for many different reasons, for example, title issues, alterations having been carried out by homeowners without having obtained the necessary paperwork and challenges around clients obtaining mortgage funding. However, we note that only 9% of transactions fall through in Scotland.²

² [Faster moves, fewer fall throughs: the UK Government plan to fix home sales | Propertymark](#)



Question 20 - What do you think is the most effective means of doing this – incentivise estate agents to offer this as a service, raise consumer awareness of binding agreements, legislate to require their use in property transactions etcetera?

There are several things which help to smooth achieving early binding agreements in Scotland. The Home Report is a useful tool in Scotland, as important information is provided when the property is marketed for sale. The buyer has visibility as to the condition of the property to assist them in making a decision to offer, and how that offer should be framed. The Single Survey within the Home Report, and the fact that most Home Reports include a mortgage valuation report, both of which are accepted by most lenders, also creates efficiencies and speeds up the home buying process. Home Reports are of benefit to the Scottish market and work well in practice.

The Scottish Standard Clauses, also mentioned above, have introduced standardisation and created efficiencies. They work well in practice and have been adopted by most conveyancing solicitors in Scotland. The accompanying Client Guide, as also referenced above, explains the missives to the client in a standardised form. In addition to the Scottish Standard Clauses, the [Property Standardisation Group](#) has collaborated with the Law Society of Scotland to produce a suite of standardised documents tailored to residential transactions. In Scotland, solicitors are involved very early on in the sale/purchase transaction and are responsible for negotiating the terms of the sale/purchase. Estate agents in Scotland therefore have a much shorter and less involved role in home selling than in the rest of the UK. In Scotland, a written offer to buy is prepared and submitted by the solicitor acting for the buyer. The estate agent passes that offer to the seller's solicitor and the estate agent takes no further role in negotiations. For solicitor estate agents, their estate agency team will pass the offer to their legal team.

Our members are subject to our Rules and Guidance, as mentioned above. We have Guidance on [Gazumping, Gazundering and Closing Dates](#) which sets out what is professionally expected of Scottish solicitors when acting specifically as estate agents and as conveyancers. As that Guidance explains, where a solicitor for a seller (including a solicitor estate agent) "has intimated... to the [buyer's solicitor] that [the buyer's] offer is acceptable – whether after a closing date or otherwise - the seller's solicitor should not accept subsequent instructions from the seller to accept an offer from another party unless and until negotiations with the original offeror have fallen through for bona fide reasons unconnected with the possible offer from another party". If that Guidance was not adhered to, the seller's solicitor could face regulatory consequences. This, plus the fact that in Scotland the



home selling process often involves a closing date set for interested buyers to submit an offer and, if there is a successful offer, a property will be removed from the market after the closing date, all help to make the sale more secure at an early stage, deter gazumping and achieve a binding contract sooner.

In Scotland it is unusual for buyers to pay a deposit and although it is *possible* for a deposit to be paid and for the parties to enter into a conditional contract incurring, potentially, the loss of the buyer's deposit, this is not usual practice in Scotland. Buyers do not tend to agree to this for fear of losing their deposit.

As a generality, any proposals should be considered against broader market conditions. Chains exist because many sellers do not have the option of a chain-free buyer.

We are not sure what is meant by "incentivis[ing] estate agents" and would seek clarity on this point.

Question 21 - What would be appropriate costs or penalties for failure to comply with binding contracts?

What would be appropriate penalties, for failure to comply with binding contracts, would depend on the specifics of each transaction. As such, it is difficult to suggest a general approach.

Question 22 - Would there be any listed exceptions, or certain situations, for binding contracts not being applied?

This would depend on the specifics of a transaction, and therefore it would be difficult to adopt a general approach.

Question 23 - Do you agree that publishing information on the services of property professionals would improve home buying and selling by supporting consumer choice and driving competition?

In the current landscape, information is shared widely and publicly and so it is difficult to envisage what further information could be provided, and how this would assist the process.

For example, we have published information for the public on the buying and selling process here - [Buying and selling a property | Law Society of Scotland](#), which sets out what clients can expect from a Scottish qualified solicitor.



We also have [Guidance on Price Transparency](#) for our members which supports consumer choice.

Again, the introduction of the Scottish Standard Clauses, with their accompanying Client Guide, and the Home Report have made a significant difference to consumers in Scotland. Their introduction provides for a standardised approach which makes the process easier for clients to understand and aids market stability.

We don't believe that an accreditation system is necessary, as Scottish qualified solicitors practising in this area are already regulated by us, are subject to a robust complaints system, as mentioned above, and have appropriate professional indemnity insurance. Introducing an accreditation scheme may produce unjustified discrepancies.

Question 24 - What information would you want to see included in a service of this type?

We note the Case Study provided and agree that if it was possible to introduce a centralised digital platform, where all interested parties to the chain could share and access pertinent information, this may create efficiencies and speed up the process.

Question 25 - Do you think a charter as set out above would be useful in supporting consumers to identify quality property professional services?

Please see our response to Question 23 above.

Question 26 - Do you agree that AML checks should be streamlined?

We agree that AML checks should be streamlined to avoid unnecessary duplication. We currently have AML supervisory authority status ratified by HM Treasury and discharged through the Solicitors (Scotland) Act 1980. We have submitted a response to a separate consultation setting out that we should retain that supervisory status. Please also see our response to Question 15 above.



Question 27 - How can government most effectively support the application of AI conveyancing technology?

Government can assist by ensuring that the data provided by Government agencies is reliable, accurate and is available in a format that can be utilised by AI tools. AI technology should be used in conveyancing only where it is appropriate and all AI generated information must be verified, so that all parties can rely on that information.

We have produced a [Guide to Generative AI | Law Society of Scotland](#) to help our members make informed decisions about how to safely incorporate the use of generative AI products into their legal practice.

Question 28 - What else do you think government should do to streamline the conveyancing process?

As referenced above, the introduction of the Home Report, the Scottish Standard Clauses and the standardised residential documents produced by the Property Standardisation Group have all assisted the conveyancing process in Scotland. We would recommend all of these initiatives to other jurisdictions.

It is essential that Government agencies across all UK jurisdictions are adequately resourced to ensure efficiencies and avoid delays in the conveyancing process both during the transaction and post-completion.

Question 29 - Do you agree that this is the correct direction of travel?

We agree that digitalisation of the home buying and selling process is the correct direction of travel as this can deliver improved flexibility, speed, and efficiency. That said, any conveyancing process should cater for the fact that there can be, for example, outages, poor internet connectivity in some rural areas, and consumers who may prefer, or may be able only, to interact in a non-digital manner. For reasons explained below, we are particularly interested in any UK Government measures which would increase the availability of cheap qualified electronic signatures (**QES**).

We are aware of the European Digital Identity Regulation which mandates member states to provide EU digital identity wallets to citizens by the end of 2026 (and the UK government efforts around digital ID) and this should be borne in mind when considering QES.



In Scotland, electronic signing was introduced via the Land Registration etc. (Scotland) Act 2012. Many solicitors in Scotland (including many conveyancing solicitors) are wary of the complexities of electronic signing. Nevertheless, particularly since Covid lockdowns, the electronic signing of documents has increased in Scotland, due to the ease and speed with which documents can be signed by signatories situated in separate locations (compared with printing them and circulating them for wet ink signing). We published a [Guide to electronic signatures](#) to help solicitors in Scotland with the use of electronic signatures.

The biggest increase in the use of electronic signing is by solicitors practising commercial law, rather than property solicitors, because most commercial law documents do not fall within section 1(2) of the Requirements of Writing (Scotland) Act 1995 (“**1995 Act**”) and so, if being signed electronically, require only a *simple* electronic signature to be validly signed. By contrast, most property documents fall within section 1(2) of the 1995 Act and so, if being electronically signed, require an *advanced* electronic signature (**AES**) to be validly signed (as provided in The Electronic Documents (Scotland) Regulations 2014, as amended (“**2014 Regs**”)).

In practice, AES are rarely used and, if more than a simple electronic signature is required for validity purposes, a QES is used instead. This has the added advantage of making the electronic signature self-proving (if it is self-proving, the document is presumed to have been signed by the granter(s) of the document) because, via the 1995 Act and the 2014 Regs, a self-proving electronic signature can only be created by use of a QES. An AES or a simple electronic signature cannot be self-proving in Scots law. **Note:** *Unlike English law, Scots law does not recognise the concept of witnessing an electronic signature in the same way that self-proving status is attributed to witnessing a wet-ink-signed document. Therefore, a purported ‘witnessing’ of any form of electronic signature does not create a self-proving signature.*

There are a number of providers who offer QES products. Some offer low-cost single-use QES's. QES's are also available through e-signing platforms such as Adobe Sign or DocuSign. Subscribing to e-signing platforms can be costly, so it is generally large commercial firms of solicitors and large commercial organisations who use them. Setting up an individual to sign with a QES on such an e-signing platform requires the identity of each signatory to be verified by an approved third-party agency and so requires each signatory to have a current valid passport or other acceptable form of ID for that purpose. The ID verification process can be cumbersome and time-consuming. However, there are ways to speed up that QES signing. For example, on DocuSign, an individual signing with a QES has the option to set up a digital identity wallet which lasts for three years and so speeds up subsequent DocuSign QES signatures by them in that three-year period, because



they do not need to produce their ID and go through additional verification steps again.

There is debate about whether the Scots law threshold for self-proving electronic signatures has been set too high. Some favour changing that threshold, to follow the English approach (in England execution as a “deed” can be achieved via a deed being signed with a simple electronic signature in the presence of a witness), because QES’s are regarded by them as being inaccessible and costly. Others consider that the current Scots-law requirement for a QES ensures the most robust form of protection against fraud prevention. Signing with a QES has the added advantage that, under Scots law, provided any annexations have been annexed prior to the document being signed with a QES, the signatories need apply their QES only once to the document (i.e. not in multiple places in the document), thereby saving each signatory significant time.

The debate is particularly relevant to the three main registers used by conveyancing solicitors in Scotland: (1) the Land Register of Scotland, (2) the General Register of Sasines (“**GRS**”) and (3) the Register of Deeds (in the Books of Council & Session), as these registers can only accept documents which are self-proving. The first two do not currently accept electronically signed documents, other than via Registers of Scotland’s Digital Discharge Service (**DDS**) which enables the electronic creation, signing and submission of discharges of residential standard securities (mortgages) registered in the Land Register of Scotland. Discharges submitted via the DDS are signed using Registers of Scotland’s own QES solution. The third - the Register of Deeds (in the Books of Council & Session) - accepts, in addition to wet-ink-signed paper documents, QES-signed electronic documents and also documents which are signed partly with QES and partly with wet-ink (for example, counterparts and missives can be signed in this mixed format).

The Scottish Law Commission’s current Execution of Documents Project is underway, and it may be that the Project’s Discussion Paper will explore the arguments for and against the current threshold for self-proving electronic signatures.

In Scotland, the hope is that the Land Register of Scotland and the GRS will in future accept electronically signed documents. Indeed, Registers of Scotland (**RoS**)’s [analysis](#) of the responses to their 2020/2021 public consultation about digital submission, indicates that of the 223 responses received to the consultation, 96.9% agreed that RoS should continue to pursue fully digital land registration. In practice, this will depend, to an extent, on how easily accessible



and cheap QES signatures are (if QES remains the only type of electronic signature that is self-proving in Scotland).

A number of large commercial firms of solicitors and their clients want to be able to register electronically-signed documents in the Land Register and GRS, not least because those firms/clients would currently be able to take advantage of that. However, most residential conveyancing firms and their clients would not currently be able to do so. Residential transactions make up the largest volume of transactions handled by RoS and so that, plus the introduction of RoS's Digital Submission Service as explained below, has slowed the drive towards fully digital land registration.

The momentum for electronically signed documents to be accepted into the Land Register and the GRS has, to an extent, arguably been slowed by the introduction of RoS's excellent Digital Submission Service. This permits scanned copies of wet-ink-signed paper documents to be uploaded and submitted electronically to RoS and was rapidly developed by RoS in response to the first Covid lockdown. Its introduction increased flexibility in working locations and hours and increased certainty and speed in the submission process.

Although the Digital Submission Service has additionally resulted in environmental benefits (by removing the need for paper documents to be posted or delivered to RoS), a fully digital Land Register of Scotland/GRS, which permitted registration of (QES-signed) electronic documents would potentially bring many more environmental benefits, by avoiding the need to print and sign documents which are registrable in those registers, and by increasing the speed and efficiency of the conveyancing process.

Question 30 - Is there anything else that government should be doing to promote digitalisation of the property sector?

Please see our comments in response to Question 29 regarding the accessibility and cost of QES. Any government measures to increase the availability of, and reduce the cost of, QES would assist in the digitalisation of the conveyancing process.

In addition, as mentioned in our response to Question 28, it is essential that Government agencies in all jurisdictions are adequately resourced to support the digitalisation of the conveyancing process, both during the transaction and post-completion.



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