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2003

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2002

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1999

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		Manuals & Memo's - Memo's 1998 Registration of Standard Securities by a Limited Company

1997

Day	Month	Memo
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1990	Syndicated loans
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2014

Northern Rock (Asset Management) plc: Change of name to NRAM plc (Legal and Sasine Manual)

With effect from 16 May 2014, Northern Rock (Asset Management) plc changed its name to NRAM plc. The company number remains 3273685. The Certificate of Incorporation on Change of Name has been examined and is in order.

Land Register

Standard Securities executed before 16 May 2014

Any standard security granted in favour of Northern Rock (Asset Management) plc executed before 16 May 2014 but submitted as part of an application for registration on or after that date may be accepted if the application form specifies NRAM plc as the applicant.

Agents should be encouraged to list the Certificate of Incorporation on Change of Name on the Form 4, but applications need neither be rejected nor returned for amendment where this has not been done.

The Certificate of Incorporation on Change of Name does not require to be produced with any application.

The following note should be added to the charges section entry for the security, and to the charge certificate -

Note: by Certificate of Incorporation on Change of Name dated 16 May 2014 the creditor in the foregoing standard security changed its name from Northern Rock (Asset Management) plc to NRAM plc.

Discharges executed before 16 May 2014

Discharges executed on behalf of Northern Rock (Asset Management) plc must be executed before the 16 May 2014. They can be accepted for registration after that date.

Standard Securities and Discharges executed on or after 16 May 2014

On or after the 16 May 2014, no Standard Security or Discharge should be granted in favour of or by Northern Rock (Asset Management) plc. Should any such deeds be identified at intake/create, they should be rejected and the agent advised that a deed in favour of or by NRAM plc is required. Where any such deed is identified later in the registration process, it should be returned to the ingiving agent for amendment/re-engrossment.

Register of Sasines

Standard Securities executed before 16 May 2014

Any Standard Security granted in favour of Northern Rock (Asset Management) plc before 16 May 2014 but presented for recording on or after that date may be accepted if the Sasine Application Form specifies NRAM plc as the applicant.

Discharges executed before 16 May 2014

Discharges executed on behalf of Northern Rock (Asset Management) plc must be executed before 16 May 2014. They can be accepted for recording after that date.

Standard Securities and Discharges executed on or after 16 May 2014

On or after the 16 May 2014, no Standard Security or Discharge should be granted in favour of or by Northern Rock (Asset Management) plc. If any such deed is presented, it should be rejected and the ingiving agent advised that a deed in favour of or by NRAM plc is required.
Owner: Legal Services
Author: Erin Burns
Publication Date: 07/07/2014

Plans Quality Assurance – Vector Perfect mapping

Within the plans quality framework the issue of Vector Perfect Mapping has been identified as a recurring theme. This instruction seeks to clarify for both Plans RO1's involved in the quality assurance rota and individual settlers the position regarding vector perfect mapping.

Vector Perfect mapping is a fundamental requirement for the drawing of **all Title**polygons on the DMS. This is an integral part of our TC31 Plans training course and is one of the marking criteria applied to our SCQF Plans accreditation. Responsibility for **all**polygons authorised on a title lies with the individual settlers and is a key part of settler's objectives.
Vector Perfect Mapping means following the vector points on the underlying Ordnance Survey detail when relevant. Failure to map polygons in this style is likely to result in an error being flagged during any quality assurance of a Title.

Current best practice is where points exist other than vector points (i.e. another polygon) these should be snapped to, however any mapping without these points will not generate an error at quality assurance. Please note that polygons created using bound or lasso may include an additional vector point however these titles will not be flagged as containing an error at quality assurance.

Mapbase Maintenance continually update titles to reflect 'change only' update supply from Ordnance Survey and many developments require multiple titles to be amended. This has a significant impact upon resource. It has been agreed that Mapbase will only update the 'Master Title' for a development to be vector perfect. This will normally be either the Parent Title or the Title used for copy/duplicate Title. A note will be added to the DMS casenotes stating what Title has been updated. Mapbase will keep a note of the other affected Titles that will be updated at a later date. (See example in Appendix 1)

Author:S Arnott/R Elrick
Publication Date: 12/03/2014

Budget 2014 – SDLT (Legal Memo)

As a result of the Chancellor's Budget on 19 March 2014, the following measures will affect SDLT and land registration:

- **Residential properties purchased by non-natural persons** - The Government has extended the 15% SDLT rate applied to residential properties purchased by certain non-natural persons to those properties purchased for over £500,000 with effect from 20 March 2014. Please note that the Keeper will not accept such an application for registration via ARTL, rather said application must be submitted on paper.
- **Charities relief** - the Government will legislate to make it clear that partial relief from SDLT is available where a charity purchases property jointly with a non-charity. The charity will be able to claim relief from SDLT on the proportion of the purchase attributable to it. The changes will take effect from the date on which the Finance Bill receives Royal Assent, at which time a reminder will be issued.
For further information, all documents relating to this year's Budget can be found at:

https://www.gov.uk/government/collections/budget-2014-hm-revenue-customs

Owner: Legal Services
Author: Lian Boughen
Publication Date: 25/03/2014

2013

Lloyds TSB Scotland PLC – Partial Asset Transfer to Bank of Scotland PLC (Legal and Sasines Memo)

Transfer of Part of the rights, assets and property of Lloyds TSB Scotland plc.
1. During the period between the date of the court order, the 1st October 2012, and the 15th March 2013 part of the deposit-taking and associated business carried on by Lloyds TSB Scotland plc was transferred to Bank of Scotland plc, incorporated in Scotland with registered number SC327000, by virtue of the Transfer Scheme between Lloyds TSB Scotland plc and Bank of Scotland plc approved by the Court of Session on 1st October 2012 in terms of the Financial Services and Markets Act 2000. The transfer documents have been examined and are in order.

Given that only a small number of the rights, assets and property have been transferred, the Keeper will rely on the applicants and their agents intimating to the Keeper in the application form and/or the deed, as advised below, that it relates to a loan transferred by the Transfer Instrument. Failing which the application will be processed on the assumption that no such transfer has taken place and the following provisions do not therefore apply.

2. In this Memo the following definitions are used:

- "the transfer date" means the date between 1st October 2012 and 15th March 2013 as confirmed by the applicant;
- "the transfer period" means 1st October 2012 to 15th March 2013;
- "Transfer Instrument" means the Transfer Scheme between Lloyds TSB Scotland plc and Bank of Scotland plc approved by the Court of Session on 1 October 2012 in terms of the Financial Services and Markets Act 2000

The Keeper's Requirements

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Where there is no information in the application to indicate that the right has transferred to Bank of Scotland plc, the assumption will be that any deed executed by or granted to Lloyds TSB Scotland plc is acceptable for registration without enquiry.

3.Deeds executed before the transfer date

3.1 Where a deed is executed in favour of Lloyds TSB Scotland plc and information in the application indicates that the right has transferred to Bank of Scotland plc during

the transfer period, the deed will be accepted for registration, provided that the following requirements are met, namely:
(a) the application form specifies that the applicant is Bank of Scotland plc;

(b) the application form specifies that registration is sought in respect of the deed in favour ofLloyds TSB Scotland plc;

(c) the Transfer Instrument is listed in the Form 4 submitted with the application but there is no need for the document to be enclosed; and

(d) the applicant confirms the transfer date, and the deed is executed before that date.

The application forms should be returned for amendment if they do not meet these requirements. Where the applicant has not confirmed the transfer date, confirmation of said date should only be sought from the agent if the deed was executed before 15th March 2013.

Where the deed being registered is a Standard Security, the entry in the Charges Section of the title sheet will show a standard security in favour of Lloyds TSB Scotland plc. A note should be added to both the entry and the Charge Certificate as follows:

"Note: with effect from *(insert transfer date)* the interest of Lloyds TSB Scotland plc in the standard security was transferred to Bank of Scotland plc by virtue of the Transfer Instrument being the Transfer Scheme between Lloyds TSB Scotland plc and Bank of Scotland plc approved by the Court of Session on 1st October 2012 in terms of the Financial Services and Markets Act 2000"

The Creditor in the Charge Certificate should be amended to Bank of Scotland plc.

3.2 Where a deed is executed by Lloyds TSB Scotland plc (e.g. deed of restriction, disburdenment or variation) and information in the application indicates that the right has transferred to Bank of Scotland plc during the transfer period, the deed must bear to have been executed prior to the transfer date. In this case, the deed is acceptable for registration provided the following requirements are met, namely:

(a) the Transfer Instrument is listed in the Form 4 submitted with the application but there is no need for the document to be enclosed; and

(b) the applicant confirms the transfer date, and the deed is executed before that date.
Where the applicant has not confirmed the transfer date, confirmation of said date should only be sought from the agent if the deed was executed before 15th March 2013.

The entry in the Charges Section of the title sheet for the subsisting standard security will show a standard security in favour of Lloyds TSB Scotland plc. A note should be

added to both the entry and the Charge Certificate (if a Charge Certificate is being issued) as follows
:
"Note: with effect from *(insert transfer date)* the interest of Lloyds TSB Scotland plc in the standard security was transferred to Bank of Scotland plc by virtue of the Transfer Instrument being the Transfer Scheme between Lloyds TSB Scotland plc and Bank of Scotland plc approved by the Court of Session on 1st October 2012 in terms of the Financial Services and Markets Act 2000".

The Creditor in the Charge Certificate (if a Charge Certificate is being issued) should be amended to Bank of Scotland plc.

4. Deeds executed after the transfer date

4.1 Where a deed is executed during the transfer period and information in the application indicates that the right has transferred to Bank of Scotland plc during the transfer period, the applicant should submit confirmation of the transfer date. Where the applicant has not confirmed the transfer date, confirmation of said date should only be sought from the agent if the deed was executed before 15th March 2013.

All deeds executed on or after the transfer date that relate to a transferred standard security must be granted by or be in favour of Bank of Scotland plc. If any deed is executed on or after the transfer date by or in favour of Lloyds TSB Scotland plc and information in the application indicates that the right has transferred to Bank of Scotland plc, the deed should be returned to the agent for amendment and re-execution.

Where Bank of Scotland plc grant a discharge, repossession disposition or any other deed in terms of a standard security registered or recorded prior to the transfer date where the original grantee was Lloyds TSB Scotland plc, the Transfer Instrument should be listed in the Form 4, but need not be submitted with the registration application.

4.2 Where the deed being registered is a deed of restriction, disburdenment or variation executed after the transfer date, the entry in the Charges Section of the title sheet for the subsisting standard security will show a standard security in favour of Lloyds TSB Scotland plc. A note should be added to both the entry and the Charge Certificate (if a Charge Certificate is being issued) as follows:

"Note: with effect from *(insert transfer date)* the interest of Lloyds TSB Scotland plc in the standard security was transferred to Bank of Scotland plc by virtue of the Transfer Instrument being the Transfer Scheme between Lloyds TSB Scotland plc and Bank of Scotland plc approved by the Court of Session on 1st October 2012 in terms of the Financial Services and Markets Act 2000".

The Creditor in the Charge Certificate (if a Charge Certificate is being issued) should be amended to Bank of Scotland plc.

Register of Sasines

5. Deeds executed before the transfer date

5.1 Where it has been intimated to the Keeper that a deed executed in favour of Lloyds TSB Scotland plc, before the transfer date, transferred under the Transfer Scheme to Bank of Scotland plc, but is submitted for recording after the transfer date, the deed should be either (a) docqueted with reference to a Notice of Title on behalf of Bank of Scotland plc which deduces title through the Transfer Instrument and the two deeds recorded together or (b) re-engrossed and re-executed in favour of Bank of Scotland plc

The deed should be returned to the agent for amendment and re-execution if these requirements are not met.

5.2 Discharges granted by Lloyds TSB Scotland plc must bear to have been executed prior to the transfer date. Such discharges are acceptable for recording after this date.

5.3 Where a deed of restriction, disburdenment or variation is executed by Lloyds TSB Scotland plc and information in the application indicates that the right has transferred to Bank of Scotland plc during the transfer period, the deed must bear to have been executed prior to the transfer date. Such deeds are acceptable for recording after this date.

6. Deeds executed after the transfer date

Any deed executed on or after the transfer date which relates to a transferred security must be granted by or be in favour of Bank of Scotland plc.

Where Bank of Scotland plc grants a discharge, restriction, disburdenment, variation or assignation of a standard security registered or recorded prior to the transfer date, where the original grantee was the **Lloyds TSB Scotland plc**, the deed should deduce title from the **Lloyds TSB Scotland plc**, referring to the Transfer Instrument in terms similar to the following:

"which standard security was last vested in the said **Lloyds TSB Scotland plc** as aforesaid and from whom we the said Bank of Scotland plc acquired right by virtue of the Transfer Instrument being Transfer Scheme between the said **Lloyds TSB Scotland plc**and Bank of Scotland plc approved by the Order of the Court of Sessions on 1 October 2012 in terms of the Financial Services and Markets Act 2000……..".

Owner: Legal Services
Author: Erin Burns/David Robertson
Publication Date: 27/12/2013

Registration Practice Memo – Reducing Risk for High Value Casework

In a Memo dated 12 Nov 2012, I made Registration staff aware that the threshold for casework to be considered as High Value had been re-set at £3 million. Since that date, to the end of November 2013, there have been 400 Land Register applications flagged as High Value Casework.
While I am pleased to say that the procedures are adhered to at intake stage for the vast majority of applications, there are still some instances when the Quality Team are required to remind officers of the need to add LRS notes and enter the application details on the High Value Casework logs.

Once an application has been identified as High Value, it is subject to a series of auditable checks. It is important that on completion of each stage of these checks, the appropriate officer updates the log and adds the relevant note to the LRS.

Can I therefore ask all Registration officers to please ensure they are fully aware of the High Value Casework procedures.

Owner: Quality Unit
Author: Scott Niven
Publication Date: 04/12/2013

Registration Practice Memo – Gratuitous Transfer

For clarification - when considering the omission of a right of pre-emption from a burdens entry in a Title Sheet it should be noted that a gratuitous transfer, or transfer in implementation of agreement, should be discounted when considering whether the right had previously expired.

Owner: Legal Services / Registration
Author: David Lange / David Robertson
Publication Date: 22/11/2013

Lloyds TSB Bank PLC: Change of Name to Lloyds Bank PLC (Legal & Sasine Memo)

With effect from the 23rd September 2013 Lloyds TSB Bank plc changed its name to Lloyds Bank plc. The company number remains 00002065. The Certificate of Incorporation on Change of Name has been examined and is in order.

Land Register

Standard Securities executed before 23rd September 2013
Any standard security granted in favour of Lloyds TSB Bank plc executed before 23rd September 2013 but submitted as part of an application for registration on or after that date may be accepted if the application form specifies Lloyds Bank plc as the applicant.

Agents should be encouraged to list the Certificate of Incorporation on Change of Name on the Form 4, but applications need neither be rejected nor returned for amendment where this has not been done.

The Certificate of Incorporation on Change of Name does not require to be produced with any application.

The following note should be added to the charges section entry for the security, and to the charge certificate -

Note: by Certificate of Incorporation on Change of Name dated 23rd September 2013 the creditor in the foregoing standard security changed its name from Lloyds TSB Bank plc to Lloyds Bank plc.

Discharges executed before 23rd September 2013

Discharges executed on behalf of Lloyds TSB Bank plc must be executed before the 23rd September 2013. They can be accepted for registration after that date.

Standard securities and discharges executed on or after 23rd September 2013

On or after the 23rd September 2013, no standard security or discharge should be granted in favour of or by Lloyds TSB Bank plc. Should any such deeds be identified at intake/create, they should be rejected and the agent advised that a deed in favour of or by Lloyds Bank plc is required. Where any such deed is identified later in the registration process, it should be returned to the ingiving agent for amendment/re-engrossment.

Register of Sasines

Standard Securities executed before 23rd September 2013

Any Standard security granted in favour of Lloyds TSB Bank plc before 23rd September 2013 but presented for recording on or after that date may be accepted if

the Sasine Application Form specifies Lloyds Bank plc as the applicant.

Discharges executed before the 23rd September 2013

Discharges executed on behalf of Lloyds TSB Bank plc must be executed before 23rd September 2013. They can be accepted for recording after that date.

Standard securities and discharges executed on or after 23 September 2013

On or after the 23rd September 2013, no standard security or discharge should be granted in favour of or by Lloyds TSB Bank plc. If any such deed is presented, it should be rejected and the ingiving agent advised that a deed in favour of or by Lloyds Bank plc is required.

Owner: Legal Services
Author: Erin Burns
Publication Date: 23/09/2013

Registration Practice Memo – Entry in Schedule of Historic Monuments

Section 1 of the Ancient Monuments and Archaeological Areas Act 1979 provides for the maintenance of a schedule of monuments (referred to as "the Schedule"); the maintenance of the schedule is undertaken by Historic Scotland. Details of entries in the Schedule are submitted for recording and/or registration against the interest of the owner of the land on which the monument exists.
In relation to recording/registration of deeds the Keeper's general policy is that it is the original document that requires to be submitted, however sub-section 1(10) (a) of the foresaid Ancient Monuments Act provides that it is competent for a certified copy of the entry to be recorded in the Register of Sasines (or registered in the Land Register).

What is now being submitted for recording/registration is a copy of the original deed that has been certified as being a true copy of the original; the original deed is the entry in the Schedule.

Accordingly those documents that are copies of an entry in the schedule of monuments and have been certified as true copies should be accepted for both recording and registration.

Owner: Legal Services / Registration
Author: Chris Kerr / David Lange
Publication Date: 20/09/2013

Lloyds TSB Scotland PCL: Change of Name to TSB Bank PLC (Legal & Sasine Memo)

With effect from 9 September 2013 Lloyds TSB Scotland plc changed its name to TSB Bank plc. The company number remains SC095237. The Certificate of Incorporation on Change of Name has been examined and is in order.

Land Register

1. Standard securities and dispositions executed before 9th September 2013

Any standard security granted in favour of Lloyds TSB Scotland plc executed before 9th September 2013 but submitted as part of an application for registration on or after that date may be accepted if the application form specifies TSB Bank plc as the applicant.
Agents should be encouraged to list the Certificate of Incorporation on Change of Name on the Form 4, but applications need neither be rejected nor returned for amendment where this has not been done.

The Certificate of Incorporation on change of Name does not require to be produced with any application.
The following note should be added to the charges section entry for the security, and to the charge certificate -

Note: by Certificate of Incorporation on Change of Name dated 9th September 2013 the creditor in the foregoing standard security changed its name from Lloyds TSB Scotland plc to TSB Bank plc.

2. Discharges executed before 9th September 2013

Discharges executed on behalf of Lloyds TSB Scotland plc must be executed before 9th September 2013. They can be accepted for registration after that date.

3.Standard securities and discharges executed on or after 9th September 2013

On or after the 9th September 2013 no standard security or discharge should be granted in favour of or by Lloyds TSB Scotland plc. Should any such deeds be identified at intake/create, they should be rejected and the agent advised that a deed in favour of or by TSB Bank plc is required. Where any such deed is identified later in the registration process, it should be returned to the ingiving agent for amendment/re-engrossment.
Register of Sasines

1. Standard Securities executed before 9th September 2013

Any Standard Security granted in favour of Lloyds TSB Scotland plc before the 9th

September 2013 but presented for recording on or after that date may be accepted if the Sasine Application Form specifies TSB Bank plc as the applicant

2. Discharges executed before the 9th September 2013

Discharges executed on behalf of Lloyds TSB Scotland plc must be executed before 9th September 2013. They can be accepted for recording after that date.

3. Standard securities and discharges executed on or after 9th September 2013

On or after the 9th September 2013 no standard security or discharge should be granted in favour of or by Lloyds TSB Scotland plc. If any such deed is presented, it should be rejected and the ingiving agent advised that a deed in favour of or by TSB Bank plc is required.

Owner: Legal Services
Author: Erin Burns
Publication Date: 09/09/2013

Lloyds TSB Bank PLC: Partial Asset Transfer to Lloyds TSB Scotland PLC (Legal and Sasine Memo)

Transfer of Part of the banking business of Lloyds TSB Bank plc
This transfer is being carried out in connection with the disposal programme required by the European Commission following the receipt by Lloyds Banking Group of state aid from the UK government.

With effect from 15th July 2013 ("the transfer date") part of the banking business of Lloyds TSB Bank plc, including Cheltenham and Gloucester branded securities, was transferred to Lloyds TSB Scotland plc incorporated in Scotland with registered number SC095237 by virtue of the Transfer Scheme between Lloyds TSB Bank plc and Lloyds TSB Scotland plc approved by the Court of Sessions on 5th March 2013 in terms of the Financial Services and Markets Act 2000 ("the transfer instrument"). The transfer documents have been examined and are in order.

Given that only part of the banking business has been transferred the Keeper will rely on the applicants and their agents intimating to the Keeper in the application form or the deed, as advised below, that it relates to a loan transferred by the Transfer Instrument. Failing which the application will be processed on the assumption that no such transfer has taken place and the following provisions do not therefore apply.

Land Register

1. Standard securities and dispositions executed before the transfer date

Any deed (e.g. a standard security or a disposition) granted in favour of Lloyds TSB Bank plc executed before the transfer date, but submitted as part of an application for registration on or after that day, will be accepted for registration, provided that the following requirements are met, namely:
(a) the application form specifies that the applicant is Lloyds TSB Scotland plc;

(b) the application form specifies that registration is sought in respect of the deed in favour of Lloyds TSB Bank plc; and

(c) the Transfer Instrument is listed in the Form 4 submitted with the application but there is no need for the document to be enclosed.
The application forms should be returned for amendment if they do not meet these requirements.

The entry in the Charges Section of the title sheet will show a standard security in favour of Lloyds TSB Bank plc. A note should be added to both the entry and the Charge Certificate as follows:

"Note: with effect from 15th July 2013 the interest of Lloyds TSB Bank plc in the standard security was transferred to Lloyds TSB Scotland plc by virtue of the Transfer

Instrument being the Transfer Scheme between Lloyds TSB Bank plc Lloyds TSB Scotland plc approved by the Court of Sessions on the 5th March 2013 in terms of the Financial Services and Markets Act 2000"

The Creditor in the Charge Certificate should be amended to Lloyds TSB Scotland plc.

2. Discharges executed before the transfer date

Discharges granted by Lloyds TSB Bank plc must bear to have been executed prior to the transfer date. There is no objection to registering them after that date since no completion of title is involved.

3. Standard securities and discharges executed after the transfer date

All deeds (e.g. discharges, deeds of variation or dispositions) executed on or after the transfer date and which relate to a transferred security should be granted by Lloyds TSB Scotland plc
Where Lloyds TSB Scotland plc grant a discharge of, or a repossession disposition in terms of a standard security registered or recorded prior to the transfer date, where the original grantee was Lloyds TSB Bank plc, the Transfer Instrument should be listed in the Form 4, but need not be submitted with the registration application.

Sasine Register

1. Standard securities and other deeds executed before the transfer date

Any deed granted in favour of Lloyds TSB Bank plc executed before the transfer date, but submitted for recording after the transfer date should be either (a) docqueted with reference to a Notice of Title on behalf of Lloyds TSB Scotland plc which deduces title through the Transfer Instrument and the two deeds recorded together or (b) re-engrossed and re-executed in favour of Lloyds TSB Scotland plc
The deed should be returned to the agent for amendment if these requirements are not met.

2. Discharges and other deeds executed before the transfer date

Discharges and any other deeds granted by Lloyds TSB Bank plc must bear to have been executed prior to the transfer date. There is no objection to recording them after that date since no completion of title is involved.

3. Standard securities and discharges executed after the transfer date

All deeds executed on or after the transfer date in relation to a transferred standard security must be granted by Lloyds TSB Scotland plc.

Where Lloyds TSB Scotland plc grant a discharge of a standard security registered or recorded prior to the transfer date, where the original grantee was Lloyds TSB Bank

plc, the discharge should deduce title from Lloyds TSB Bank plc, referring to the Transfer Instrument and transfer date in terms similar to the following:

“which standard security was last vested in the said Lloyds TSB Bank plc as aforesaid and from whom we the said Lloyds TSB Scotland plc acquired right on 15th July 2013 by virtue of the Transfer Instrument being the Transfer Scheme between the said Lloyds TSB Bank plc and Lloyds TSB Scotland plc approved by the Order of the Court of Sessions on 5th March 2013 in terms of the Financial Services and Markets Act 2000……..”

Owner: Legal Services
Author: Erin Burns
Publication Date: 09/09/2013

Registration Practice Memo – SDLT requirements for pre-completion transactions

Finance Act 2013

Legislation introduced in the Finance Act 2013 both amends and supplements the transfer of rights rules provided for in section 45 of the Finance Act 2003.

These are important amendments which will apply to all transfers of rights, including sub-sales and assignments of contracts made on or after 17 July 2013. The new legislation will be contained in a new section 45 of the Finance Act 2003 and a new Schedule 2A will be added thereto. "Transfers of rights" will now be known under the new rules as "pre-completion transactions".

New provisions for pre-completion transactions replace the previous provisions of section 45 of the Finance Act 2013 as they related to transfers of rights. Likewise, these new provisions apply where a contract for a land transaction is to be completed by a conveyance from A to B and where B enters into a further agreement with C prior to the completion or substantial performance of the original contract.

Impact on RoS practice
Section 79 of The Finance Act 2003 prevents the registration of land acquired in most notifiable land transactions unless the person applying to have his interest registered produces a certificate (in practice an SDLT 5) evidencing that he has met his SDLT obligations.

Please note the change in the requirements for SDLT evidence in the following situations:

Example of a sub-sale:

In a sub-sale, there will ordinarily be two transfers of land - a transfer by A to B followed by a transfer by B to C. In such an instance, B will require to produce an SDLT 5 should he wish to register his interest in land.
However, if B does not wish to register his Title the onus will be on C to produce the SDLT 5 when registering his Title. C must also provide, in support of his application for registration, either:

- Written confirmation that B acquired the land from A and subsequently transferred said land to C in pursuance of a "free-standing transfer" for the purposes of Schedule 2A to the Finance Act 2003, or
- Written confirmation from B (or B's Agent) that B acquired the land from A and transferred it to C in pursuance of a "free-standing transfer" for the purposes of Schedule 2A to the Finance Act 2003.

Should there be only one transfer of land, by A to C, only C will be required to produce an SDLT 5 in support of his application for registration.
In line with the Keeper's current policy, failure to produce the appropriate SDLT evidence will result in the rejection of the application submitted for registration.

Example of an assignment of rights:

In the case of an assignment of rights, there will be only one transfer of land - a transfer by A to C. Although the notional land transaction between A and B is notifiable for SDLT purposes, section 79 does not apply to the notional transaction. Consequently, there will be no need to produce written confirmation of the transaction as with sub-sales. Rather C will proceed to register his Title in the usual way by producing an SDLT 5.

In the event that any queries relating to the requirement for SDLT evidence in any examples not covered within this memo, please revert to Lian Boughen in Legal Services.

Owner: Legal Services
Author: Lian Boughen
Publication Date: 23/07/2013

Lloyds TSB Bank PLC: Partial Asset Transfer to Lloyds TSB Scotland PLC (Legal and Sasine Memo)

Transfer of Part of the banking business of Lloyds TSB Scotland plc
This is the first transfer to assist in the reorganisation of the Lloyds Banking Group, being carried out in connection with the disposal programme required by the European Commission following the receipt by Lloyds Banking Group of state aid from the UK government.

During the period between the date of the court order, the 1st October 2012, and the 28th February 2013 part of the banking business of the Lloyds TSB Scotland plc was transferred to Lloyds TSB Bank plc incorporated in England and Wales with registered number 00002065 by virtue of the Transfer Scheme between the Lloyds TSB Scotland plc and Lloyds TSB Bank plc approved by the Court of Session on 1st October 2012 in terms of the Financial Services and Markets Act 2000. The transfer documents have been examined and are in order.

Given that only part of the assets and loans have been transferred, the Keeper will rely on the applicants and their agents intimating to the Keeper in the application or the deed, as advised below, that it relates to a loan transferred by the Transfer Instrument. Failing which the application will be processed on the assumption that no such transfer has taken place and the following provisions do not therefore apply.

As the transfer occurred on a variety of dates between the date of the Court Order and the 28th February 2013 the Bank has retained with their documents a copy of the letter they sent to each customer notifying them of the relevant date of their transfer.

In this Memo the following definitions are used:

"Letter" means the letter sent by Lloyds TSB Bank plc to their customer confirming the transfer date - an example of the letter can be found following this link.
"the transfer date" means the date between 1 Oct. 2012 and 28 Feb. 2013 as stated in the letter submitted by Lloyds TSB Bank plc to the customer, or where applicable as specified in the deduction of title clause narrated in the deed

"the Transfer Instrument " means the Transfer Scheme between Lloyds TSB (Scotland) plc and Lloyds TSB Bank plc approved by the Court of Session on 1 October 2012 in terms of the Financial Services and Markets Act 2000

Land Register

1. Standard securities and dispositions executed before the transfer date

Any deed (e.g. a standard security or a disposition) granted in favour of the Lloyds TSB Scotland plc executed before the transfer date, but submitted as part of an application for registration on or after that day, will be accepted for registration, provided that the following requirements are met, namely

(a) the application form specifies that the applicant is Lloyds TSB Bank plc

(b) the application form specifies that registration is sought in respect of the deed in favour of Lloyds TSB Scotland plc;

(c) the Transfer Instrument is listed in the Form 4 submitted with the application but there is no need for the document to be enclosed; and

(d) the application includes the letter sent by Lloyds TSB Bank plc to the customer confirming the date of the transfer.

The application forms should be returned for amendment if they do not meet these requirements. If the information in the application form suggests that standard security to which it relates has been transferred under the Transfer Instrument, and the letter has not been submitted with the application, it should be requisitioned from the Agent.

The entry in the Charges Section of the title sheet will show a standard security in favour of Lloyds TSB Scotland plc. A note should be added to both the entry and the Charge Certificate as follows:

"Note: with effect from *(insert transfer date)* the interest of Lloyds TSB Scotland plc in the standard security was transferred to Lloyds TSB Bank plc by virtue of the Transfer Instrument being the Transfer Scheme between the Lloyds TSB Scotland plc and Lloyds TSB Bank plc approved by the Court of Session on the 1st October 2012 in terms of the Financial Services and Markets Act 2000"

The Creditor in the Charge Certificate should be amended to Lloyds TSB Bank plc.

2. Discharges executed before the transfer date

Discharges granted by the Lloyds TSB Scotland plc must bear to have been executed prior to the transfer date. There is no objection to registering them after that date since no completion of title is involved.

3. Standard securities and discharges executed after the transfer date

All deeds (i.e. discharges, deed of variation or dispositions) executed on or after the transfer date and relating to a transferred security should be granted by or be in favour of the Lloyds TSB Bank plc

Where Lloyds TSB Bank plc grants a discharge of, or a repossession disposition in terms of a standard security registered or recorded prior to the transfer date, where the original grantee was Lloyds TSB Scotland plc, the Transfer Instrument should be listed in the Form 4, but need not be submitted with the registration application.

If any deed executed on or after the transfer date by or in favour of Lloyds TSB

Scotland plc is submitted the deed should be returned to the agent for amendment and re-execution.

Sasine Register

1. Standard securities and other deeds executed before the transfer date

Any deed (such as a standard security or disposition) granted in favour of Lloyds TSB Scotland plc executed before the transfer date, but submitted for recording after the transfer date should be either (a) docqueted with reference to a Notice of Title on behalf of Lloyds TSB Bank plc which deduces title through the Transfer Instrument and the two deeds recorded together or (b) re-engrossed and re-executed in favour of Lloyds TSB Bank plc

The deed should be returned to the agent for amendment if these requirements are not met.

2. Discharges and other deeds executed before the transfer date

Discharges and any other deeds granted by Lloyds TSB Scotland plc must bear to have been executed prior to the transfer date. There is no objection to recording them after that date since no completion of title is involved.

3. Standard securities and discharges executed after the transfer date

All deeds executed on or after the transfer date in relation to a transferred standard security must be granted by Lloyds TSB Bank plc. If any deed executed on or after the transfer date by Lloyds TSB Scotland plc is submitted the deed will be returned to the agent for amendment and re execution.

Where Lloyds TSB Bank plc grants a discharge of a standard security registered or recorded prior to the transfer date, where the original grantee was Lloyds TSB Scotland plc, the discharge should deduce title from the Lloyds TSB Scotland plc referring to the Transfer Instrument and transfer date in terms similar to the following:
"which standard security was last vested in the said Lloyds TSB Scotland plc as aforesaid and from whom we the said Lloyds TSB Bank plc acquired right on *(transfer date)* by virtue of the Transfer Instrument being Transfer Scheme between the said Lloyds TSB Scotland plc and Lloyds TSB Bank plc approved by the Order of the Court of Session on 1st Oct. 2012 in terms of the Financial Services and Markets Act 2000…….. "

Owner: Legal Services
Author: Erin Burns
Publication Date: 22/07/2013

Update: Liquidation of Irish Bank Resolution Corporation Ltd – Legal Memo

Irish Nationwide Building Society's Transfer of Assets to Anglo Irish Bank Corporation Limited; and Change of Name to Irish Bank Resolution Corporation Ltd - Legal Memo

With effect from 1 July 2011 the assets and liabilities of the Irish Nationwide Building Society were transferred to the Anglo Irish Bank Corporation Limited by virtue of the Transfer Order between Irish Nationwide Building Society and Anglo Irish Bank Corporation Limited approved by the High Court in Dublin in terms of the Credit Institutions (Stabilisation) Act 2010 (the "Transfer Order"). This Transfer Order is given effect in Scotland by virtue of the European Union Directive 2001/24/EC which was implemented in the UK under the Credit Institutions (Re-organisation and Winding up) Regulations 2004 (SI 2004/1045) ("the 2004 Regulation").
On the 14th October 2011, Anglo Irish Bank Corporation Limited changed its name to Irish Bank Resolution Corporation Limited.
On 7th February 2013, the Irish Bank Resolution Corporation Act 2013 (Special Liquidation) Order 2013 was made in Ireland and provided for the winding-up of Irish Bank Resolution Corporation Limited. The Order is recognised in Scotland by the 2004 Regulation mentioned above.
The transfer documents, Certificate of Incorporation on Change of Name and the winding-up documents have been examined and are in order.

1. Deeds granted by or in favour of Irish Nationwide Building Society

1.1 Standard securities and dispositions executed before 1 July 2011
Any deed (e.g. a standard security or a disposition) granted in favour of Irish Nationwide Building Society executed before 1 July 2011, but submitted as part of an application for registration on or after that day, will be acceptable for registration provided the following requirements are met:-

(1) where the deed was submitted for registration before the 14th October 2011:

(a) the application form specifies Anglo Irish Bank Corporation Limited as the applicant,

(b) the application form specifies that registration is sought in respect of the deed in favour of the Irish Nationwide Building Society, and

(c) the Transfer Order is listed on the Form 4 submitted with the application, but there is no need for a copy of the document to be submitted.
The application forms should be returned for amendment if they do not meet these requirements.
The entry in the Charges Section of the Title Sheet will show a standard security in favour of the Irish Nationwide Building Society. A note should be added to both the entry and the Charge Certificate in following terms:

Note: With effect from 1 July 2011 the interest of said Irish Nationwide Building

Society in the standard security was transferred to the Anglo Irish Bank Corporation Limited by virtue of the Transfer Order between the Irish Nationwide Building Society and the Anglo Irish Bank Corporation Limited approved by the High Court in Dublin on 1 July 2011.

The creditor in the Charge Certificate should be amended to Anglo Irish Bank Corporation Limited.

(2) where the deed is submitted for registration after the 14th October 2011:

(a) the application form specifies Irish Bank Resolution Corporation Limited as the applicant,

(b) the application form specifies that application for registration is sought in respect of the deed in favour of Irish Nationwide Building Society,

(c) the Transfer Order is listed on the Form 4 submitted with the application but there is no need for a copy of the document to be submitted,

(d) the Certificate of Incorporation on Change of Name should also be listed on the Form 4, but applications need neither be rejected nor returned for amendment where this has not been done.

The application forms should be returned for amendment if they do not meet these requirements.
The entry in the Charges Section of the Title Sheet will show a standard security in favour of the Irish Nationwide Building Society. The following notes should be added to both the entry and the Charge Certificate:

Note 1: With effect from 1 July 2011 the interests of said Irish Nationwide Building Society in the standard security was transferred to the Anglo Irish Bank Corporation Limited by virtue of Transfer Order between the Irish Nationwide Building Society and the Anglo Irish Bank Corporation Limited approved by the High Court in Dublin on 1 July 2011.

Note 2: by Certificate of Incorporation on Change of Name dated 14th October 2011 the creditor in the foregoing standard security changed its name from Anglo Irish Bank Corporation Limited to Irish Bank Resolution Corporation Limited.
The creditor in the Charge Certificate should be amended to the Irish Bank Resolution Corporation Limited.

1.2 Discharges executed before 1 July 2011
Discharges granted by Irish Nationwide Building Society must have been executed before 1 July 2011. There is no objection to recording or registering them after that date since no completion of title is involved.

1.3 Deeds executed on or after the 1 July 2011
On or after 1 July 2011 it is not legally competent for a deed to be granted by or in

favour of Irish Nationwide Building Society. Registration officers should return any such deed that forms part of an application for registration to the presenting agent for amendment/re-engrossment.

2. Deeds granted by or in favour of Anglo Irish Bank Corporation Limited

2.1 Standard securities and dispositions executed before 14 October 2011
Any deed (e.g. standard security or a disposition) granted in favour of Anglo Irish Bank Corporation Limited executed before 14 October 2011 but submitted as part of an application for registration on or after that date may be accepted if the following points are met:
(a) the application form specifies the Irish Bank Resolution Corporation Limited as the applicant;
(b) the application form specifies that application for registration is sought in respect of the deed in favour of the **Anglo Irish Bank Corporation Limited;**
(c) the Certificate of Incorporation on Change of Name should be listed on the Form 4, but applications need neither be rejected nor returned for amendment where this has not been done.
Settlers should note that the Certificate of Incorporation on Change of Name has been examined and added to the Common Links Index. No requisitioning or further examination of this document is therefore necessary.
The following note should be added to the charges section entry for the security, and to the charge certificate -
Note: by Certificate of Incorporation on Change of Name dated 14th October 2011 the creditor in the foregoing standard security changed its name from Anglo Irish Bank Corporation Limited to Irish Bank Resolution Corporation Limited.

2.2 Discharges executed before 14 October 2011

Discharges executed by Anglo Irish Bank Corporation Limited must be executed before 14 October 2011. They can be accepted for registration after that date. Where the Anglo Irish Bank Corporation Limited grants a discharge, or a repossession disposition in terms of a standard security registered or recorded prior to 1 July 2011, where the original grantee was Irish Nationwide Building Society, the Transfer Order should be listed on the Form 4, but need not be submitted with the registration application.

2.3 Deeds executed on or after 14 October 2011
On or after 14 October 2011, no standard security or discharge should be granted in favour of or by Anglo Irish Bank Corporation Limited. Should any such deeds be identified at intake/create, they should be rejected and the agent advised that a deed in favour of or by Irish Bank Resolution Corporation Limited is required. Where any such deed is identified later in the registration process, it should be returned to the ingiving agent for amendment/re-engrossment.

3. Deeds granted by or in favour of Irish Bank Resolution Corporation Limited

On or after 14 October 2011 no standard security, discharge or other deed should be

granted in favour of or by the Irish Nationwide Building Society or the Anglo Irish Bank Corporation Limited. Should any such deed be identified at intake, they should be rejected and the agent advised that a deed in favour of or by Irish Bank Resolution Corporation Limited is required.
Discharges of existing standard securities which are in favour of the Irish Nationwide Building Society or the Anglo Irish bank Corporation Limited should be granted by the Irish Bank Resolution Corporation Limited; no deduction of title is necessary. The Transfer Order and/or the Certificate of Incorporation on Change of Name should be listed on the Form 4.

4. Liquidation of Irish Bank Resolution Corporation Limited
On the 7th February 2013 the Irish Bank Resolution Corporation Limited was put into liquidation. Kieran Wallace and Eamonn Richardson of KPMG, 1 Stokes Place, St. Stephen's Green, Dublin 2 were appointed as joint special liquidators and have the power to act either jointly or individually. The evidence of the appointment of the liquidators has been examined and is satisfactory.
Any deed executed after the 7 February 2013 should run in the name of the company but be executed by one or both of the liquidators in place of the directors.

Update: Liquidation of Irish Bank Resolution Corporation Ltd (Sasine Memo)

Irish Nationwide Building Society's Transfer of Assets to Anglo Irish Bank Corporation Limited; and Change of Name to Irish Bank Resolution Corporation Ltd (Sasine Memo)

With effect from 1 July 2011 the assets and liabilities of the Irish Nationwide Building Society were transferred to the Anglo Irish Bank Corporation Limited by virtue of the Transfer Order between Irish Nationwide Building Society and Anglo Irish Bank Corporation Limited approved by the High Court in Dublin in terms of the Credit Institutions (Stabilisation) Act 2010 (the "Transfer Order"). This Transfer Order is given effect in Scotland by virtue of the European Union Directive 2001/24/EC which was implemented in the UK under the Credit Institutions (Re-organisation and Winding up) Regulations 2004 (SI 2004/1045).
On the 14th October 2011, Anglo Irish Bank Corporation Limited changed its name to Irish Bank Resolution Corporation Limited.
On 7th February 2013, the Irish Bank Resolution Corporation Act 2013 (Special Liquidation) Order 2013 was made in Ireland and provided for the winding-up of Irish Bank Resolution Corporation Limited. The Order is recognised in Scotland by the 2004 Regulation mentioned above.
The transfer documents, Certificate of Incorporation on Change of Name and the winding-up documents have been examined and are in order.

1. Deeds granted by or in favour of Irish Nationwide Building Society

1.1 Standard securities and other deeds executed before 1 July 2011
Any deed (such as a standard security or disposition) granted in favour of Irish Nationwide Building Society executed before 1 July 2011, but submitted for recording after that date must:

(1) Where the deed is submitted for registration before the 14th October 2011
1. (a) be docqueted with reference to a Notice of Title on behalf of the Anglo Irish Bank Corporation Limited which deduces title through the Transfer Order and the two deeds recorded together; or

(b) be re-engrossed and re-executed in favour of Anglo Irish Bank Corporation Limited.

(2) Where the deed is submitted for registration after the 14th October 2011

(a) be docqueted with reference to a Notice of Title on behalf of the Anglo Irish Bank Corporation Limited which deduces title through the Transfer Order and the two deeds recorded together, and the Sasine Application Form specifies Irish Bank Resolution Corporation Limited as the applicant; or
(b) be docqueted with reference to a Notice of Title on behalf of the Irish Bank Resolution Corporation Limited which deduces title through the Transfer Order and the Certificate of Incorporation on Change of Name, and the two deeds recorded together; or

(c) be re-engrossed and re-executed in favour of the Anglo Irish Bank Corporation Limited, and the Sasine Application Form specifies Irish Bank Resolution Corporation Limited as the applicant, or
(d) be re-engrossed and re-executed in favour of the Irish Bank Resolution Corporation Limited.

1. The deed should be returned for amendment if none of these requirements are met.

1.2 Dischargesand other deedsexecuted before 1 July 2011
Discharges and any other deeds granted by Irish Nationwide Building Society must bear to have been executed before 1 July 2011. There is no objection to recording or registering them after that date since no completion of title is involved.

1.3 Deeds executed on or after the 1 July 2011
If any deed executed on or after 1 July 2011 by or in favour of the Irish Nationwide Building Society is submitted, the deed should be returned to the agent for amendment and re-execution.

2. Deeds granted by or in favour of Anglo Irish Bank Corporation Limited

2.1 Standard securities and dispositions executed before 14 October 2011
Any deed (e.g. standard security or a disposition) granted in favour of Anglo Irish Bank Corporation Limited executed before 14 October 2011 but submitted as part of an application for registration on or after that date may be accepted if the sasine application form specifies Irish Bank Resolution Corporation Limited as the applicant. The Certificate of Incorporation on Change of Name does not require to be produced with any application.

2.2 Discharges executed before 14 October 2011

Discharges executed on behalf of Anglo Irish Bank Corporation Limited must be executed before 14 October 2011. They can be accepted for registration after that date.

2.3 Deeds executed on or after 14 October 2011
On or after 14 October 2011, no standard security or discharge should be granted in favour of or by Anglo Irish Bank Corporation Limited. If any such deed is presented, it should be rejected and the ingiving agent advised that a deed in favour of or by Irish Bank Resolution Corporation Limited is required.

3. Deeds granted by or in favour of Irish Bank Resolution Corporation Limited

On or after 14 October 2011 no standard security, discharge or other deed should be granted in favour of or by the Irish Nationwide Building Society or the Anglo Irish Bank Corporation Limited. Should any such deed be identified, they should be rejected and the agent advised that a deed in favour of or by Irish Bank Resolution Corporation Limited is required.

Owner: Legal Services
Author: Erin Burns
Publication Date: 11/06/2013

Breach of Inhibitions (Legal Memo 04-2013)

1. With immediate effect, the following instructions apply to **all applications where an ROI search is required**, regardless of when they were received.

2. The instructions in this memo relate to inhibitions only, and not to any other entries in the Register of Inhibitions, including such other entries which have inhibitory effect, e.g. entries related to sequestration. The ROI section of the Legal Manual has been updated to take account of these updated instructions.

3. Registration officers are reminded that, for **applications received on or after 22 January 2007**, provided the relevant question on the application form has been completed in full and no adverse entries have been disclosed, any ROI search required should be carried out from the date of registration back to the date certified by the submitting agent. For the avoidance of doubt, registration officers should carry out their own search in line with current instructions where the relevant question has not been completed or has been only partially completed.

4. Where it appears (from a search completed by a Registration Officer or from a disclosure by a submitting agent) that the deed being registered is in breach of an inhibition, the Registration Officer should requisition from the submitting agent a letter confirming clearly that, in their view, the relevant interest is not being transferred or created in breach of the inhibition. Unless the submitting agent is able to provide a response confirming that the inhibition does not strike at the transaction, the Keeper will reflect the inhibition on the title sheet and exclude indemnity in respect thereof. Where the agent is able to confirm the inhibition does not strike, the inhibition should not be reflected on the title sheet and no exclusion of indemnity is required. The standard 60 day rule will apply to any such requisitions. If no response is received the inhibition should be reflected on the title sheet and indemnity excluded in respect thereof.

5. In cases where the submitting agent has disclosed the existence of an inhibition on the application form but their view is that it does not strike at the transaction the Keeper expects they will have explained this either on the application form or by separate letter. If such explanation is an unequivocal statement that the relevant interest is not being transferred or created in breach of the inhibition no further requisition will be required and the registration officer may omit the inhibition from the title sheet and proceed without an exclusion of indemnity. Where the agent has not provided any such explanation or the explanation does not contain a sufficiently clear statement, the requisition procedure at paragraph 4 should be followed.

6. If a submitting agent sends in evidence (such as missives or details of loan encashment etc.) purporting to show that an inhibition does not strike at a particular transaction, but is unable or unwilling to give their own assurance regarding the inhibition, registration officers should not examine such evidence but should exclude indemnity and reflect the inhibition on the title sheet.

7. External guidance on the Keeper's policy in respect of Inhibitions and Land Register applications has been published on our external website.

Owner: Registration (John King)
Author: David Lange & Chris Kerr
Publication Date: 03/06/2013

The Dunfermline Building Society Asset Transfer – Legal and Sasine Memo

Legal memo 01-2009 provided information on the transfer of Dunfermline Building Society's assets. At that time the assets comprising social housing loans were transferred to DBS Bridge Bank Limited, owned by the Bank of England, for management of these assets until transferred to a third party.
These assets were transferred to Nationwide Building Society with effect from 1 July 2009 and any deeds (Discharges, Deeds of restriction &c.) should now be granted by Nationwide Building Society. Any deed granted between 30 March and 30 June 2009 should be granted by DBS Bridge Bank Limited. DBS Bridge Bank Limited was dissolved on 19 June 2010. (Provisions relating to "second supplemental transfer time" appear to have been effective from 30 March 2009.)

For Sasine purposes the deduction of title in any deed granted by Nationwide Building Society ,where the loan was part of the social housing assets, should refer to both the original transfer instrument to DBS Bridge Bank Limited (Dunfermline Building Society Property Transfer Instrument 2009) and also the DBS Bridge Bank Limited Supplemental and Onward Transfer Instrument dated 30 June 2009.

For land registration purposes both Instruments should be listed on the inventory form 4; there is no requirement to requisition either Instrument as these have been examined by the Keeper.

If the original loan was not part of the Dunfermline Building Society's social housing asset portfolio then only the "Dunfermline Building Society Property Transfer Instrument 2009" will be referred to.

Owner: Registration/Legal Services
Author: David Lange/Chris Kerr
Date: 8 May 2013

The Scottish Police Authority Property Transfer Scheme 2013

With effect from 1st April 2013:

1) all property, rights, liabilities and obligations of the joint police boards, the Scottish Police Services Authority and chief constables of police forces;

(2) the property, rights, liabilities and obligations of the Scottish Ministers, in so far as they relate to functions of the Scottish Police Authority or police functions (under exception of those properties listed below); and

(3) the heritable property of the Dumfries and Galloway Council, and the Fife Council, specified in the Schedule to the Scottish Police Authority Property Transfer Scheme 2013, and any rights, liabilities, or obligations of those authorities in relation to that property;

was transferred to the Scottish Police Authority, a body corporate established under Section 1 of the Police and Fire Reform (Scotland) Act 2012 and having its principal place of business at Elphinstone House, West Regent Street, Glasgow, G2 2AF, by virtue of the Scottish Police Authority Property Transfer Scheme 2013, made in terms of Schedule 5 of the Police and Fire Reform (Scotland) Act 2012

In this memo the following definitions are used:

- "the transfer date" means 1st April 2013
- "the transferors" means the joint police boards, the Scottish Police Services Authority, the chief constables of police forces, the Scottish Ministers, the Dumfries and Galloway Council and the Fife Council
- "the 2012 Act" means the Police and Fire Reform (Scotland) Act 2012
- "the Transfer Scheme" means The Scottish Police Authority Property Transfer Scheme 2013
- "the Authority" means the Scottish Police Authority
- "Certificate" means a Certificate issued by the Scottish Ministers in terms of paragraph 19(7) of Schedule 5 to the Police and Fire Reform (Scotland) Act 2012

As of the 1st April 2013, the eight Scottish joint police boards and the Scottish Police Services Authority merged into a single body, the Scottish Police Authority. To facilitate the transfer of functions, paragraph 17(5) of Schedule 5 of the 2012 Act in conjunction with the Transfer Scheme, provides that all property of the joint police boards, the Scottish Police Services Authority and the chief constables of police forces, and a number of properties of the Scottish Ministers, the Dumfries and Galloway Council and the Fife Council, transfer to and vest in the Authority.

Using the details from the common links index, a copy of the Transfer Scheme can be found on the RAC tool.

The Land Register

1. Deeds executed before the transfer date

It will not be competent for deeds executed before the transfer date to be either in favour of or granted by the Authority, up until that date all deeds should continue to be granted by or be in favour of one of the transferors.

Any deed granted in favour of one of the transferors, executed before the transfer date, but submitted as part of an application for registration after that date, will be accepted for registration, provided that the following requirements are met, namely:
(a) the application form specifies that the applicant is the Authority;

(b) the application form specifies that registration is sought in respect of the deed in favour of one of the transferors, the 2012 Act and the Transfer Scheme; and

(c) the 2012 Act and the Transfer Scheme are listed on the Inventory Form 4 submitted with the application, but there is no need for the documents to be enclosed.
The application form should be returned for amendment if it does not meet these requirements.

<u>Deed granted in favour of Dumfries and Galloway Council or Fife Council</u>

Any deed submitted for registration by the Authority, but executed in favour of the Dumfries and Galloway Council or the Fife Council before the transfer date, should only be accepted where the deed relates to a property specified in the list of transferred properties in the schedule of the Transfer Scheme.

<u>Deed granted in favour of the Scottish Ministers</u>
An application for registration submitted by the Authority for a deed in favour of the Scottish Ministers, executed before the transfer date, should not only meet the above registration requirements, but also be accompanied by a Certificate. Such a Certificate should state that the property has transferred and will be taken as conclusive evidence of the transfer.

2. Deeds executed after the transfer date

It will not be competent for deeds executed after the transfer date to be in favour of or granted by any joint police board, the Scottish Police Services Authority and or any chief constables. After the transfer date all deeds relating to property formerly vest in these bodies should be granted by or be in favour of the Authority.
Any deed relating to property that was formerly vest in either the Dumfries and Galloway Council or the Fife Council and is included in the list of transferred property, should be granted by, or in favour of, the Authority.
An application by the Authority of a deed relating to property that was formerly vest in the Scottish Ministers should be accompanied by a Certificate confirming that the property was transferred to the Authority. In its absence it should be requisitioned from the submitting agent.

Deed executed by the Authority
Where property has transferred to the Authority, the 2012 Act and the Transfer Scheme will form the necessary links in title and should therefore be referred to on the Inventory Form 4. It will not be necessary for the agent to submit the 2012 Act or Transfer Scheme.

Deed executed by one of the transferors
Where property is being conveyed or otherwise dealt with by a joint police board, the Scottish Police Services Authority or a chief constable, after the transfer date, the deed should be returned to the Agent for amendment and re-execution. This also applies to any deed executed by either the Dumfries and Galloway Council or the Fife Council relating to a property listed as transferred property in Schedule to the Transfer Scheme.

If after the transfer date it appears that property relating to functions of the Authority or other police functions is being conveyed or otherwise dealt with by the Scottish Ministers, a Certificate stating that the property has not transferred to the Authority should accompany the application for registration. A Certificate will not be required for the following properties which have been expressly excluded from the transfer, title to these properties remains with the Scottish Ministers:

- The Scottish Police College, Tullialan Castle, Kincardine, Fife, FK10 4BE,
- SPSA Forensic Services, Rushton Court, 3 West Victoria Dock Road, Dundee, DD1 3JT,
- Any right of the Scottish Ministers as a tenant under lease in relation to heritable property.

The Sasine Register

1. Deeds executed before the transfer date

It will not be competent for deeds executed before the transfer date to be either in favour of or granted by the Authority, up until that date all deeds should continue to be granted by or be in favour of one of the transferors.
If however a deed is executed in favour of one of the transferors before the transfer date and is submitted for recording after the transfer date, and the deed relates to a property transferred to the Authority under the Transfer Scheme, the deed should be either (a) re-engrossed in favour of the Authority, or (b) docqueted with reference to a Notice of Title on behalf of the Authority and the two deeds recorded together, with the Notice of Title incorporating reference to the earlier deed.

The deed should be returned to the Agent for amendment if these requirements are not met.

2. Deeds executed after the transfer date

Deed executed by the Authority
Where the deed is granted by the Authority, the Act and Transfer Scheme will form the relevant link in title for the purposes of deducing title.

Deed executed by one of the transferors

Where property is being conveyed or otherwise dealt with by either one of the joint police boards, the Scottish Police Services Authority or a chief constable of a police force after the transfer date, the deed should be returned to the Agent for amendment and re-execution.

Where Dumfries and Galloway Council or the Fife Council convey or otherwise deal with property specified in the list of transferred properties in the schedule of the Transfer Scheme after the transfer date, the deed should be returned to the Agent for amendment and re-execution.

Owner: Legal Services
Author: Erin Burns
Publication Date: 30/04/2013

The Scottish Fire and Rescue Service Property Transfer (No. 1) Scheme 2013

With effect from 1st April 2013:

(1) all property, rights, liabilities and obligations of the joint fire and rescue boards;

(2) the property, rights, liabilities and obligations of the Scottish Ministers, in so far as they relate to the functions of the Scottish Fire and Rescue Service (under exception of the property specified below); and

(3) the heritable property of the Dumfries and Galloway Council, and the Fife Council, specified in Schedule 2 of The Scottish Fire and Rescue Service Property Transfer (No. 1) Scheme 2013 and any rights, liabilities, or obligations of those authorities in relation to that property,

was transferred to the Scottish Fire and Rescue Service by virtue of The Scottish Fire and Rescue Service Property Transfer (No. 1) Scheme 2013, made in terms of Schedule 6 of the Police and Fire Reform (Scotland) Act 2012

In this memo the following definitions are used:

- "the transfer date" means 1st April 2013
- "the transferors" means the joint fire and rescue boards, the Scottish Ministers, the Dumfries and Galloway Council and the Fife Council
- "the 2012 Act" means the Police and Fire Reform (Scotland) Act 2012
- "the Transfer Scheme" means The Scottish Fire and Rescue Service Property Transfer (No. 1) Scheme 2013
- "the SFRS" means the Scottish Fire and Rescue Service
- "Certificate" means a Certificate issued by the Scottish Ministers in terms of paragraph 7(7) of Schedule 6 to the 2012 Act

As of the 1st April 2013, all property of the joint fire and rescue boards, and a number of properties of the Scottish Ministers, the Dumfries and Galloway Council and the Fife Council, transfer to and vest in the SFRS.

Using the details from the common links index, a copy of the Transfer Scheme can be found on the RAC tool.

<u>The Land Register</u>

1. Deeds executed before the transfer date

It will not be competent for deeds executed before the transfer date to be either in favour of or granted by the SFRS, up until that date all deeds should continue to be granted by or be in favour of one of the transferors.

Any deed granted in favour of one of the transferors, executed before the transfer date, but submitted as part of an application for registration after that date, will be accepted for registration, provided that the following requirements are met, namely:
(a) the application form specifies that the applicant is the SFRS;

(b) the application form specifies that registration is sought in respect of the deed in favour of one of the transferors, the 2012 Act and the Transfer Scheme; and

(c) the 2012 Act and the Transfer Scheme are listed on the Inventory Form 4 submitted with the application, but there is no need for the documents to be enclosed.
The application form should be returned for amendment if it does not meet these requirements.

Deed granted in favour of Dumfries and Galloway Council or Fife Council

Any deed submitted for registration by the SFRS, but executed in favour of the Dumfries and Galloway Council or the Fife Council before the transfer date, should only be accepted where the deed relates to a property specified in the list of transferred properties in Schedule 2 of the Transfer Scheme.

Deed granted in favour of the Scottish Ministers

An application for registration submitted by the SFRS of a deed in favour of the Scottish Ministers, executed before the transfer date, should not only meet the above registration requirements, but also be accompanied by a Certificate. Such a Certificate should state that the property has transferred and will be taken as conclusive evidence of the transfer.

2. Deeds executed after the transfer date

It will not be competent for deeds executed after the transfer date to be in favour of or granted by any of the joint fire and rescue boards. After the transfer date all deeds relating to property formerly vest in one of the joint fire and rescue boards should be granted by or be in favour of the SFRS.

Any deed relating to property that was formerly vest in either the Dumfries and Galloway Council or the Fife Council, and is included in the list of transferred property in Schedule 2 of the Transfer Scheme, should be granted by the SFRS. Where the SFRS submit a deed relating to property that was formerly vested in the Scottish Ministers, the application should be accompanied by a Certificate confirming that the property transferred to the SFRS. In its absence it should be requisitioned from the submitting agent.

Deed executed by the SFRS
Where property has transferred to the SFRS, the 2012 Act and the Transfer Scheme will form the necessary links in title and should therefore be referred to on the Inventory Form 4. It will not be necessary for the agent to submit the 2012 Act or Transfer Scheme.

Deed executed by one of the transferors
Where property is being conveyed or otherwise dealt with by one of the joint fire and rescue boards after the transfer date, the deed should be returned to the Agent for

amendment and re-execution. This also applies to any deed executed by either the Dumfries and Galloway Council or the Fife Council relating to a property listed as transferred property in Schedule 2 of the Transfer Scheme.

If after the transfer date it appears that property relating to functions of the SFRS is being conveyed or otherwise dealt with by the Scottish Ministers, a Certificate stating that the property has not transferred to the SFRS should accompany the application for registration. A Certificate will not be required for the following properties which have been expressly excluded from the transfer, title to these properties remains with the Scottish Ministers:

- The Scottish Fire Service College, Main Street, Gullane, East Lothian, EH31 2HG
- 19 Main Street, Gullane, East Lothian, EH31 2HH
- 2 Garelton Court, Gullane, East Lothian, EH31 2HH
- 26 Muirfield Park, Gullane, East Lothian, EH31 2DY
- 30 Muirfield Park, Gullane, East Lothian EH31 2DY
- Glenelg, Coulindoune, Kyle, Highland, IV40 8JU
- Staffin, Staffin Road, Skye, Highland, IV51 9HP

The Sasine Register

1. Deeds executed before the transfer date

It will not be competent for deeds executed before the transfer date to be either in favour of or granted by the SFRS, up until that date all deeds should continue to be granted by or be in favour of one of the transferors.

If however a deed is executed in favour of one of the transferors before the transfer date and is submitted for recording after the transfer date, and the deed relates to a property transferred to the SFRS under the Transfer Scheme, the deed should be either (a) re-engrossed in favour of the SFRS, or (b) docqueted with reference to a Notice of Title on behalf of the SFRS and the two deeds recorded together, with the Notice of Title incorporating reference to the earlier deed.

The deed should be returned to the Agent for amendment if these requirements are not met.

2. Deeds executed after the transfer date

Deed executed by the SFRS

Where the deed is granted by the SFRS, the Act and Transfer Scheme will form the relevant link in title for the purposes of deducing title.

Deed executed by one of the transferors

Where property is being conveyed or otherwise dealt with by one of the joint fire and rescue boards after the transfer date, the deed should be returned to the Agent for amendment and re-execution.

Where Dumfries and Galloway Council or the Fife Council convey, or otherwise deal with, property specified in the list of transferred properties in the schedule 2 of the

Transfer Scheme after the transfer date, the deed should be returned to the Agent for amendment and re-execution.

Owner: Legal Services
Author: Erin Burns
Publication Date: 30/04/2013

Registration of Company Charges

The Companies Act 2006 (Amendment of Part 25) Regulations 2013 amend Part 25 of the Companies Act 2006. These Regulations will come into force on 6 April 2013.

- **New provisions will apply to the procedure for submitting an application to Companies House. These new provisions will impact upon the registration of standard securities created on or after 6 April 2013 by companies and LLPs incorporated in one of the UK jurisdictions.**

- **The existing provisions of Part 25 of the Companies Act 2006 will continue to apply to those charges created before 6 April 2013.**

No change to existing practice in the Register of Sasines or for Land Register applications received prior to 6 April 2013

Where a security to which the regulations apply is presented either for recording in the Register of Sasines or for registration in the Land Register, the Keeper will – if so requested – continue to examine the application promptly on receipt and issue a letter confirming the date of recording/registration. For deeds presented for recording in the Register of Sasines our existing practice will continue to apply. However, the regulations will necessitate a change to our registration practice in relation to the evidential requirements for Land Register applications received after 6 April 2013.

Change to registration practice for Land Register applications received after 6 April 2013

In the Land Register, the L19 letter confirming the RoS registration date includes a request for the production of evidence that the charge has been registered at Companies House within the 21 day period after its creation. Under the pre- 6 April 2013 scheme, the Keeper requests production of the Companies House certificate of registration of the charge. However, under the new scheme that will come into effect on 6 April, the Companies House certificate will contain only the name and number of the company or LLP that granted the security, together with the unique reference code allocated by Companies House to the charge.

As a consequence, in addition to the production of the Companies House certificate, we will require an assurance from the solicitor that the certificate relates to the charge in question. For example, the letter enclosing the Companies House certificate should include the Land Register title number and application number, together with the date of registration at Companies House. (If the Land Register application includes more than one security by the same company or LLP, care should be taken to ensure that each certificate is supported by a letter explaining which security it relates to).

Solicitors have been/will be advised of the impact of the Companies Act 2006 (Amendment of Part 25) Regulations 2013 in Registers Update 38.

The Legal Manual will be updated on Monday 8 April to provide additional guidance on the procedures to be followed.
Land Register letters L19 to L19F have been amended to reflect the Keeper's new evidential requirements, and a new exclusion of indemnity note will be added to the LRS pick-list.

Registration Officers should familiarise themselves with the new guidance and letters.

For further information please contact Donald Craig.

Owner - Hugh Welsh
Author - Donald Craig/David Lange
Publication Date - 08/04/13

ING Direct N.V – Barclays Bank PLC (Legal Memo 03-2013)

Transfer of the savings and mortgage business of the UK branch of ING Direct N.V. With effect from 6th March 2013 (the "transfer date") the savings and mortgage business of the UK branch of ING Direct N.V. whose registered office is at Bijlmerplein 888, Amsterdam, The Netherlands and whose UK branch is 410 Thames Valley Park Drive, Reading, Berskhire, was transferred to the Barclays Bank plc incorporated in England and Wales (registered number 1026167), by virtue of the Transfer Scheme between ING Direct N.V. and Barclays Bank plc approved by Order of the High Court of Justice on 20 February 2013 in terms of the Financial Services and Markets Act 2000 (the "Transfer Instrument"). The transfer documents have been examined and are in order.

1. Standard securities and dispositions executed before 6th March 2013

Any deed (e.g. a standard security or a disposition) granted in favour of the ING Direct N.V. executed before the transfer date, but submitted as part of an application for registration on or after that day, will be accepted for registration, provided that the following requirements are met, namely:

(a) the application form specifies that the applicant is the Barclays Bank plc;

(b) the application form specifies that registration is sought in respect of the deed in favour of the ING Direct N.V.; and

(c) the Transfer Instrument is listed in the Form 4 submitted with the application, but there is no need for the Instrument to be enclosed.

The application form should be returned for amendment if it does not meet these requirements.

The entry in the Charges Section of the title sheet will show a standard security in favour of ING Direct N.V., and a note should be added to both the entry and the Charge Certificate as follows:

"Note: with effect from 6th March 2013 the interest of ING Direct N.V. in the standard security was transferred to Barclays Bank plc by virtue of the Transfer Instrument being the Transfer Scheme between the ING Direct N.V. and Barclays Bank plc approved by the High Court of Justice on 20th February 2013 in terms of the Financial Services and Markets Act 2000"

The Creditor in the Charge Certificate should be amended to the Barclays Bank plc.

2. Discharges executed before 6th March 2013

Discharges granted by the ING Direct N.V. must bear to have been executed prior to the transfer date. There is no objection to registering them after that date since no completion of title is involved.

3. Deeds executed after 6th March 2013

All deeds (be they standard securities, dispositions or discharges) executed on or after the transfer date must be granted by or be in favour of the Barclays Bank plc.

Where Barclays Bank plc grant a discharge of, or a repossession disposition in terms of a standard security registered or recorded prior to the transfer date, where the original grantee was ING Direct N.V., the Transfer Instrument should be listed in the Form 4, but need not be submitted with the registration application.

If any deed executed on or after the transfer date by or in favour of ING Direct N.V. is submitted the deed should be returned to the agent for amendment and re-execution.

Owner: Legal Services
Author: Erin Burns
Publication Date: 21/03/2013

ING Direct N.V – Barclays Bank PLC (Sasine Memo 03-2013)

Transfer of the savings and mortgage business of the UK branch of ING Direct N.V.

With effect from 6th March 2013 (the "transfer date") the savings and mortgage business of the UK branch of ING Direct N.V. whose registered office is at Bijlmerplein 888, Amsterdam, The Netherlands and whose UK branch is 410 Thames Valley Park Drive, Reading, Berskhire was transferred to the Barclays Bank plc incorporated in England and Wales (registered number 1026167), by virtue of the Transfer Scheme between ING Direct N.V. and Barclays Bank plc approved by the Order of the High Court of Justice on 20th February 2013 in terms of the Financial Services and Markets Act 2000 (the "Transfer Instrument"). The transfer documents have been examined and are in order.

1. Standard securities and other deeds executed before 6th March 2013

Any deed (such as a standard security or disposition) granted in favour of **ING Direct N.V.** executed before the transfer date, but submitted for recording after the transfer date should be either (a) docqueted with reference to a Notice of Title on behalf of Barclays Bank plc which deduces title through the Transfer Instrument and the two deeds recorded together or (b) re-engrossed and re-executed in favour of Barclays Bank plc.

The deed should be returned to the agent for amendment if these requirements are not met.

2. Discharges and other deeds executed before 6th March 2013

Discharges and any other deeds granted by the **ING Direct N.V.** must bear to have been executed prior to the transfer date. There is no objection to recording them after that date since no completion of title is involved.

3. Standard securities and discharges executed after 6th March 2013

All deeds (be they standard securities, dispositions or discharges) executed on or after the transfer date must be granted by or be in favour of Barclays Bank plc.

If any deed executed on or after the transfer date by or in favour of the ING Direct N.V. is submitted the deed will be returned to the agent for amendment and re execution.

Where Barclays Bank plc grants a discharge of a standard security registered or recorded prior to the transfer date, where the original grantee was **ING Direct N.V.**, the discharge should deduce title from the**ING Direct N.V.**, referring to the Transfer Instrument in terms similar to the following:
"which standard security was last vested in the said **ING Direct N.V.** as aforesaid and from whom we the said Barclays Bank plc acquired right by virtue of the Transfer Instrument being Transfer Scheme between the said **ING Direct N.V.** and Barclays

Bank plc approved by the Order of the High Court of Justice on 6th March 2013 in terms of the Financial Services and Markets Act 2000…….. ”

Owner: Legal Services
Author: Erin Burns
Publication Date: 21/03/2013

Century Building Society – Scottish Building Society (Legal Memo 01-2013)

With effect from 1 February 2013 (the "transfer date") the assets and loans of the Century Building Society was transferred to the Scottish Building Society by virtue of the Instrument of Transfer of Engagements between the Century Building Society and Scottish Building Society (the "Transfer Instrument"). This transfer was registered by the Financial Services Authority on 25th January 2013 in terms of the Building Societies Act 1986. The transfer instrument has been examined and is in order.

1. Standard securities and dispositions executed before 1 Feb 2013

Any deed (e.g. a standard security or a disposition) granted in favour of the Century Building Society executed before the transfer date, but submitted as part of an application for registration on or after that day, will be accepted for registration, provided that the following requirements are met, namely:
(a) the application form specifies that the applicant is the Scottish Building Society;
(b) the application form specifies that registration is sought in respect of the deed in favour of the Century Building Society; and
(c) the Transfer Instrument is listed in the Form 4, there is no need for the document to be submitted.
The application form should be returned for amendment if it does not meet these requirements.
The entry in the Charges Section of the title sheet will show a standard security in favour of Century Building Society, and a note should be added to both the entry and the Charge Certificate in the following terms:
"Note: with effect from 1 February 2013 the assets of said Century Building Society in the standard security was transferred to Scottish Building Society by virtue of the Instrument of Transfer of Engagements."
The Creditor in the Charge Certificate should be amended to the Scottish Building Society.

2. Discharges executed before 1 Feb 2013

Discharges granted by Century Building Society must bear to have been executed prior to the transfer date. There is no objection to registering them after that date since
no completion of title is involved.

3. Deeds executed after 1 Feb 2013

All deeds (e.g. standard securities, dispositions or discharges) executed on or after the transfer date must be granted by or be in favour of the Scottish Building Society
Where Scottish Building Society grants a discharge of, or a repossession disposition in terms of a standard security registered or recorded prior to the transfer date, where the original grantee was Century Building Society, the Transfer Instrument should be listed in the Form 4, but need not be submitted with the registration application.

If any deed executed on or after the transfer date by, or in favour, of Century Building Society is submitted the deed should be returned to the agent for amendment and reexecution

Owner: Legal Services
Author: Erin Burns
Publication Date: 01/02/2013

Century Building Society – Scottish Building Society (Sasine Memo 01-2013)

With effect from 1 February 2013 (the "transfer date") the assets and loans of the Century Building Society was transferred to the Scottish Building Society by virtue of the Instrument of Transfer of Engagements between the Century Building Society and Scottish Building Society (the "Transfer Instrument"). This transfer was registered by the Financial Services Authority on 25th January 2013 in terms of the Building Societies Act 1986. The transfer instrument has been examined and is in order.

1. Standard securities and other deeds executed before 1 Feb 2013
Any deed (such as a standard security or disposition) granted in favour of the Century Building Society executed before the transfer date, but submitted for recording after the transfer date should be either:
(a) docqueted with reference to a Notice of Title on behalf of Scottish Building Society which deduces title through the Transfer Instrument and the two deeds recorded together, or
(b) re-engrossed and re-executed in favour of Scottish Building Society.
The deed should be returned to the agent for amendment if these requirements are not met.

2. Discharges and other deeds executed before 1 Feb 2013
Discharges and any other deeds granted by the Century Building Society must bear to have been executed prior to the transfer date. There is no objection to recording them after that date since no completion of title is involved.

3. Standard securities and discharges executed after 1 Feb 2013
All deeds (e.g. standard securities, dispositions or discharges) executed on or after the transfer date must be granted by or be in favour of the Scottish Building Society.
If any deed executed on or after the transfer date by or in favour of the Century Building Society is submitted the deed will be returned to the agent for amendment and re-execution.

Where the Scottish Building Society grants a discharge of a standard security registered or recorded prior to the transfer date, where the original grantee was the Century Building Society, the discharge should deduce title from the Century Building Society, referring to the Transfer Instrument in terms similar to the following:
“which standard security was last vested in the said Century Building Society as aforesaid and from whom we the said Scottish Building Society acquired right by virtue of the Instrument of Transfer of Engagements between the Century Building Society and the Scottish Building Society dated 3rd October 2012 and registered by the Financial Services Authority on 25th January 2013 in terms of the Building Societies Act 1986....."

Owner: Legal Services
Author: Erin Burns
Publication Date: 01/02/2013

2012

Registration Practice Memo – Servitudes

Mapping of servitudes in prior recorded deeds

Following a decision by the Policy and Practice Group, the registration practice in respect of applications for registration, in which a servitude is found to map through a solid feature or structure is standardised. Further guidance on the practice to be adopted is given below.

Plans Settle:
If a servitude or right of way granted and shown on a plan annexed to a *prior* recorded deed is found to run through a solid feature, for example a garage or a property extension such as a conservatory, the plans officer should reflect the full extent of the servitude as granted in the deed. There is no requirement for the plans officer to contact the agent regarding this. A note should however be added in the Title Notes and Instructions advising the legal settler that part of the servitude granted in the deed does not appear to be exerciseable.
e.g. The right of access coloured blue on plan to deed 1 has been tinted blue on the Title Plan. Part of this route passes through an extension and therefore does not appear to be being exercised.
The relevant section of the Plans Manual, Section 8.9.3 has been updated to reflect this new policy.

Legal Settle:
It is the legal settler's role to consider whether the relevant legal requirements have been met to allow the servitude to be disclosed in the Title Sheet.

Notwithstanding that the servitude in question is shown as running through a solid feature, where the servitude is granted in a prior deed, the legal settler will consider whether there is any reason to doubt its constitution. If satisfied on this point, the legal settler should consider the style of entry for the new title sheet. For the avoidance of doubt, this will not involve the verbalisation of the servitude to avoid the seeming anomaly of the right running through a structure that would appear to have come into existence since the servitude came into being.

Generally, there will be no need to contact the agent. However, where there is evidence of significant development - or redevelopment - on the ground, calling into question whether the servitude can be exercised, and consequently its inclusion on the title sheet, (e.g. it is more than just an extension where the route is most likely diverted round the edge) legal settlers should refer the application in question to a senior caseworker for consideration. Senior caseworkers will retain the discretion to decide whether it is appropriate to contact the submitting agent if there is evidence of significant development or re-development on the ground, calling into question the servitude and its prospective inclusion on the title sheet.

In the unlikely event that a *new* positive servitude is found to plot through a solid feature, the application in question should be referred to a senior caseworker.
Owner – Quality
Author– Donald Craig / Carole Russell
Publication Date – 19/12/12

Registration Practice Memo - Issuing Updated Parent Title Land Certificates for "small runs", small developments or single Transfer of Part applications.

Issuing Updated Parent Title Land Certificates for "small runs", small developments or single Transfer of Part applications.
The undernoted procedures will apply with immediate effect.
The following registration practice was approved at the November meeting of the Policy and Practice Group.

Before issuing the Land Certificate for a Parent Title that has been updated to reflect a "small run" of Transfer of Part ("TP") applications, small developments or a single "one off" TP, legal settlers should contact (by email or telephone) the agent who submitted the most recent TP application to request details of the seller's agent. The reason for making this request is to ensure that the updated Parent Title Land Certificate is sent to the correct agent.

This procedure will not be necessary if it is possible to identify the agent acting for the proprietor of the Parent Title from an application lodged against that Parent Title.

In the event that the TP agent declines or is unable to provide the seller's agent's details, legal settlers should examine our records (LRS/EAS/BOPS etc) to find the details of the agent who last acted for the proprietor of the Parent Title.

In all cases, legal settlers should examine our Solicitors' Information/FAS records for the agent who last acted for the Parent Title proprietor/seller's agent to determine whether there has been a change of name, merging of firms, firm has ceased to practise etc

In cases of doubt, settlers should speak to a Senior Caseworker for advice.

Section 31.4 of the Legal Manual and the relevant section of the Cat B TP Legal Settle Training Manual have been updated to reflect this change of practice.

Owner – Registration
Author– Pamela Dower / Donald Craig
Publication Date – 16/11/12

Practice Memo - Reducing risk for High Value Casework - a change to the threshold (11-2012)

The Policy and Practice Group has recently revisited the procedures for dealing with High Value Casework and, acknowledging the financial risk to the Registers of Scotland, the threshold for High Value Casework has been re-set at £3 million with immediate effect. It has also been clarified that these procedures are to be followed for ALL deed types.

On looking back over the past year, it is clear that the procedures have not been rigorously adhered to. Of the applications that should have been subject to High Value checks, only 20% of those submitted in this financial year were actually identified and logged.

While the initial responsibility for identifying High Value Casework lies with the Intake officers, all Registration staff have a responsibility to ensure the procedures are followed. Once identified, the application will now be placed in a red casebag, with a high value route card, and an application note added flagging that it is High Value Casework. The only other change to the actual procedures is that the post legal check of all deed types for all products will now be carried out by a Senior Caseworker.

To assist in identifying High Value Casework, where the form or deed states that the consideration or value of the deed submitted for registration is £3 million or more, the Intake officer will enter this information on efinancials. A daily report will be produced for the Quality Team detailing the previous days intake and this will allow us to ensure all relevant cases are flagged up.

The procedures can be found at O:\Production\All BU\Public\High Value Casework\High Value Procedures

Logs detailing Reports and Applications for Registration which meet the above criteria have been created in O:\Production\All BU\Public\High Value Casework.

Reports and Settle checklists have been created in the same folder O:\Production\All BU\Public\High Value Casework.

Owner – Registration/Quality
Author– Scott Niven
Publication Date – 12/11/12

Northern Rock PLC – Change of name to Virgin Money PLC (Sasine Memo)

With effect from 12 October 2012 Northern Rock plc (company number 6952311) changed its name to Virgin Money plc.

Standard securities executed before 12 October 2012:

Any standard security granted in favour of Northern Rock plc before 12 October 2012 but presented for recording on or after that date may be accepted if the Sasine Application Form specifies Virgin Money plc as the applicant.

Discharges executed before the 12 October 2012:

Discharges executed on behalf of Northern Rock plc must be executed before 12 October 2012. They can be accepted for recording after that date.

Standard securities and discharges executed on or after 12 October 2012:

On or after 12 October 2012, no standard security or discharge should be granted in favour of or by Northern Rock plc. However if any such deed is presented, it should be rejected.

Owner: Legal Services
Author: Erin Burns
Publication Date: 16/10/2012

Northern Rock PLC – Change of name to Virgin Money PLC (Legal Memo)

With effect from 12 October 2012 Northern Rock plc (company number 6952311) changed its name to Virgin Money plc. The Certificate of Incorporation on Change of Name has been examined and is in order.

1. Standard Securities executed before 12 October 2012

Any standard security granted in favour of Northern Rock plc executed before 12 October 2012 but submitted as part of an application for registration on or after that date may be accepted if the application form specifies Virgin Money plc as the applicant.

Agents should be encouraged to list the Certificate of Incorporation on Change of Name on Form 4, but applications need neither be rejected nor returned for amendment where this has not been done.

The Certificate of Incorporation on Change of Name does not require to be produced with any application.

The following note should be added to the charges section entry for the security, and to the charge certificate -

Note: by Certificate of Incorporation on Change of Name dated 12 October 2012 the creditor in the foregoing standard security changed its name from Northern Rock plc to Virgin Money plc.

2. Discharges executed before 12 October 2012

Discharges executed on behalf of Northern Rock plc must be executed before 12 October 2012. They can be accepted for registration after that date.

3. Standard securities and discharges executed on or after 12 October 2012

On or after 12 October 2012, no standard security or discharge should be granted in favour of or by Northern Rock plc. Should any such deeds be identified at intake/create, they should be rejected and the agent advised that a deed in favour of or by Virgin Money plc is required. Where any such deed is identified later in the registration process, it should be returned to the ingiving agent for amendment/re-engrossment.

Please note that there may be some existing standard securities registered in the Land Register in favour of Northern Rock plc but with the company number 3273685. Under the restructure by virtue of The Northern Rock plc Transfer Order 2009, as of 1 January 2010 these securities would have been transferred to either:

- **Northern Rock (Asset Management) plc, company number 3273685, or**
- **Northern Rock plc, company number 6952311, (now known as Virgin Money plc)**

As it is not practical for RoS staff to establish which securities are in favour of Northern Rock (Asset Management) plc, or which were transferred to Northern Rock plc, (company number 6952311), it is our policy to rely on the information provided by the two companies, and by agents acting for them.

Please see Legal Memo 01-2010 for further information regarding the 2010 restructure. If there is any uncertainty as to whether or not the correct creditor has been narrated in a deed, the application should be referred to a Senior Caseworker.

Update:
"With effect from 16 May 2014 Northern Rock (Asset Management) plc changed its name to NRAM plc. The company number remains 3273685. Further information on the registration requirements can be found here"

Author: Legal Policy Branch
Publication Date: 7 July 2014

Owner: Legal Services
Author: Erin Burns
Publication Date: 16/10/2012

Land Register registration practice memo – Termination of a Lease

The undernoted procedures will apply with effect from **16 July 2012**.
These procedures apply to applications for the termination of a long lease. For the avoidance of doubt, they do not apply to applications to extinguish a lease confusione. Details on this can be found in section 19.13.3 of the Legal Manual.
Following a decision by the Policy and Practice Group, the registration procedure in respect of applications to effect the termination of a long lease - where both the landlord's and tenant's interests are registered - has been standardised.

Where an application for the termination of a registered lease is submitted for registration, separate applications should be created against both the landlord's and tenant's interests. This is to ensure that any pending application to terminate a lease is reflected on the Application Record and will be disclosed when searching against either of the affected interests.

In the absence of an application against one of the affected interests, an Internal Dealing application should be created against the interest for which an application has not been presented.

In all cases, the registration officer must examine the evidence of termination of the long lease submitted in support of the application to ensure that it is sufficient to terminate the lease and conforms to the Keeper's evidential requirements as set out in section 19.13 of the Legal Manual.
It is necessary to draw a distinction between those applications which have been created prior to 16 July 2012 and those that are received on or after that date. Further guidance on each can be found by following the links below.

1. Applications received prior to 16 July 2012
2. Applications received on or after 16 July 2012

Owner: Registration 1
Contact: Donald Craig, Jane Dick, Lynne Johnstone, David Lange and Avril Watson
Publication Date - 13/07/12

Land Register Memo - Changes to TP last removal process

Changes to the TP Last Removal process and procedures for updating Parent Titles
Following recommendations from the Registration Directorate, the Policy and Practice Group recently agreed policy on the areas noted below:

- The impact of the PMP decision on the update of Development Parent Titles that applied the first removal policy in existence pre 3 August 2009.
- The correction of former superiority title sheets as part of the Parent Title updating process.

The policy, which can be viewed by clicking here, will have an impact on the current TP Last Removal and Parent Title Update procedures and will be incorporated into the Legal Manual in due course.

Owner - Registration
Author - Karen Francis
Contacts - Pam Dower / Alice Pirie
Publication Date – 29/06/12

Practice Memo – Reducing Risk for High Value Casework

High Value Casework is defined as casework with a value of £10 million or more.

The procedures are designed to ensure that there is an auditable trail to verify the checks that have been made to High Value Casework applications. The procedures can be found at O:\Production\All BU\Public\High Value Casework\High Value Procedures
Logs detailing Reports and Applications for Registration which meet the above criteria have been created in O:\Production\All BU\Public\High Value Casework.
Reports and Settle checklists have been created in the same folder O:\Production\All BU\Public\High Value Casework.

Suggestions for improvement or amendment should be made to the officer with overall responsibility for these procedures.
A list of Team Leaders responsible for arranging the check/vet Reports and Applications for Registration will be published and maintained.

Owner: Registration
Contact: John Davidson
Publication Date - 17/04/12

Legal/Sasines Memo – Changes to Stamp Duty Land Tax

The Chancellor's Budget statement yesterday included a number of changes to Stamp Duty Land Tax (SDLT). These are summarised below.

This announcement does not otherwise affect the Keeper's current requirements in respect of SDLT. An SDLT 5 Certificate must be submitted in support of an application for registration when the transaction is a notifiable transaction in terms of the Finance Act 2003:

Registers of Scotland - Stamp Duty Land Tax (SDLT) Frequently Asked Questions

The key changes to SDLT are as follows

From 21 March 2012:

- A higher rate of SDLT of 15% will apply to purchases of single dwellings over £2 million by certain non-natural persons or bodies of persons (being companies, collective investment schemes, unit trusts and partnerships). Property developers and corporate trustees may be exempt from the charge in certain circumstances. Charities will be able to claim relief from the SDLT charge providing that the property is used for charitable purposes. Transitional rules will apply to those transactions which would otherwise be within the higher rate but where the contract was completed and signed by all parties to the transaction prior to 21 March 2012
- Changes to the SDLT rules on transfer of rights (sub-sales) to exclude the grant or assignment of an option from being a transfer of rights

From 22 March 2012:

- A higher rate of SDLT of 7% will apply to purchases of residential property over £2 million, where the 15% rate does not apply. Transitional provisions will ensure that the old rates will continue to apply in respect of those contracts entered into before 22 March 2012 but which are completed on, or after, that date. Charities will be able to claim relief from the SDLT charge.

Owner: Legal Policy Branch
Contact: Lian Boughen ext. 5786
Publication Date - 22/03/12

Information regarding changes to registrable and recordable deeds under Town and Country Planning (Scotland) Act 1997

Town and Country Planning (Scotland) Act 1997

The Town and Country Planning (Scotland) Act 1997 ('the 1997 Act') has been amended with the effect of replacing the provisions of section 75 (Planning Agreements) and adding new sub-sections 75A to 75G; these changes came into effect on 1 February 2011.

Seven new deeds arise from the amended legislation, these are:

- Planning obligations (section 75(1)(a));
- Unilateral obligations (section 75(1)(b));
- Determination modifying planning obligation (section 75A or 75B);
- Determination discharging planning obligation (section 75A or 75B);
- Good neighbour agreements ('GNAs') (section 75D);
- Determination modifying good neighbour agreement (section 75E or 75F);
- and
- Determinations discharging GNAs (section75E or 75F).

Such documents should be accepted for recording in the General Register of Sasines or registration in the Land Register of Scotland provided they comply with the following registration criteria:

- Determinations should refer to the recording/registration date of the planning obligation or GNA to be discharged or modified;

- With one exception, the deed should be 'self-proving' (or, in other words, attested by a witness) as provided for in the Requirements of Writing (Scotland) Act 1995;

- The subjects must be appropriately described, including reference to title numbers where appropriate

While it is desirable that the deed makes reference to the appropriate section of the Act there is not statutory requirement to do so. As there is no prescribed form the document may not meet the above criteria; accordingly the document may be annexed to another form of deed, such as an agreement, which is itself in a format acceptable for recording/registration.

The original deed must be submitted.

The exception referred to above concerns a Notice of Determination issued by Scottish Ministers under section 75B or 75F of the 1997 Act. It is competent to record such a document in the Sasine Register without it having to be 'self proving'. The Keeper will apply the same approach for applications made to register these documents in the Land Register.

Deed codes will be added to LRS pick lists; however no new deed name will be added to BoPS. There is no prescribed form for these deeds and fuller guidance will be prepared on our practices once we know the form of documents being submitted.

Further guidance on the relevant provisions of the 1997 Act and the form of entries in Title Sheets will be incorporated into the legal manual in due course.

A similar amendment to will be made to the online Sasine Manual.

2011

Registration Practice Memo – Content of Burden Sections of Title Sheets

1. Standard Securities - Variation of Standard Conditions Does Not Create Real Burdens

The Registration Management Team has become aware of a number of cases which have been placed in standover, or have not been processed, for the registration of a standard security where the lender and the granter/debtor have agreed in the deed to vary the existing standard conditions which otherwise apply under the Conveyancing and Feudal Reform (Scotland) Act 1970. For the avoidance of doubt, these variations of the standard conditions do not constitute a form of title condition and do not require to be entered in the burdens section of a Land Register title sheet.

It is theoretically possible for a standard security to constitute a real burden or servitude, but the general requirements of the law in this regard would apply, so the standard security must clearly also grant a servitude and be dual registered as required by section 75 of the Title Conditions (Scotland) Act or the deed must meet the general requirements of section 4 of the Title Conditions (Scotland) Act 2003. See the Real Burdens Part 1 Training Materials on the intranet. Referrals can be made to Senior Caseworkers in cases of doubt.

2. Leases Containing 'Servitudes' in Favour of the Tenant Only

For the avoidance of doubt, a right granted only to the tenant and not in favour of future proprietors of the land, does not require dual registration.

Again, although it may be possible to create a servitude (being a right which burdens one piece of land in favour of another piece of land or the proprietors of that land) in a lease, usually even though a grant of a lease may state that it is a creating a servitude, the right is expressly held by the tenant only, not the proprietor of the land, and so would not benefit future proprietors of the land leased.

As stated in paragraph 26.1 of the Legal Manual, the interest of a tenant in a long lease is not sufficient to sustain a true servitude. A tenant may nevertheless have a right exerciseable against the landlord in respect of land owned by the landlord but which is not leased to them or, in situations where the landlord as proprietor of the land leased already has a servitude right, the tenant is able to benefit from that existing right. It is on the basis that such rights are forms of title condition (but not servitudes) that the right can be entered in the tenant's title sheet.

3. 'Conditions' in De-crofting Directions or Resumptions

A number of title sheets have come to light where a de-crofting direction or resumption order has been presented as evidence that registered land is no longer

subject to crofting tenure or that the land has returned to crofting tenure. Registration officers have entered conditions imposed by the Crofters Commission set out in the direction or Land Court resumption order in the Burdens Section of the Title Sheet. This is not appropriate. There is no legal requirement to register such directions or orders, and the conditions do not require to be entered in a title sheet. **Amendments appropriate to these issues will be made to the Legal Manual in due course.**

Related Links
Registration Reference Materials

Owner - Registration
Author- Sarah Duncan
Publication Date - 15/08/11

Norwich & Peterborough Building Society: Transfer of Assets (Legal Memo 05/2011, Sasine Memo 04/2011

Legal Memo 5/2011
Sasine Memo 4/2011

With effect from 1 November 2011 (the "transfer date") the property, rights and liabilities of the Norwich and Peterborough Building Society were transferred to the Yorkshire Building Society by virtue of the Instrument of Transfer of Engagements between the Norwich and Peterborough Building Society and the Yorkshire Building Society dated 23 Jun. 2011 (the "Transfer Instrument"). This transfer was registered by the Financial Services Authority on 4 October 2011 in terms of the Building Societies Act 1986. The Transfer Instrument has been examined and is in order.

LAND REGISTER
Deeds executed prior to the transfer date granted by or in favour of the Norwich and Peterborough Building Society
Standard securities
Any standard security granted in favour of Norwich and Peterborough Building Society executed before 1 November 2011 but submitted as part of an application for registration on or after that date will be acceptable for registration if the following points are met:-

(a) the application form specifies the Yorkshire Building Society as the applicant,

(b) the application form specifies that application for registration is sought in respect of the deed in favour of Yorkshire Building Society, and

(c) the Transfer Instrument is listed on the Form 4 submitted with the application. A copy of the Transfer Instrument need not be submitted.

The entry in the Charges Section of the Title Sheet will be a standard security in favour of Norwich and Peterborough Building Society. A note should be added to both the entry and the Charge Certificate in following terms:

Note: With effect from I November 2011 the assets of said Norwich and Peterborough Building Society vest in the Yorkshire Building Society by virtue of Instrument of Transfer of Engagements.

The creditor in the Charge Certificate should be amended to the Yorkshire Building Society.

Discharges
Discharges granted by Norwich and Peterborough Building Society must bear to have been executed before 1 November 2011. There is no objection to recording or registering them after that date since no completion of title is involved.

Deeds executed on or after the 1 November 2011
Where the Yorkshire Building Society grants a discharge of a registered standard security that was in the name of Norwich and Peterborough Building Society the Transfer Instrument should be listed on the Form 4.
On or after 1 November it is not legally competent for a deed to be granted by or in favour of Norwich and Peterborough Building Society. Registration officers should return any such deed that forms part of an application for registration to the presenting agent for amendment/re-engrossment.

SASINE REGISTER

Deeds executed prior to the transfer date granted by or in favour of the Norwich and Peterborough Building Society
Standard securities
Any deed granted in favour of the Norwich and Peterborough Building Society executed before 1 November but presented for recording after that date must be either -

(a) docqueted with reference to a Notice of Title on behalf of the Yorkshire Building Society and the two deeds recorded together, or

(b) re-engrossed and re-executed in favour of the Yorkshire Building Society. The deed should be returned for amendment if these requirements are not met.

Discharges
Any discharge granted by the Norwich and Peterborough Building Society must bear to have been executed prior to the transfer date. There is no objection to such discharges being recorded after that date since no completion of title is involved.

Deeds executed on or after the transfer date
All deeds (be they standard securities, assignations, dispositions or discharges) executed on or after 1 November 2011 must be granted by or be in favour of the Yorkshire Building Society.
Where the Yorkshire Building Society grants a discharge of a standard security recorded prior to 1 November 2011 in which the original grantee was the Norwich and Peterborough Building Society, the discharge should deduce title in the terms similar to the following: -

“which standard security was last vested in the said Norwich and Peterborough Building Society as aforesaid and from whom we the said Yorkshire Building Society acquired right by virtue of the Instrument of Transfer of Engagements between the Norwich and Peterborough Building Society and the Yorkshire Building Society dated 23 Jun. 2011 and registered by the Financial Services Authority on 4 Oct. 2011 in terms of the Building Societies Act 1986. ……..”

If any deed executed on or after 1 November 2011 in favour of the Norwich and Peterborough Building Society is presented, it should be returned to the agent for amendment and re-execution.

Owner: Legal Policy Branch
Contact: Janet Heritage Ext. 5711
Publication Date: 28th November 2011

Yorkshire Building Society & Egg Banking plc (Legal Memo 04/2011, Sasine Memo 03/2011)

Legal Memo 04/2011
Sasine Memo 03/2011

With effect from 31 Oct. 2011 (the "transfer date") the mortgage business of Egg Banking plc was transferred to the Yorkshire Building Society by virtue of the Transfer Scheme between Egg Banking plc and the Yorkshire Building Society approved by the High Court of Justice on 25 Oct 2011 in terms of the Financial Services and Markets Act 2000 (the "Transfer Instrument"). The time of the transfer is 23.59 hours on the transfer date. The Transfer Instrument has been examined and is in order.

LAND REGISTER APPLICATIONS

Deeds executed on or prior to the transfer date

Standard securities and other deeds granted in favour of Egg Banking Plc or a predecessor in Title to Egg under the Egg or Pi brands executed on or before the transfer date, but submitted as part of an application for registration after that day, will be accepted for registration, provided that the following requirements are met -

(a) the application form specifies that the applicant is the Yorkshire Building Society,

(b) the application form specifies that registration is sought in respect of the deed in favour of Egg Banking plc, and

(c) the Transfer Instrument is listed in the Form 4 submitted with the application but there is no need for that document to be enclosed.
The application forms should be returned for amendment if they do not meet these requirements.

The entry in the Charges Section of the title sheet will show a standard security in favour of Egg Banking plc and a note should be added to C section entry and the Charge Certificate as follows:

"Note: With effect from 31 Oct. 2011 the interest of Egg Banking plc in the standard security was transferred to Yorkshire Building Society by virtue of the Transfer Instrument being the Transfer Scheme between **Egg Banking plc and the Yorkshire Building Society approved by the High Court of Justice on 25 Oct 2011 in terms of the Financial Services and Markets Act 2000."**
The Creditor in the Charge Certificate should be amended to Yorkshire Building Society.

Discharges granted by Egg Banking plc must bear to have been executed on or prior to the transfer date. There is no objection to an application for registration of such discharges being made after that date since no completion of title is involved.

Deeds executed after the transfer date
All deeds executed on or after the transfer date must be granted by or be in favour of Yorkshire Building Society. If any deed executed on or after the transfer date by or in favour of Egg Banking plc is submitted the deed should be returned to the agent for amendment and re execution.

Where the Yorkshire Building Society grants a discharge of or a repossession disposition or assignation in terms of a standard security registered or recorded prior to the transfer date in which the original grantee was Egg Banking plc or a predecessor in title to Egg under the Egg or Pi brands, the Transfer Instrument should be listed in the Form 4. There is no need for the Transfer Instrument to be submitted.
SASINE REGISTER APPLICATIONS

Deeds executed on or before the transfer date:
Any deed granted in favour of Egg Banking plc or a predecessor in title to Egg under the Egg or Pi brands executed on or before the transfer date, but presented for recording after the transfer date should be either -
(a) docqueted with reference to a Notice of Title on behalf of Yorkshire Building Society which deduces title through the Transfer Instrument and the two deeds recorded together or
(b) re-engrossed and re-executed in favour of Yorkshire Building Society.
The deed should be returned to the agent for amendment if these requirements are not met.

Discharges granted by Egg Banking plc must bear to have been executed on or prior to the transfer date. There is no objection to such discharges being presented for recording after that date since no completion of title is involved.

Deeds executed on or after the transfer date:
All deeds (be they standard securities, assignations, dispositions or discharges) executed on or after the transfer date must be granted by or be in favour of Yorkshire Building Society.
Where Yorkshire Building Society grants a discharge of a standard security recorded prior to the transfer date in which the original grantee was Egg Banking plc, the discharge should deduce title from Egg Banking plc, referring to the Transfer Instrument in the terms similar to the following:

“which standard security was last vested in the said Egg Banking plc as aforesaid and from whom we the said Yorkshire Building Society acquired right by virtue of the Transfer Instrument being Transfer Scheme between the Egg Banking plc and the Yorkshire Building Society approved by the High Court of Justice on 25 Oct. 2011.”

If any deed executed after the transfer date by or in favour of Egg Banking plc is presented the deed should be returned to the agent for amendment and re execution.

Owner: Legal Policy Branch
Contact: Janet Heritage
Publication Date: 28th November 2011

Division of owner-occupied crofts

(Legal Memo 03/2011 – Sasines Memo 02/2011)
New legal provisions which came into effect on 1 October 2011 have an impact on the transfer of title to certain areas of land that are held under crofting tenure. The provisions may have an effect on a limited number of applications for registration in the Land Register and the Sasine Register. This memo explains the background to the changes and sets out the way in which registration staff should deal with the small number of titles which may be affected.

1. Background

Section 34 of the Crofting Reform (Scotland) Act 2010 ('the 2010 Act') came into effect on 1 October 2011. Section 34 of the 2010 Act inserts a new section 19D into the Crofters (Scotland) Act 1993 (the '1993 Act'). Under section 19D, an owner-occupier crofter requires the consent of the Crofters Commission before dividing his or her croft. If the croft has not been divided with the Commission's consent prior to the transfer, then the transfer and any deed purporting to transfer ownership of part of the croft is null and void. Section 19D applies to any such transfer, where missives are concluded on or after 1 October 2011. (Where there are no formal missives, the Keeper assumes that the provisions apply to a disposition delivered on or after that date.) The provisions apply only to the division of an owner-occupied croft, not to a sale by a crofting landlord.

Crofting tenure applies to certain areas of land in the original crofting counties of Argyll, Caithness, Inverness, Orkney and Zetland, Ross and Cromarty, and Sutherland. Furthermore, Scottish Ministers may designate an area outwith the original counties for the creation of new crofts and have already used appropriate powers to designate new areas in the counties of Bute and Moray.

Where property in a crofting area is being acquired, the Keeper takes the view that the onus should be on the acquirer's solicitor to consider whether any provisions of the Crofting Acts are relevant, and in the case of Land Register applications, to draw to the Keeper's attention any failure to comply which is material to the validity of the title. A Registers Update has been added to the RoS website to draw solicitors' attention to the new provisions.

Following a decision by the Policy and Practice Group, registration staff should adopt the approach set out below in relation to the effect of the new section 19D of the 1993 Act:

2. Register of Sasines

There is no change to current practice in the Register of Sasines. There is a risk that a deed transferring part of a croft may subsequently be reduced or declared void, if Commission consent is required but was not obtained. However, the Keeper does not guarantee the validity or effect of a deed recorded in the Sasine Register.

3. Land Register – Dealings with Whole

There is no change to current practice in the registration of DW applications. The new provisions affect only the conveyance of part of a croft.

4. Land Register – First Registrations

In the absence of specific confirmation from the applicant's solicitor, it is unlikely that registration officers will be able to establish whether section 19D applies in a given case. Registration staff should **not** investigate whether section 19D applies, unless

- it is apparent from the title description (in the deed inducing registration and/or a prior deed) that the subjects are in crofting tenure, **and/or**
- there is other information in the application for registration (e.g. the answer to question 5(c) or 14 on Form 1, or a copy of a search sheet etc.) which reveals that the subjects are in crofting tenure.

Examples of relevant information in the title description would be where the subjects are described as *'part of croft x in the township of y'*, or where a deed indicates that the subjects were previously sold under 'right to buy' provisions contained in the 1993 Act. The mere fact that the subjects are rural land in a crofting area is **not** sufficient to justify investigation, unless it is clear that the subjects of the application are in crofting tenure.

If it is apparent that the subjects are in crofting tenure, the registration officer should check whether either the deed inducing registration or a prior deed in the prescriptive progress implements a split-off transaction concluded **on or after 1 October 2011**. In the limited circumstances where it is apparent that the subjects may be affected by the provisions of section 19D, settlers should ask the agent to submit **either** a letter confirming that section 19D does not apply **or** evidence of compliance with the provisions (e.g. evidence of division of the croft with the Commission's consent).

If satisfactory evidence is not submitted, the following exclusion of indemnity should be added to the B Section of the title sheet:

Note: [As regards the part tinted xxx on the title plan,] Indemnity is excluded in terms of Section 12(2) of the Land Registration (Scotland) Act 1979 in respect of any loss arising as a result of the Disposition by A to B registered [recorded G.R.S. (xxx)] [date]being reduced or declared or found to be void because of any failure to comply with the provisions of section 19D of the Crofters (Scotland) Act 1993.

Settlers should note that section 19D will not apply to an FR within a research area.

5. Land Register – Transfers of Part

Registration staff should **not** investigate whether section 19D applies, unless

- the A Section of the parent title sheet contains a note stating that the subjects (or part thereof) comprise a croft as defined in the Crofters (Scotland) Act 1993, **and/or**
- there is other information in the application for registration (e.g. the answer to question 1(d) or 11 on Form 3) which reveals that the subjects are part of a croft.

Registration staff should bear in mind that section 19D only affects owner-occupier crofters' title sheets, and has no bearing on a crofting landlord's title. Accordingly, unless the application reveals otherwise, registration staff can assume that section 19D does not apply if the subjects of the TP application are part of a croft listed in a schedule of crofts in a D section entry. Staff should also bear in mind that TPs for which the relevant transaction was concluded prior to 1 October 2011 are not affected by section 19D.

In the limited circumstances where it is apparent that the subjects may be affected by the provisions of section 19D, settlers should ask the agent to submit **either** a letter confirming that section 19D does not apply **or** evidence of compliance with the provisions (e.g. evidence of division of the croft with the Commission's consent). If satisfactory evidence is not submitted, the following exclusion of indemnity should be added to the B Section of the title sheet:

Note: [As regards the part tinted xxx on the title plan,] Indemnity is excluded in terms of Section 12(2) of the Land Registration (Scotland) Act 1979 in respect of any loss arising as a result of the Disposition by A to B registered [recorded G.R.S. (xxx)] [date]being reduced or declared or found to be void because of any failure to comply with the provisions of section 19D of the Crofters (Scotland) Act 1993.

6. Referrals

Any problematic cases should be referred in the first instance to a senior caseworker. In the event that a solicitor states that the transaction inducing registration is in breach of section 19D (i.e. that section 19D is relevant but has not been complied with), then the application for registration should be cancelled on the basis that the deed is null and void.

Owner - Legal Policy Branch
Author - Martin Corbett
Publication Date - 31/10/11

Certificate of registration of charge: changes affecting standard securities granted by overseas companies

Legal Memo 02/2011
Sasines Memo 01/2011

What has changed?
With effect from 1 October 2011, overseas companies which have re-registered in the UK will no longer require to register charges at Companies House. Where an overseas company grants a standard security which is presented for registration in the Land Register on or after 1 October 2011, the Keeper will not therefore require to see a certificate of registration of charge issued by the Registrar of Companies.

Since such a security does not need to be registered at Companies House, there is no need for the Keeper to prioritise the application or to issue confirmation of the registration date within 21 days of receipt. The same rule applies to standard securities by overseas companies which are recorded in the Register of Sasines.

What is an 'overseas company'?
An 'overseas company' means a company incorporated outside the United Kingdom, i.e. a company incorporated in a jurisdiction other than England and Wales, Scotland or Northern Ireland. Companies incorporated in other parts of the British Isles (e.g. Jersey or the Isle of Man) are included in the definition of 'overseas companies'.

Some overseas companies also have a UK company registration number. This is because overseas companies which have a UK establishment are required to register particulars of the company at UK Companies House. However, from 1 October 2011 they no longer require to register their charges at Companies House.

It will usually be clear from the terms of the standard security whether the granter is a UK company or an overseas company. Even if the designation includes a UK company number and/or the address of a UK place of business, the deed should state the name of the country or jurisdiction in which the company is incorporated. A Registers Update explaining the change asks solicitors to make it clear in an application whether a security is granted by an overseas company. If in doubt, clarification should be sought from the presenting agent (in a Land Register case, the agent should be asked to provide a letter confirming the jurisdiction in which the company is incorporated).

*What has **not** changed?*
Part 9.11.5.2.2 of the Legal Manual explains the procedures in the Land Register for registration of securities granted by overseas companies which are received by the Keeper before 1 October 2011. These procedures should continue to be followed for such securities. Existing procedures in the Sasine Register should also be followed where the date of recording of a standard security by an overseas company is prior to 1 October 2011. The new procedures in this Memo apply only where the date of registration/recording at RoS is on or after 1 October 2011.

For the avoidance of doubt, there is **no** change to the rules relating to standard securities granted by companies and limited liability partnerships incorporated in one of the UK jurisdictions (England and Wales, Scotland, and Northern Ireland). Registration staff should continue to follow the existing instructions for such securities, e.g. to prioritise examination, and issue confirmation of the registration/recording date in time for the solicitor to arrange registration at Companies House within the 21-day period; and (in the case of a Land Register security)

- to requisition and examine the certificate of registration of charge issued by Companies House;
- to exclude indemnity if the applicant fails to provide a certificate showing that the security was registered at Companies House within the 21-day period

Owner: Legal Policy Branch
Author: Martin Corbett
Publication date: 29/09/11

Aerial Imagery Update (Plans Memo 01-2011)

The last Plans Memo (04-2010) regarding Aerial Imagery stated that Flash 10 was a candidate for inclusion in the December non functional service release (INFO-07). This would enable Users to access Google Street View.
Unfortunately due to time constraints this was not included in the December release. However BT has assured Partnership Management that they are about to start testing Flash 10 for inclusion in a future service release in approximately 2 to 3 months time.

A further update will be published if there are any changes to proposed dates.

Aerial Imagery (Plans Memo 04-2010)

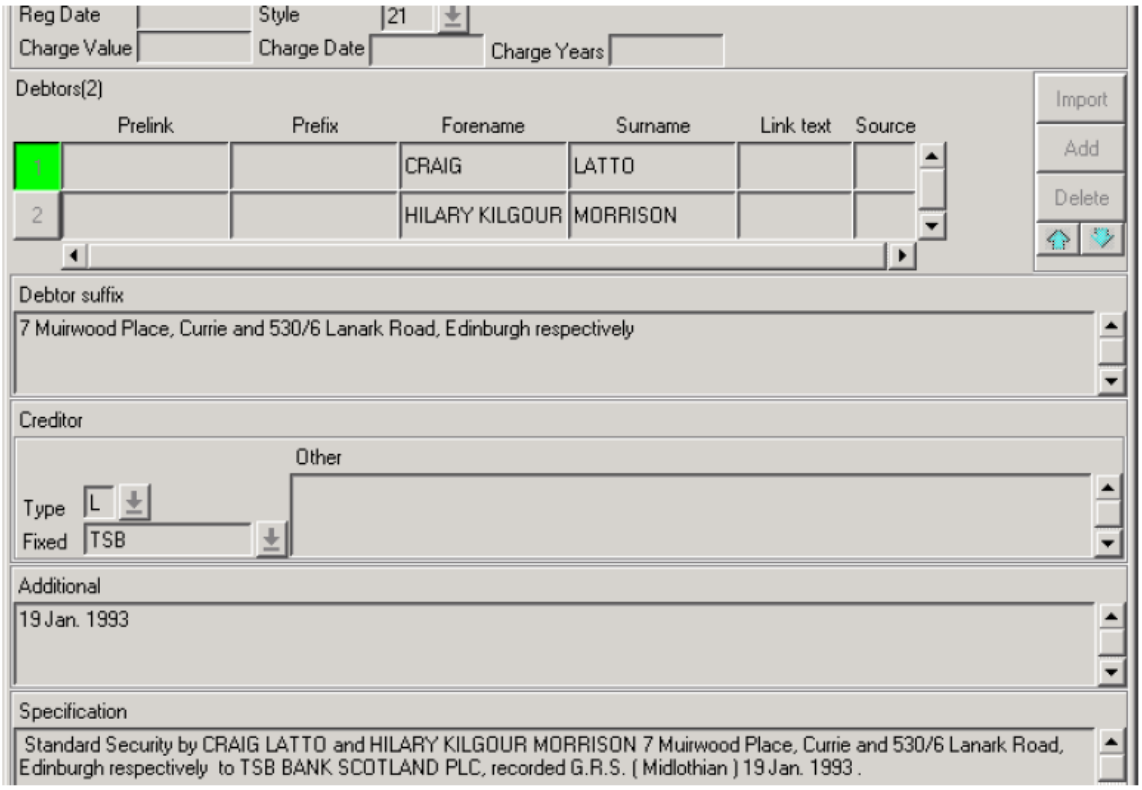
Owner - Registration Practice
Author - Rhona Elrick / Greg Ewing
Publication Date - 11/01/11

C. Section Indexing on LRS

Data Integrity Information Paper 1/2011

C. Section Indexing on LRS

This paper is issued to remind LRS Users of the expected practice when indexing Debtors and Creditors within the C Section,
especially when dealing with securities that are granted by previous proprietors of the Title. Failure to populate these fields correctly
makes any subsequent ARTL application incompatible.
The names of the Debtor should therefore be shown within the index fields rather than within the Debtor Suffix field. The Debtors
address should appear either within the Debtor Suffix field or within the Link text field, depending on the circumstances. (see
possible example).



Settlers are also reminded that where a Creditor picklist entry exists this should always be used in preference to adding a manual
User entry within the "other" field. See Data Integrity Paper 15/2008 for more detail.
Please also be aware that previous Data Integrity papers can now be found on the new intranet site under the heading of Manuals.
Should you require further information or advice please contact Robert Dunn on Ext:3102 or Iain Geddes on Ext:3138.

Isa Anderson
24 Jan. 2011

Fee Order 2010 – Updates to Legal Manual

The Fees in the Registers of Scotland Amendment Order 2010 came into force on 10 January 2011. Various changes introduced by the Order have required amendments to the Legal Manual.

Section 49 relates to the Fees that RoS charges for; registration in the Land Register, recording in the Sasine Register, and for the Information we provide. The section has been revised with the previously published sections 49.2 to 49.11 deleted. The remaining section 49.1 reflects the changes brought about by the Order and provides links to relevant RoS publications.

Sections 2.34 to 2.36 relate to the Rejection and Cancellation of applications. A number of amendments have been made to reflect the Order and changes to practice. Changes deriving from current ongoing consideration of RoS policy and procedure will be intimated in due course.

Section 11.12 concerning requests for quick copies has been updated to include links to new guidelines.

Click on the links below to view the relevant parts of the manual.

Related links
Section 49.1
Sections 2.34 to 2.36
Section 11.12

Owner - Registration Practice
Author - Greg Ewing
Publication Date - 27/01/11

Real Burdens Updates (Legal Memo 01-2011)

We have recently updated the Part 1 and Part 2 Real Burdens training manuals. Amendments are noted in the "Recent Updates" section of the Title Conditions Training Manuals website (see links below).

FR and TP legal settlers are reminded that any application affected by real burdens created by dual registration in a deed recorded or registered after the Appointed Day (28 Nov. 2004) but prior to the date of registration of their current application should be processed only by settlers who have completed part 2 of the Real Burdens training. Instructions on how to identify such applications are included in the Real Burdens Part 1 manual (pages 23 and 24). All FR and TP Legal Settlers should familiarise themselves with these instructions.

When dealing with First Attached (FA) or Transfer Attached (TA) applications or with amalgamations of registered titles, settlers should check to see whether any of the applications are affected by real burdens created by dual registration in a previously registered deed. If they are, the effect of the current transaction on the other (burdened/benefited) property affected by the real burdens must be considered and such applications should only be completed by settlers who have completed part 2 of the Real Burdens training.

Related links
Recent Updates to Real Burdens Part 1 Manual
Real Burdens Part 1 Manual
Recent Updates to Real Burdens Part 2 Manual
Real Burdens Part 2 Manual

Owner - Registration Training / Registration Practice
Author - Alice Pirie & Donald Craig / Greg Ewing
Publication Date - 12/01/11

Standard Securities – Exercise of Power of Sale

The UK Supreme Court issued a decision on 24 November 2010 in the case of Royal Bank of Scotland plc v John Patrick McCormack Wilson and another. The decision relates to the procedures which a creditor requires to follow when exercising their powers of repossession and sale under a standard security. In particular, the Court overturned the view, previously held by some solicitors and lenders, that it is not necessary to issue a calling-up notice as a precursor to Court action under section 24 of the Conveyancing and Feudal Reform (Scotland) Act 1970.

In the light of the Supreme Court's decision, the Legal Policy Group has reviewed policy with regard to applications for registration in the Land Register which are induced by a disposition in exercise of a power of sale in a standard security. The following information results from the Legal Policy Group's decisions.

1. Reliance on application forms

Application forms 1, 2 and 3 contain a question asking whether the statutory procedures necessary for the exercise of the power of sale have been complied with. The purpose of that question is to place the onus on the applicant's solicitor to satisfy themselves on that point, rather than submitting evidence for the Keeper to examine.

In a given case, if the purchaser's solicitor is satisfied that the statutory procedures have been properly complied with, then they should answer the question in the affirmative. As noted in paragraph 22.2 of the Legal Manual, where the question is answered in the affirmative, registration officers should rely on the solicitor's certification and should settle the case without requisitioning evidence relating to the power of sale procedures under the 1970 Act (as amended by the Home Owner and Debtor Protection (Scotland) Act 2010).

However, if the compliance question is not answered in the affirmative, indemnity should be excluded. Evidence relating to the statutory procedures necessary for the exercise of the power of sale should not be requisitioned or examined by the registration officer. This instruction supersedes the advice in paragraph 22.3 of the Manual relating to requisitioning of evidence and assessment of risk.

2. Exclusion of indemnity

Where the compliance question is not answered in the affirmative, an exclusion of indemnity should be entered in the Proprietorship Section of the title sheet in the following style:

Note: The title of the said A [registered proprietor] is founded on a Disposition by C [creditor] to the said A registered [date] in implement of the power of sale under a standard security by D [debtor] to the said C registered [date]. Indemnity is excluded in terms of section 12(2) of the Land Registration (Scotland) Act 1979 in respect of any loss arising as a result of the said Disposition being reduced or declared or found to be void because of any defect or failing in the exercise of the statutory procedures necessary for the proper exercise of the power of sale.

This style of note replaces the style suggested in paragraph 22.16 of the Legal

Manual.
3.Postponed and pari passu standard securities

Section 26 of the 1970 Act states that, on registration of the disposition by the creditor in exercise of the power of sale, the subjects are disburdened of all securities and diligences which rank pari passu with or postponed to the security on which the power of sale has been exercised. As instructed in paragraph 22.2 of the Legal Manual, registration officers should refer to a team leader any case where more than one standard security over the subjects exists at the time of the power of sale. The same rule applies where the subjects are affected by a diligence such as inhibition.

Paragraph 22.12 of the Manual provides guidance to team leaders on this point. Team leaders should be aware, however, that if there is doubt as to whether the statutory procedures necessary for the power of sale have been properly exercised, then there must also be doubt as to whether the statutory disburdenment under section 26 has taken effect. Accordingly, in all cases where the compliance question is not answered in that affirmative, any securities which rank pari passu with or postponed to the security on which the power of sale has been exercised should continue to be shown in the Charges Section of the title sheet. A note in the following style should be added below the entry for each such security:
Note: The above standard security ranks pari passu with or postponed to the standard security by D [debtor] to C [creditor] registered [date] referred to in Note [xx] in the Proprietorship Section. Indemnity is excluded in terms of section 12(2) of the Land Registration (Scotland) Act 1979 in respect of any loss arising from rectification of the register to delete the above standard security or from the subjects in this title being declared or found not to have been disburdened of the above standard security in terms of section 26(1) of the Conveyancing and Feudal Reform (Scotland) Act 1970.

If the purchaser under the power of sale has granted a standard security, the charge certificate in respect of that security should disclose the securities which have been retained in the title sheet. The exclusions of indemnity in both the Proprietorship Section and the Charges Section should be reflected in the charge certificate.

As noted in paragraph 22.12, the rights of prior creditors are unaffected by the power of sale and their standard securities should in any event be shown in the Charges Section.
The above principles apply also to diligences (e.g. inhibitions or the inhibitory effect of sequestration).

4. Power of sale earlier in the prescriptive progress

In the case of an application for first registration where a power of sale has been exercised earlier in the prescriptive progress, the compliance question does not apply. The instruction in paragraph 22.15 of the Legal Manual applies in this scenario: registration officers should rely on the solicitor's certification in answer to question 14 on form 1, which asks whether there are any other facts and circumstances material to the right or title of the applicant. However, if any concern regarding the

effectiveness of a prior power of sale is disclosed in the application, then indemnity should be excluded in terms of the instructions in this memo.

5. Pending applications

The instructions in this memo apply both to applications for registration which have been submitted since the Supreme Court's decision was issued and to any pending applications induced by a creditor's power of sale which were already in the Keeper's hands before the decision was publicised.

Owner - Legal Policy Branch
Author - Martin Corbett
Publication Date - 23/02/11

Abbey National PLC – Change of name to Santander UK PLC (Legal Memo 02-2010)

With effect from 11 January 2010 Abbey National plc changed its name to Santander UK plc. The company number remains 2294747. The Certificate of Incorporation on Change of Name has been examined and is in order.
Standard Securities executed before 11 January 2010

Any Standard security granted in favour of Abbey National plc executed before 11 January 2010 but submitted as part of an application for registration on or after that date may be accepted if the application form specifies Santander UK plc as the applicant.

Agents should be encouraged to list the Certificate of Incorporation on Change of Name on Form 4, but applications need neither be rejected nor returned for amendment where this has not been done.

The Certificate of Incorporation on Change of Name does not require to be produced with any application.

The following note should be added to the charges section entry for the security, and to the charge certificate -

Note: by Certificate of Incorporation on Change of Name dated 11 January 2010 the creditor in the foregoing standard security changed its name from Abbey National plc to Santander UK plc.

Discharges executed before 11 January 2010

Discharges executed on behalf of Abbey National plc must be executed before 11 January 2010. They can be accepted for registration after that date.

Standard securities and discharges executed on or after 11 January 2010

On or after 11 January 2010, no standard security or discharge should be granted in favour of or by Abbey National plc. Should any such deeds be identified at intake/create, they should be rejected and the agent advised that a deed in favour of or by Santander UK plc is required. Where any such deed is identified later in the registration process, it should be returned to the ingiving agent for amendment/re-engrossment.

Owner - Registration
Author - John Glover
Publication Date - 26/01/10

Abbey National PLC – Change of name to Santander UK PLC (Legal Memo 02-2010)

With effect from 11 January 2010 Abbey National plc changed its name to Santander UK plc. The company number remains 2294747.
Standard Securities executed before 11 January 2010

Any Standard security granted in favour of Abbey National plc before 11 January 2010 but presented for recording on or after that date may be accepted if the Sasine Application Form specifies Santander UK plc as the applicant

Discharges executed before the 11 January 2010

Discharges executed on behalf of Abbey National plc must be executed before 11 January 2010. They can be accepted for recording after that date.

Standard securities and discharges executed on or after 11 January 2010

On or after 11 January 2010, no standard security or discharge should be granted in favour of or by Abbey National plc. However if any such deed is presented, it should be rejected and the ingiving agent advised that a deed in favour of or by Santander UK plc is required.

Owner - Registration
Author - John Glover
Publication Date - 26/01/10

Aerial Imagery (Plans Memo 04-2010)

In June this year, Google Street View was updated to use Flash10.

This resulted in numerous calls to BT Helpdesk as Users requested the updated version of Flash in order to view said application.

Google Maps/Street View is not a BT/ROS supported business tool but BT were contacted to ask if they planned to upgrade Flash in the near future.

RD currently uses Flash version 9 (and there may be other applications affected), therefore any future updates to Flash would have to be fully regression tested against the current desktop before an agreement to inclusion within a future service release.

An assessment of RoS' requirements and the possible effect on our decision making process has now been concluded.
Legal Validity

In their current unsupported forms Bing Birdseye View and Google Street View are simply useful tools to confirm information received from other sources. Because they are unsupported applications, there must be uncertainty as to the accuracy and currency of the photography displayed on each site. The photography should not therefore be relied upon to make registration or rectification decisions. It can still be useful of course in helping an officer decide whether further investigation is required, such as instructing the department surveyor to make a site visit.

The Spatial Data Browser might have a stronger legal standing since it is supported by Ordnance Survey, but we cannot speculate as to how the Lands Tribunal or a court might treat its photography as evidence.

Conclusion

Feedback has been positive for all applications and it is clear that they all play an important part in the Plans Settling process. Settlers are encouraged to make use of all Tools available in the consider process.

The Aerial photography layer plays a fundamental part in the Plans Consider process and is fully supported. The majority of Plans Settlers use this layer as their first port of call before using all other tools at their disposal.

Ordnance Survey states that the data should be no older than 5 years and the SDB has recently been updated to give more or less complete coverage (click link below to access).
Registration Practice plan to develop their own site on the Intranet and a list of all helpful websites for both Plan and Legal will be published therein.

Please note that the above applications should be accessed when there is an issue regarding the extent/occupation of the subjects sought to be registered and should

not be accessed as a matter of course for each application.

Latest update from Partnership Management is that Flash 10 is currently a candidate for inclusion in the December non functional service release (INFO-07). Before this is confirmed it will need to go through BT's test environments to ensure there are no issues. An update will be published if there are any changes to proposed dates.

Contact Rhona Elrick

Related links
Ordnance Survey

Owner - Registration Practice
Author - Rhona Elrick / Greg Ewing
Publication Date - 06/10/10

Alliance & Leicester - Santander (Legal Memo 03-2010) Alliance & Leicester PLC: Transfer of Assets to Santander UK PLC

1.1 With effect from 28 May 2010 the business, trading name and all property and liabilities of the Alliance & Leicester PLC were transferred to Santander UK plc by virtue of the Transfer Scheme between the Alliance & Leicester PLC and Santander UK plc approved by the High Court of Justice on 13 May 2010 in terms of the Financial Services and Markets Act 2000. The transfer documents have been examined and are in order.
1.2 In this Memo the following definitions are used:

• "the transfer date" means 28 May 2010 ;
• "the Transfer Instrument " means the Transfer Scheme between the Alliance & Leicester
PLC and Santander UK plc approved by the High Court of Justice on 13 May 2010 in terms of the Financial Services and Markets Act 2000
Deeds executed before the transfer date granted by or in favour of the Alliance & Leicester PLC

Standard securities and dispositions

2.1 Any deed (e.g. a standard security or a disposition) granted in favour of the Alliance & Leicester PLC executed before the transfer date, but submitted as part of an application for registration on or after that day, will be accepted for registration, provided that the following requirements are met -

(a) the application form specifies that the applicant is the Santander UK plc

(b) the application form specifies that registration is sought in respect of the deed in favour of the Alliance & Leicester PLC; and

(c) the Transfer Instrument is listed in the Form 4 (but there is no need for the document to be enclosed.)

The application forms should be returned for amendment if they do not meet these requirements.

2.2 The entry in the Charges Section of the title sheet will show a standard security in favour of Alliance & Leicester PLC. A note should be added to both the entry and the Charge Certificate as follows:

"Note: with effect from 28 May 2010 the interest of Alliance & Leicester PLC in the standard security was transferred to Santander UK plc by virtue of the Transfer Instrument being the Transfer Scheme between the Alliance & Leicester PLC and Santander UK plc approved by the High Court of Justice on 13 May 2010 in terms of the Financial Services and Markets Act 2000"
The Creditor in the Charge Certificate should be amended to the Santander UK plc.
Discharges

2.3 Discharges granted by the Alliance & Leicester PLC must bear to have been executed prior to the transfer date. There is no objection registration applications in respect of such discharges being made after that day since no completion of title is involved.
Deeds executed on or after the transfer date

3.1 All deeds (be they standard securities, dispositions or discharges) executed on or after the transfer date must be granted by or be in favour of the Santander UK plc

3.2 Where Santander UK plc grants a discharge of, or a repossession disposition in terms of a standard security registered or recorded prior to the transfer date in which the original grantee was Alliance & Leicester PLC, the Transfer Instrument should be listed in the Form
4, but need not be submitted with the registration application.

3.3 If any deed executed on or after the transfer date by or in favour of Alliance & Leicester PLC is submitted the deed should be returned to the agent for amendment and re execution.

Owner - Registration Practice
Author - John Glover / Greg Ewing
Publication Date - 11/06/10

Alliance & Leicester - Santander (Sasine Memo 03-2010) Alliance & Leicester PLC: Transfer of Assets to Santander UK PLC

1.1 With effect from 28 May 2010 the business, trading name and all property and liabilities of the Alliance & Leicester PLC were transferred to Santander UK plc by virtue of the Transfer Scheme between the Alliance & Leicester PLC and Santander UK plc approved by the High Court of Justice on 13 May 2010 in terms of the Financial Services and Markets Act 2000.
1.2 In this Memo the following definitions are used:

• "the transfer date" means 28 May 2010 ;

• "the Transfer Instrument " means the Transfer Scheme between the Alliance & Leicester
PLC and Santander UK plc approved by the High Court of Justice on 13 May 2010 in terms of the Financial Services and Markets Act 2000

Deeds executed before the transfer date granted by or in favour of the Alliance & Leicester PLC

Standard securities and other deeds in favour of Alliance and Leicester PLC

2.1 Any deed (such as a standard security or disposition) granted in favour of the Alliance & Leicester PLC executed before the transfer date, but presented for recording after that date should be either (a) docqueted with reference to a Notice of Title on behalf of Santander UK plc which deduces title through the Transfer Instrument and the two deeds recorded together or (b) re-engrossed and re-executed in favour of Santander UK plc.
The deed should be returned for amendment if these requirements are not met.
Discharges

2.2 Discharges and any other deeds granted by the Alliance & Leicester PLC must bear to have been executed prior to the transfer date. There is no objection to their being presented for recording after that day since no completion of title is involved.
Deeds executed on or after the transfer date

3.1 Standard securities and other deeds executed on or after the transfer date must be in favour of Santander UK plc. Similarly discharges executed after the transfer date must be granted by Santander UK plc, who have confirmed that deeds will be granted to or by " Santander UK plc, incorporated under the Companies Acts and having its registered office at 2 Triton Square, Regent's Place, London NW1 3AN"

3.2 If any deed executed on or after the transfer date by or in favour of Alliance & Leicester PLC is submitted the deed should be returned to the agent for amendment and re execution.

3.3 Where the Santander UK plc grants a discharge of a standard security recorded prior to the transfer date in which the original grantee was Alliance & Leicester PLC,

the discharge should deduce title, referring to the Transfer Instrument, in the terms similar to the following:
“which standard security was last vested in the said Alliance & Leicester PLC as aforesaid and from whom we the said Santander UK plc acquired right by virtue of the Transfer Instrument being Transfer Scheme between the Alliance & Leicester PLC and Santander UK plc approved by the High Court of Justice on 13 May 2010 in terms of the Financial Services and Markets Act 2000 …….. ”

Owner - Registration Practice
Author - John Glover / Greg Ewing
Publication Date - 11/06/10

Bank of Ireland – Bank of Ireland (UK) PLC (Legal Memo 11-2010)
Transfer of Part of the Assets and Loans of the Governor and Company of the Bank of Ireland

With effect from 1 November 2010 (the "transfer date") part of the assets and loans of the Governor and Company of the Bank of Ireland established by Royal Charter was transferred to the Bank of Ireland (UK) plc incorporated in England and Wales with registered number 7022885 by virtue of the Transfer Scheme between the Governor and Company of the Bank of Ireland and Bank of Ireland (UK) plc approved by the Order of the High Court of Justice on 29 October 2010 in terms of the Financial Services and Markets Act 2000 (the "Transfer Instrument")

Given that only part of the assets and loans have been transferred, the Keeper will rely on the applicants and their agents intimating to the Keeper in the application form and or the deed as advised below that it relates to a loan transferred by the Transfer Instrument. Failing which the application will be processed on the assumption that no such transfer has taken place and the following provisions do not therefore apply.
LAND REGISTER REQUIREMENTS WHERE THE LOAN HAS BEEN TRANSFERRED IN TERMS OF THE TRANSFER INSTRUMENT

Standard securities executed before 1 November 2010

Any standard security granted in favour of the Governor and Company of the Bank of Ireland executed before the transfer date, but submitted as part of an application for registration on or after that day, will be accepted for registration, provided that the following requirements are met, namely

(a) the application form specifies that the applicant is the Bank of Ireland (UK) plc

(b) the application form specifies that registration is sought in respect of the deed in favour of the Governor and Company of the Bank of Ireland; and

(c) the Transfer Instrument is listed in the Form 4 submitted with the application but there is no need for the document to be enclosed.

Discharges executed before 1 November 2010

Discharges granted by the Governor and Company of the Bank of Ireland must bear to have been executed prior to the transfer date. There is no objection to registering them after that date.

Standard securities and discharges executed after 1 November 2010

All deeds (be they standard securities, dispositions or discharges) executed on or after the transfer date can be granted by or be in favour of the Bank of Ireland (UK) plc

Where Bank of Ireland (UK) plc grants a discharge of, or a repossession disposition in

terms of a standard security registered or recorded prior to the transfer date, where the original grantee was Governor and Company of the Bank of Ireland, the Transfer Instrument should be listed in the Form 4. There is no need for the Transfer Instrument to be submitted.

If any deed executed on or after the transfer date by or in favour of Governor and Company of the Bank of Ireland is submitted the application should be passed to Legal Services for the attention of Peter Smith. Email peter.smith@ros.gov.uk

Owner - Legal Services / Registration Practice
Author - Peter Smith / Greg Ewing
Publication Date - 20/12/10

Bank of Ireland – Bank of Ireland (UK) PLC (Sasine Memo 06-2010)
Transfer of Part of the Assets and Loans of the Governor and Company of the Bank of Ireland

With effect from 1 November 2010 (the "transfer date") part of the assets and loans of the Governor and Company of the Bank of Ireland established by Royal Charter was transferred to the Bank of Ireland (UK) plc incorporated in England and Wales with registered number 7022885 by virtue of the Transfer Scheme between the Governor and Company of the Bank of Ireland and Bank of Ireland (UK) plc approved by the Order of the High Court of Justice on 29 October 2010 in terms of the Financial Services and Markets Act 2000 (the "Transfer Instrument")

Given that only part of the assets and loans have been transferred, the Keeper will rely on the applicants and their agents intimating to the Keeper in the application form and or the deed as advised below that it relates to a loan transferred by the Transfer Instrument. Failing which the application will be processed on the assumption that no such transfer has taken place and the following provisions do not therefore apply.
GENERAL REGISTER OF SASINES REQUIREMENTS WHERE THE LOAN HAS BEEN TRANSFERRED IN TERMS OF THE TRANSFER INSTRUMENT

Standard securities executed before 1 November 2010

Any standard security granted in favour of the Governor and Company of the Bank of Ireland executed before the transfer date, but submitted for recording after the transfer date should be either (a) docqueted with reference to a Notice of Title on behalf of Bank of Ireland (UK) plc and the two deeds recorded together with the application for the recording of the Notice of Title making reference to the other deed or (b) re-engrossed and re-executed in favour of Bank of Ireland (UK) plc

The deed will be returned to the agent for amendment if these requirements are not met.
Discharges executed before 1 November 2010

Discharges granted by the Governor and Company of the Bank of Ireland must bear to have been executed prior to the transfer date. There is no objection to recording them after that date.

Standard securities and discharges executed after 1 November 2010

All deeds (be they standard securities, dispositions or discharges) executed on or after the transfer date must be granted by or be in favour of the Bank of Ireland (UK) plc. Where the Bank of Ireland (UK) plc grants a discharge of a standard security registered or recorded prior to the transfer date, where the original grantee was the Governor and Company of the Bank of Ireland, the discharge should deduce title from the Governor and Company of the Bank of Ireland, referring to the Transfer Instrument in terms similar to the following:

“which standard security was last vested in the said Governor and Company of the Bank of Ireland as aforesaid and from whom we the said Bank of Ireland (UK) plc acquired right by virtue of the Transfer Instrument being Transfer Scheme between the said Governor and Company of the Bank of Ireland and said Bank of Ireland (UK) plc approved by the Order of the High Court of Justice on 29 October 2010 in terms of the Financial Services and Markets Act 2000…….. ”

If any deed executed on or after the transfer date by or in favour of the Governor and Company of the Bank of Ireland is submitted the deed will be returned to the agent for amendment and re execution.

Owner - Legal Services / Registration Practice
Author - Peter Smith / Greg Ewing
Publication Date - 20/12/10

Check of Application Record (Legal Memo 09-2010)

Failure to check the Application Record can lead to serious errors and on occasion this has placed the Keeper's indemnity at risk because, for example Settlers have given effect to DWs in ignorance of prior TPs.

Legal Settlers are reminded that before updating a Land Certificate / Title Sheet - whether to reflect a subsequent dealing or for any other reason - the appropriate checks against the Application Record must be made to ensure that earlier applications lodged against the registered title in question have not been overlooked.

It is important that any pending applications are dealt with appropriately.
Specific queries should be referred to a Senior Caseworker.

For further information or advice contact Registration Practice -Margaret Grieve or Anne Godfrey.

Owner - Registration Practice
Author - Margaret Grieve / Greg Ewing
Publication Date - 06/10/10

Chelsea – Yorkshire Building Societies, Inhibitions Update (Legal Memo 07A-2010)

Chelsea Building Society: Transfer of Assets to The Yorkshire Building Society
Legal Memo 07-2010 noted that with effect from 1 April 2010 the business, trading name and all property and liabilities of the Chelsea Building Society was transferred to the Yorkshire Building Society by virtue of the Instrument of Transfer of Engagements between the Chelsea Building Society and the Yorkshire Building Society dated 2 December 2009.
"the transfer date" means 1 April 2010

"the transfer instrument" means the Instrument of Transfer of Engagements between the Chelsea Building Society and the Yorkshire Building Society
REGISTRATION PRACTICE – INHIBITIONS

Following the renaming of Chelsea Building Society to Yorkshire Building Society, we may see some transitional cases involving inhibitions.

Possible scenarios and guidance;

If the date of service is on or after the transfer date Schedule 1 should state Yorkshire Building Society. (However staff should be aware that 'Chelsea Building Society' continues to be used as a trading brand; deeds granted to or by 'Yorkshire Building Society (trading as Chelsea Building Society) and whose principal office is at Yorkshire House, Yorkshire Drive, Bradford BD5 8LJ' are acceptable).

If the Instrument of debt narrated in Schedule 2/3 is before the transfer date we should expect to see "obtained at the instance of Chelsea Building Society" there is no requirement to mention Yorkshire Building Society as we do not need to see a deduction of title.
Yorkshire Building Society should be narrated as the Inhibitor.

REGISTRATION PRACTICE – DISCHARGES

Discharges executed on or after the transfer date must be granted by Yorkshire Building Society. However staff should be aware that Chelsea Building Society continues to be used as a trading brand; deeds granted to or by 'Yorkshire Building Society (trading as Chelsea Building Society and whose principal office is at Yorkshire House, Yorkshire Drive, Bradford BD5 8LJ' are acceptable.

Where Yorkshire Building Society grants a discharge of an inhibition recorded prior to the transfer date in which the original inhibitor was Chelsea Building Society, the discharge should deduce title referring to the Instrument of Transfer of Engagements.

Related links
Legal Memo 07-2010
Owner - Registration Practice
Author - Val Clough / Greg Ewing
Publication Date - 23/08/10

Chelsea – Yorkshire Building Societies, Inhibitions Update (Sasine Memo 04-2010)

Chelsea Building Society: Transfer of Assets to The Yorkshire Building Society
With effect from 1 April 2010 the business, trading name and all property and liabilities of the Chelsea Building Society was transferred to the Yorkshire Building Society by virtue of the Instrument of Transfer of Engagements between the Chelsea Building Society and the Yorkshire Building Society dated 2 December 2009. This transfer was registered by the Financial Services Authority on 22 March 2010 in terms of the Building Societies Act 1986.

Deeds executed before 1 April 2010 granted by or in favour of the Chelsea Building Society
Standard securities

Any deed granted in favour of the Chelsea Building Society executed before 1 April 2010 but presented for recording after that date must be either (a) docqueted with reference to a Notice of Title on behalf of the Yorkshire Building Society and the two deeds recorded together or (b) re-engrossed and re-executed in favour of the Yorkshire Building Society. The deed should be returned for amendment if these requirements are not met.
Discharges

Discharges granted by the Chelsea Building Society must bear to have been executed prior to 1 April 2010. There is no objection to such discharges being recorded that date since no completion of title is involved.

Deeds executed on or after 1 April 2010

All standard securities and discharges executed on or after 1 April 2010 must be granted by or be in favour of the Yorkshire Building Society. However staff should be aware that “Chelsea Building Society” continues to be used as a trading brand; deeds granted to or by " Yorkshire Building Society (trading as Chelsea Building Society) and whose Principal Office is at Yorkshire House, Yorkshire Drive, Bradford BD5 8LJ " are acceptable.
Where the Yorkshire Building Society (whether or not styled as trading as the Chelsea) grants a discharge of a standard security recorded prior to 1 April 2010 in which the original grantee was the Chelsea Building Society, the discharge should deduce title in the terms similar to the following: -

“which standard security was last vested in the said Chelsea Building Society as aforesaid and from whom we the said Yorkshire Building Society acquired right by virtue of the Transfer Instrument being the Instrument of Transfer of Engagements between the Chelsea Building Society and the Yorkshire Building Society dated 2 December 2009 and registered by the Financial Services Authority on 22 March 2010 in terms of the Building Societies Act 1986. ……..”

If any deed executed on or after 1 April 2010 in favour of the Chelsea Building Society is presented, it should be returned to the agent for amendment and re-execution.

Owner - Registration Practice
Author - Val Clough / Greg Ewing
Publication Date - 28/07/10

Chelsea – Yorkshire Building Societies, Inhibitions Update (Legal Memo 07A-2010)

Chelsea Building Society: Transfer of Assets to The Yorkshire Building Society
Legal Memo 07-2010 noted that with effect from 1 April 2010 the business, trading name and all property and liabilities of the Chelsea Building Society was transferred to the Yorkshire Building Society by virtue of the Instrument of Transfer of Engagements between the Chelsea Building Society and the Yorkshire Building Society dated 2 December 2009.
"the transfer date" means 1 April 2010

"the transfer instrument" means the Instrument of Transfer of Engagements between the Chelsea Building Society and the Yorkshire Building Society
REGISTRATION PRACTICE – INHIBITIONS

Following the renaming of Chelsea Building Society to Yorkshire Building Society, we may see some transitional cases involving inhibitions.

Possible scenarios and guidance;

If the date of service is on or after the transfer date Schedule 1 should state Yorkshire Building Society. (However staff should be aware that 'Chelsea Building Society' continues to be used as a trading brand; deeds granted to or by 'Yorkshire Building Society (trading as Chelsea Building Society) and whose principal office is at Yorkshire House, Yorkshire Drive, Bradford BD5 8LJ' are acceptable).

If the Instrument of debt narrated in Schedule 2/3 is before the transfer date we should expect to see "obtained at the instance of Chelsea Building Society" there is no requirement to mention Yorkshire Building Society as we do not need to see a deduction of title.
Yorkshire Building Society should be narrated as the Inhibitor.

REGISTRATION PRACTICE – DISCHARGES

Discharges executed on or after the transfer date must be granted by Yorkshire Building Society. However staff should be aware that Chelsea Building Society continues to be used as a trading brand; deeds granted to or by 'Yorkshire Building Society (trading as Chelsea Building Society and whose principal office is at Yorkshire House, Yorkshire Drive, Bradford BD5 8LJ' are acceptable.

Where Yorkshire Building Society grants a discharge of an inhibition recorded prior to the transfer date in which the original inhibitor was Chelsea Building Society, the discharge should deduce title referring to the Instrument of Transfer of Engagements.

Related links
Legal Memo 07-2010

Owner - Registration Practice

Author - Val Clough / Greg Ewing
Publication Date - 23/08/10

Deeds of Condition (Legal Memo 05-2010) – (originally issues as F450/09)

Deeds of Conditions — update to Registration Practice memo 01/2005
Registration Practice memo 01/2005 set out procedures to be followed by legal settlers when registering deeds submitted after 28 Nov 2004 which import the conditions in a Deed of Conditions registered before that date.
In particular, the instructions state that breakaway deeds which import conditions from either:

A Deed of Conditions registered prior to 4 Apr 1979, or

A Deed of Conditions registered after 4 Apr 1979 in which Section 17 of the Land Registration (Scotland) Act 1979 has been disapplied must use the following form of wording (as set out in Section 6 and Schedule 1 of the Title Conditions (Scotland) Act 2003) in order for the burdens to be made real:

"There are imported the terms of the title conditions specified in ....." e.g. Deed of Conditions by A, recorded G.R.S. (County) xxx (date).

We have now reviewed our practice in the light of a recent Legal Opinion and it has been decided that the Keeper will accept deeds which do not use this specific form of wording, providing that it is clear from the terms of the breakaway deed that the intention is to import the burdens from the Deed of Conditions and that the Deed of Conditions is itself clearly identified, as in the following example:

"always with and under the whole real burdens, conditions and others specified in the Deed of Conditions by A, dated xxx and registered in the Land Register of Scotland under Title Number xxx on xxx [date]".

Related links
Registration Practice memo 01/2005
Deeds of Conditions - F450/09

Owner - Registration Practice
Author - Greg Ewing
Publication Date - 21/06/10

LRS Next Application notes (Legal Memo 06-2010) (NANs)

LRS Users are reminded of the importance of using correct procedures when dealing with NANs. Incorrect NANs are still being created and NANs that should be cleared on receipt of the next application are not always being removed, staff should be aware that this has impacts for the ARTL compatability of the title, and in future, for e-settle.
Information on these procedures can be found in Data Integrity Information Paper 4/2008 and Data Integrity Information Paper 6/2008. LRS Users should familiarise themselves with the contents of these documents before creating or removing a NAN.

Key points to remember are:

Creating a NAN: to ensure consistency the text of the NAN should always be taken from the LRS pick list (all the entries on this list have been categorised for compatibility with both ARTL and e-settle). It should be noted that any text that is added outwith the pick list field will possibly render the Title as unsuitable for subsequent ARTL transactions. Although the LRS allows the User to enter text in a free text field this facility should only be used where necessary.

Removing a NAN: when dealing with an existing NAN that refers to an action that has taken place, the entry for that NAN should be removed.

Adding a new NAN to the pick list: if you consider it necessary to add a new NAN to the pick list then you should follow the procedures shown in (Notice) f33/06 Procedure for Production System Amendments.

For further information or advice please contact LRS Support - Iain Geddes on Ext:3138 or Robert Dunn on Ext:3102.

Related links
Data Integrity Information Paper 4/2008
Data Integrity Information Paper 6/2008
Procedure for Production System Amendments

Owner - Registration Practice
Author - Margaret Grieve / Robert Dunn
Publication Date - 02/07/10

Lloyds TSB Scotland PLC – Lloyds TSB Bank PLC (Legal and Sasine Memo)

Transfer of Part of the deposit-taking business of Lloyds TSB Scotland plc

With effect from the 17th May 2010 part of the deposit-taking and associated business of Lloyds TSB Scotland plc was transferred to Lloyds TSB Bank plc, incorporated in England and Wales with registered number 00002065, by virtue of the Transfer Scheme between Lloyds TSB Scotland plc and Lloyds TSB Bank plc approved by the order of the Court of Sessions on 14th May 2010 in terms of the Financial Services and Markets Act 2000 (the "Transfer Instrument"). The transfer documents have been examined and are in order.

Given that only part of the assets have been transferred, the Keeper will rely on the applicants and their agents intimating to the Keeper in the application form and or the deed as advised below that it relates to a loan transferred by the Transfer Instrument. Failing which the application will be processed on the assumption that no such transfer has taken place and the following provisions do not therefore apply.

Land Register

1. Standard securities and dispositions executed before 17th May 2010

Any deed (e.g. a standard security or a disposition) granted in favour of Lloyds TSB Scotland plc executed before the transfer date, but submitted as part of an application for registration on or after that day, will be accepted for registration, provided that the following requirements are met, namely

(a) the application form specifies that the applicant is Lloyds TSB Bank plc;

(b) the application form specifies that registration is sought in respect of the deed in favour of Lloyds TSB Scotland plc; and

(c) the Transfer Instrument is listed in the Form 4 submitted with the application but there is no need for the document to be enclosed.

The application forms should be returned for amendment if they do not meet these requirements.

The entry in the Charges Section of the title sheet will show a standard security in favour of Lloyds TSB Scotland plc. A note should be added to both the entry and the Charge Certificate as follows:

"Note: with effect from 17 May 2010the interest of Lloyds TSB Scotland plc in the standard security was transferred to Lloyds TSB Bank plc by virtue of the Transfer Instrument being the Transfer Scheme between Lloyds TSB Scotland plc and Lloyds TSB Bank plc approved by the Court of Session on 14 May 2010 in terms of the Financial Services and Markets Act 2000"

The creditor in the Charge Certificate should be amended to Lloyds TSB Bank plc.

2. Discharges executed before 17th May 2010

Discharges granted by Lloyds TSB Scotland plc must bear to have been executed prior to the transfer date. There is no objection to registering them after that date since no completion of title is involved.

3. Deeds executed after 17th May 2010

Any deed executed on or after the transfer date which relates to a transferred security must be granted by or be in favour of Lloyds TSB Bank plc.

Where Lloyds TSB Bank plc grants a discharge of, or a repossession disposition in terms of, a standard security registered or recorded prior to the transfer date where the original grantee was Lloyds TSB Scotland plc, the Transfer Instrument should be listed in the Form 4, but need not be submitted with the registration application.

Sasine Register

1. Standard securities and other deeds executed before 17th May 2010

Any deed granted in favour of Lloyds TSB Scotland plc, executed before the transfer date but submitted for recording after the transfer date, should be either (a) docqueted with reference to a Notice of Title on behalf of Lloyds TSB Bank plc which deduces title through the Transfer Instrument and the two deeds recorded together, or (b) re-engrossed and re-executed in favour of Lloyds TSB Bank plc.

The deed should be returned to the agent for amendment if these requirements are not met.

2. Discharges and other deeds executed before 17th May 2010

Discharges or other deeds relating to a transferred security, granted by Lloyds TSB Scotland plc, must bear to have been executed prior to the transfer date. There is no objection to recording them after that date since no completion of title is involved.

3. Deeds executed after 17th May 2010

Any deed executed on or after the transfer date which relates to a transferred security must be granted by or be in favour of Lloyds TSB Bank plc.
Where Lloyds TSB Bank plc grants a discharge of a standard security registered or recorded prior to the transfer date, where the original grantee was Lloyds TSB Scotland plc, the discharge should deduce title from Lloyds TSB Scotland plc, referring to the Transfer Instrument in terms similar to the following:
"which standard security was last vested in the said Lloyds TSB Scotland plc as aforesaid and from whom we the said Lloyds TSB Bank plc acquired right by virtue of the Transfer Instrument being Transfer Scheme between the said Lloyds TSB Scotland plc and Lloyds TSB Bank plc approved by the Order of Court of Sessions on 14 May 2010 in terms of the Financial Services and Markets Act 2000…….. "

Owner - Registration
Author - Erin Burns
Publication Date - 26/08/13

Mapping to Legal Extent (Plans Memo 02-2010)

Plans Settling Guidelines for Transfer of Part applications

When dealing with Transfer of Part (TP) applications it is not unusual for the extent contained within Transfer Dispositions to vary from the features shown on the latest Ordnance Survey map. These discrepancies are often due to conveyancing errors. Plans Officers should proceed to map these applications to reflect the legal extent providing (1) the developer has title to the full area and (2) the adjoining title (if submitted) is consistent. Any applications that do not fit the above two criteria should be referred to Plans RO1 for consideration.

This instruction relates to TP applications only.
A letter explaining the Keepers position should be prepared following the guide text below and should be despatched with the completed Land Certificate.

Historically Plans RO1s within TP Support would engage in correspondence with submitting agents to try resolve these issues prior to registration being completed. However our experience is that frequently this causes major delays to the processing of applications within developments with these issues. This position is not sustainable for ROS and therefore the above instruction sits with other initiatives to drive down the volumes of applications in standover.

Letter Style

Please find enclosed the completed Land Certificate and documentation for the above application of a Transfer of Part in the Land Register.

It would appear that the development on the ground shown on the latest Ordnance Survey map does not coincide with the extent shown on the plan attached to the transfer disposition. However the extent of the subjects shown on the Title Plan has been scaled and plotted from the deed plan and as such reflects the conveyancing and legal entitlement.
As the Keeper has accurately reflected the title deed when preparing the Title Plan any investigations into this matter should be raised with the Developer.

Owner - Registration Practice
Author - Stevie Arnott / Greg Ewing
Publication Date - 03/08/10

New LRS Letter Templates

With effect from 1 Sep. 2010, the Keeper's requisition policy changed in relation to applications received on or after that date. Staff will be aware that the principal changes from that date are that there will be no reminder sent subsequent to the original requisition and applications will no longer be retained pending receipt of a discharge marked as "to follow".
To reflect the change in our policy, the relevant template letters stored on the LRS were amended. At the same time, all pro forma LRS letters were re-formatted to show the RoS logo and web address in the top right hand corner of the page. Registration staff are asked to note that it is not necessary to print these re-formatted letters on headed paper. Instead, they should be printed in black and white on blank sheets of 80mg paper. For the avoidance of doubt, colour printers should not be used to print these re-formatted letters.

Headed paper will continue to be used for external correspondence that does not involve the use of the amended pro forma LRS letters.

For further information please contact Donald Craig or David Lange.

Owner - Registration
Author - Donald Craig
Publication Date - 03/09/10

New Standover Policy (Legal Memo 04-2010)

Staff are asked to note that the following changes to our Standover policy will come into effect later this year.

Following a review of our Standover procedures, the EMT has decided that the following changes will take effect from 1 September 2010.
For transactions received on or after 1 September 2010:

Registers of Scotland will no longer delay the registration of an application pending receipt of a Discharge that has been marked 'to follow'. This may result in a Land Certificate being issued showing an outstanding standard security by the previous owner. However, following registration of a Discharge, it is possible to demonstrate that the prior standard security has been removed from the Title Sheet by obtaining a Form 12 Report or a copy of the Title Sheet from Registers Direct. If an application to register the discharge is submitted before the related application is completed we will associate those applications and process them together.

Registers of Scotland will no longer issue a reminder once the 60 day standover period has elapsed. Failure to respond to a request within this period will result in the application being cancelled or progressed with an exclusion of indemnity. However, if a solicitor is experiencing particular difficulty in meeting a requisition, we will consider extending the initial compliance period if, during that period, we are asked to do so in writing with a full explanation of the reasons for the delay.

For the avoidance of doubt, our current requisition procedures will continue to apply to applications received before 1 September 2010.

We have arranged for details of these changes in our current policy to be published in the June edition of the Journal of the Law Society of Scotland. Further information will be provided to the profession in a future Registers Update.

Updated staff instructions are in the course of preparation and details of our new practice will follow.

For further information please contact Donald Craig

Owner - Registration Practice
Author - Greg Ewing
Publication Date - 14/06/10

Northern Rock PLC – Restructuring and Transfer of Assets (Sasine Memo 01-2010)

1.1 On 1 January 2010 Northern Rock plc was restructured by virtue of The Northern Rock plc Transfer Order 2009.
1.2 On that date part (but not all) of the existing Northern Rock business and mortgage portfolio was transferred to another company, initially called Gosforth Subsidiary No.1 plc and referred to as B.Co. below. But the transferor and transferee companies changed names immediately before the transfer date with the transferor company Northern Rock plc (referred to as A.Co. below) being renamed Northern Rock (Asset Management) plc and the transferee company being be renamed Northern Rock plc. Given this name change, to avoid confusion, the different company numbers should be used as explained below to distinguish between the companies.

	Name before 30 December 2009	Name after 1 January 2010	Company Number
A.Co.	Northern Rock plc	Northern Rock (Asset Management) plc	3273685
B.Co.	Gosforth Subsidiary No1 plc	Northern Rock plc	6952311

1.3 All future secured loans (excepting possibly some “pipeline” loans where the lending transaction was underway before 1 January 2010) will be issued by B.Co. and it is anticipated that the Government will eventually offer this company for sale back into the private sector. A.Co., which will remain in public ownership, will be wound down over time and ultimately closed down.

1.4 The terms of the Transfer Order have been examined and, for the assets transferred, operate as a valid link in title between A.Co. and B.Co.

1.5 It is not practical for RoS staff to establish from documentation in the public domain which existing standard securities in favour of A.Co. are transferred to B.Co. and which remain vested in A.Co. However the two companies have access to files breaking down, by account number, which loans have transferred and which have not. Our general policy is accordingly to rely upon what is said by the two companies, and by agents acting for them, as to which company any given security now vests in. We understand that the companies will be advising existing borrowers whether or not their loans have transferred and that arrangements are in place to ensure that future discharges are granted by the correct creditor.
Discharges executed before 1 January 2010 but presented thereafter

2.1 Any such discharges will have been granted by A.Co. under its former name, Northern Rock plc. Our policy is to record such discharges without any enquiry into whether the loan (had it not been repaid) would have been transferred by the Transfer Order.

Discharges executed after 1 January 2010 by A.Co.

3.1 We have been advised that the style deed to be employed will narrate that the discharge is granted by Northern Rock (Asset Management) plc (formerly named Northern Rock plc) incorporated under the Companies Acts (registered number 3273685.) These discharges relate to securities not transferred by the Transfer Order. Despite the change of name, there has been no change in the identity of the creditor and a clause of deduction of title is accordingly neither required nor appropriate.

Discharges executed after 1 January 2010 by B.Co.

4.1 Such discharges will be granted by Northern Rock plc, incorporated under the Companies Acts (registered number 6952311.) These discharges will relate to securities which have been transferred by the Transfer Order. A clause of deduction of title in or similar to, the following terms is therefore required -

"... which Standard Security was last vested in said Northern Rock (Asset Management) plc as aforesaid and from whom we Northern Rock plc acquired right by virtue of The Northern Rock plc Transfer Order 2009 ... "

Standard Securities executed before 1 January 2010 but presented thereafter

5.1 The approach to be taken to standard securities in favour of Northern Rock plc executed before 1 January 2010 but presented for recording after that date depends upon the identity of the applicant for recording given in part 12 of the Sasine Application Form.

5.2 Where the applicant is Northern Rock (Asset Management) plc (A.Co.), the security may be accepted and recorded as normal.

5.3 Where the applicant is stated to be Northern Rock plc and company number 3273685 is given on the form, the application should be rejected; as at the date of presentment there was no such company. Agents should be invited to clarify their instructions as to whether they are acting for Northern Rock (Asset Management) plc or Northern Rock plc registered number 6952311. If the former, they should be invited to amend or re-engross the

Application Form accordingly and then to resubmit the application. If the latter, see below.

5.4 Where, in relation to a standard security granted before 1 January 2010 in favour of Northern Rock plc, the applicant is stated or established to be Northern Rock plc company number 6952311 (i.e. B.Co.) the application can only be accepted where accompanied by application for recording of a notice of title in favour of that company which deduces title through the Transfer Order, the standard security being duly docqueted by reference to the notice of title.

Standard securities executed after 1 January 2010 and bearing to be in favour of Northern Rock plc, company number 3273685

6.1 Any such standard securities should be rejected. The agents should be invited to clarify their instructions whether they are instructed to create a charge in favour of Northern Rock (Asset Management) plc or Northern Rock plc, company number 6952311 and to arrange preparation and execution of a security in favour of the correct creditor.

Update:

"With effect from 12 October 2012 Northern Rock plc (company number 6952311) changed its name to Virgin Money plc. Further information on the registration requirements in Land Register can be found here, and Sasine Register here.

With effect from 16 May 2014 Northern Rock (Asset Management) plc changed its name to NRAM plc. The company number remains 3273685. Further information on the registration requirements can be found here"

Author: Legal Policy Branch

Publication Date: 7 July 2014

Owner - Registration

Author - John Glover

Publication Date - 05/01/10

Northern Rock PLC – Restructuring and Transfer of Assets (Legal Memo 01-2010)

1.1 On 1 January 2010 Northern Rock plc was restructured by virtue of The Northern Rock plc Transfer Order 2009.

1.2 On that date part (but not all) of the existing Northern Rock business and mortgage portfolio was transferred to another company, initially called Gosforth Subsidiary No.1 plc and referred to as B.Co. below. But the transferor and transferee companies changed names immediately before the transfer date with the transferor company, ("old") Northern Rock plc (referred to as A.Co. below) being renamed Northern Rock (Asset Management) plc and the transferee company being renamed Northern Rock plc. Given the name change, to avoid confusion, the different company numbers should be used to distinguish between the companies.

	Name before 30 December 2009	Name after 1 January 2010	Company Number	New Creditor Code
A.Co.	Northern Rock plc	Northern Rock (Asset Management) plc	3273685	NRAM
B.Co.	Gosforth Subsidiary No1 plc	Northern Rock plc	6952311	NRPL5

1.3 All future secured loans (excepting possibly some "pipeline" loans where the lending transaction was underway before 1 January 2010) will be issued by B.Co. and it is anticipated that the Government will eventually offer this company for sale back into the private sector. A.Co., which will remain in public ownership, will be wound down over time and ultimately closed down.

1.4 The terms of the Transfer Order have been examined and, for the assets transferred, operate as a valid link in title between A.Co. and B.Co. Registration staff need not examine or requisition the Order on any occasion. Copies of the Order and of an Agreement referred to in the Order will be added to common links.

1.5 It is not practical for RoS staff to establish from documentation in the public domain which existing standard securities in favour of A.Co. are transferred to B.Co. and which remain vested in A.Co. However the two companies have access to files breaking down, by mortgage account number, which loans have transferred and which have not. Our general policy is accordingly to rely upon what is said by the two companies, and by agents acting for them, as to which company any given security now vests in. We understand that the companies will be advising existing borrowers whether or not their loans have transferred and that arrangements are in place to

ensure that future discharges are granted by the correct creditor.

Registration Practice – Discharges

2.1 Discharges executed after 1 January 2010 will run in the name of the correct company. Where a discharge is granted by B.Co., it may be assumed without enquiry or examination of evidence that the security now vests in B.Co. by virtue of the Transfer Order.

2.2 Discharges executed before 1 January 2010 but presented for registration after that date will run in the name of A.Co. Such discharges may be accepted and given effect to in the register without any enquiry as to whether or not the loan (had it not been repaid) would have been transferred by the Transfer Order.

Registration Practice – Standard Securities

3.1 Pending applications for registration of standard securities in favour of A.Co. taken on prior to 1 January 2010 should be registered as usual. Existing creditor codes NRPLC and NRPL 1 to 4 should not be altered and no additional notes should be added to the title sheets concerned.

3.2 In loan transactions commenced after 1 January 2010, the security will be in favour of B.Co. (Northern Rock plc, Company registered number 6952311.) The creditor code for such securities is NRPL5 and no specialities apply.

3.3 In the short term, there may be some transitional cases involving (a) securities executed before 1 January 2010 but submitted for registration thereafter and (b) "pipeline" loans in which, although the security was executed after 1 January 2010, the transaction was underway before that date. Instructions for the permutations likely to be encountered follow.
(i) Security in favour of Northern Rock plc executed before 1 January 2010, application after that date on behalf of A.Co. (i.e. Northern Rock (Asset Management) plc).

Application should be taken on if otherwise in order. Creditor code NRAM applies. The following note should be added to the charges section entry for the security, and to the charge certificate -

Note: by Certificate of Incorporation on Change of Name dated 31 December 2009 the creditor in the foregoing standard security changed its name from Northern Rock plc to Northern Rock (Asset Management) plc.

(ii) Standard security in favour of Northern Rock plc executed before 1 January 2010, application after that date on behalf of Northern Rock plc but does not give a company number.

Application should be returned to submitting agent with a covering letter requesting that they clarify the application is made on behalf of Northern Rock plc (company

registered number 6952311). The agents should be asked to amend their application form accordingly; re-certify it and resubmit. And the procedure in sub paragraph (iii) below will apply.
If the application should have been on behalf of Northern Rock (Asset Management) plc (company registered number 3273685) the agent should be advised to amend their application form accordingly, re-certify and re-submit.And the procedure in sub paragraph (i) above will apply.

(iii) Security in favour of Northern Rock plc executed before 1 January 2010, application after that date on behalf of B.Co. (i.e Northern Rock plc registered number 6952311.)

The Transfer Order should be listed on the Form 4; if not the application should be returned to the ingiving agent for amendment. However the Transfer Order need not be submitted or examined.

If the Order is listed on the Form 4 and the application is otherwise in order, the application should be taken on. Creditor code NRPL5 applies.

The following note should be added to the charges section entry for the security - Note: with effect from 1 January 2010, the interest of Northern Rock (Asset Management) plc (formerly known as Northern Rock plc company registered number 3273685) in the foregoing standard security was transferred to Northern Rock plc (company registered number 6952311) by virtue of the Northern Rock plc Transfer Order 2009.

In the Charge Certificate, the identity of the Registered Creditor should be changed to Northern Rock plc (company registered number 6952311.)

(iv) Security in favour of Northern Rock plc executed before 1 January 2010, application after that date on behalf of Northern Rock plc (company registered number 3273685.)
Application should be rejected at intake/create and returned to the ingiving agent with a covering letter requesting that they clarify whether the application is made on behalf of (a) Northern Rock plc (company registered number 6952311) or (b) Northern Rock (Asset Management) plc (company registered number 3273685). The agents should be asked to amend their application form accordingly; re-certify it and resubmit. Agents should be advised that where the application is to be made on behalf of company number 6952311, the Transfer Order should be listed on the Form 4.

(v) Security in favour of Northern Rock (Asset Management) plc executed after 1 January 2010, application on behalf of that company.

No specialities apply. The applicable creditor code is NRAM.

(vi) Security in favour of Northern Rock plc (company registered number 3273685) executed after 1 January 2010.

(Reject at intake/create. Agents should be advised that the security is invalid as, at the date of execution, there was no company called Northern Rock plc having registered number 3273685).

Update:

"With effect from 12 October 2012 Northern Rock plc (company number 6952311) changed its name to Virgin Money plc. Further information on the registration requirements in Land Register can be found here, and Sasine Register here.

With effect from 16 May 2014 Northern Rock (Asset Management) plc changed its name to NRAM plc. The company number remains 3273685. Further information on the registration requirements can be found here"

Author: Legal Policy Branch

Publication Date: 7 July 2014

Owner - Registration

Author - John Glover

Publication Date - 05/01/10

Requisition Policy – reminder of charges introduced on 1 September 2010

As intimated in Legal Memo 4-2010, the Keeper's requisition policy changed in relation to applications received on or after 1 September 2010. One of the principal changes from that date is that no reminder is to be sent subsequent to the original requisition. Accordingly no reminder should be issued in respect of applications that were received, and placed into standover, after 1 September once the 60 day standover period has elapsed.
In general, failure to respond to a requisition within the 60 day period will result in the application in question being cancelled or progressed with an exclusion of indemnity. Detailed instructions on the requisition policy are included in the Legal Manual at section 2.45 In cases of doubt as to the appropriate procedure to be followed, registration officers are asked to seek guidance from a senior team leader or senior caseworker.

For the avoidance of doubt, our previous requisition procedures continue to apply to applications received before 1 September 2010.

Contact Donald Craig or David Lange should further clarification be required.

Related links
New Standover Policy (Legal Memo 04-2010)

Owner - Registration Practice
Author - Donald Craig & David Lange / Greg Ewing
Publication Date - 23/12/10

Standard Life Bank PLC – Barclays Bank PLC (Legal Memo 08-2010)

Transfer Scheme between Standard Life Bank Plc and Barclays Bank Plc

With effect from 1 June 2010 (the "transfer date") the business, trading name and all property and liabilities of the Standard Life Bank PLC was transferred to Barclays Bank PLC by virtue of the Transfer Scheme between Standard Life Bank PLC and Barclays Bank PLC approved by the High Court of Justice on 20 May 2010 in terms of the Financial Services and Markets Act 2000 (the "Transfer Instrument").
Standard securities executed before 1 June 2010

Any standard security granted in favour of Standard Life Bank PLC executed before the transfer date, but submitted as part of an application for registration on or after that day, will be accepted for registration, provided that the following requirements are met -

(a) the application form specifies that the applicant is Barclays Bank PLC

(b) the application form specifies that registration is sought in respect of the deed in favour of Standard Life Bank PLC; and

(c) the Transfer Instrument is listed in the Form 4 submitted with the application but there is no need for that document to be enclosed.

Discharges executed before 1 June 2010

Discharges granted by Standard Life Bank PLC must bear to have been executed prior to the transfer date. There is no objection to application for registration of such discharges being made after that date.

Standard securities and discharges executed after 1 June 2010

Standard securities executed on or after the transfer date must be in favour of the Barclays Bank PLC. Likewise discharges executed on or after that date must be granted by Barclays Bank PLC.

If any deed executed on or after the transfer date by or in favour of Standard Life Bank PLC is submitted the deed will be returned to the agent for amendment and re execution.

Where Barclays Bank PLC grants a discharge of or a repossession disposition in terms of a standard security registered or recorded prior to the transfer date in which the original grantee was Standard Life Bank PLC, the Transfer Instrument should be listed in the Form 4. There is no need for the Transfer Instrument to be submitted.

Owner - Registration Practice
Author - Peter Smith / Donald Craig / Greg Ewing
Publication Date - 23/09/10

Standard Life Bank PLC – Barclays Bank PLC (Sasine Memo 05-2010)

Transfer Scheme between Standard Life Bank Plc and Barclays Bank Plc

With effect from 1 June 2010 (the "transfer date") the business, trading name and all property and liabilities of the Standard Life Bank PLC was transferred to Barclays Bank PLC by virtue of the Transfer Scheme between Standard Life Bank PLC and Barclays Bank PLC approved by the High Court of Justice on 20 May 2010 in terms of the Financial Services and Markets Act 2000 (the "Transfer Instrument").

Standard securities executed before 1 June 2010

Any standard security granted in favour of Standard Life Bank PLC executed before the transfer date, but presented for recording after the transfer date should be either (a) docqueted with reference to a Notice of Title on behalf of Barclays Bank PLC which deduces title through the Transfer Instrument and the two deeds recorded together or (b) re-engrossed and re-executed in favour of Barclays Bank PLC

The deed will be returned to the agent for amendment if these requirements are not met.

Discharges executed before 1 June 2010

Discharges granted by Standard Life Bank PLC must bear to have been executed prior to the transfer date. There is no objection to such discharges being presented for recording after that date.

Standard securities and discharges executed after 1 June 2010

All deeds (be they standard securities, dispositions or discharges) executed on or after the transfer date must be granted by or be in favour of Barclays Bank PLC. These deeds will be granted to or by "Barclays Bank PLC, a company registered in England and Wales under the number 01026167 and having its registered office at 1 Churchill Place, London, E14 5HP"

Where Barclays Bank PLC grants a discharge of a standard security recorded prior to the transfer date in which the original grantee was Standard Life Bank PLC, the discharge should deduce title from the Standard Life Bank PLC, referring to the Transfer Instrument in the terms similar to the following:

“which standard security was last vested in the said Standard Life Bank PLC as aforesaid and from whom we the said Barclays Bank PLC acquired right by virtue of the Transfer Instrument being Transfer Scheme between the Standard Life Bank PLC and Barclays Bank PLC approved by the High Court of Justice on 20 May 2010 in terms of the Financial Services and Markets Act 2000 ……..”

If any deed executed on or after the transfer date by or in favour of Standard Life Bank PLC is presented the deed will be returned to the agent for amendment and re execution.

Owner - Registration Practice
Author - Peter Smith / Donald Craig / Greg Ewing
Publication Date - 23/09/10

Submission of Digital Plan Data (Plans Memo 03-2010)

Occasionally deed plans are submitted to ROS where the task of digitising the data or translating the actual position of a land parcel can be a tricky or time consuming task. In the vast majority of these situations Plans Settlers will have to use their skill and experience to translate the data from paper to digital format.
However, the same problem may have arisen for the submitting agent. In these cases, where a historical plan doesn't provide sufficient detail, doesn't exist or where the deed inducing registration (dir) represents a new parcel of ground; a surveyor or mapping firm may have been employed to perform a survey to determine the legal boundaries. In these cases the surveyor may use computer-aided design and drafting (CADD) or Geographical Information System (GIS) software to generate the plan.

The Geographical Information Systems (GIS) team have a number of powerful analysis and data manipulation tools at their disposal, which can now be made available to help colleagues in preparing large or complicated Title plans that can make use of plans prepared in the way described above.

The plans, or more appropriately the data used to create the plans, can be imported to the Digital Mapping System (DMS) via the Shape Map-info Import and Export Tool (SMILEX) using an IMP index..

The IMP is a standard type of Index (see link below) that can be opened directly or data can be copied from Index Map. See also Section 13.6.7 in the Plans Manual.

Click on the links below to find details of the process to be followed, how to recognise a suitable deed plan, frequently asked questions, different formats and draft email template.
Please contact either Rhona Elrick or Alastair Reid with any questions you may have regarding this notice.

(Note 1 - Any reference to DMS includes the OPS tool).
Related links

Email Template
Formats
Frequently Asked Questions
How to recognise a suitable deed plan
IMP Index
Process

2009

A Non Domino Applications Registration Practice (Legal Memo 02-2009)

With immediate effect all applications for registration that are based on a disposition a non domino (either for all or part of the subjects in respect of which registration is sought) should be referred to Legal Services. Legal Services will consider the application and evidence submitted and make the decision as to whether the application can proceed to be registered or whether it should be cancelled.

In addition any application for registration requesting that the Keeper remove an exclusion of indemnity note relating to an a non domino title (on the basis that the prescriptive period has elapsed or indeed any other reason) should be referred to Legal Services. Legal Services staff will consider the evidence submitted with the application and make a decision as to whether such evidence supports the removal of the exclusion of indemnity note.

Once Legal Services have made their decision the application will be returned to Registration Directorate with instructions on how to proceed.

All applications should be referred to Legal Services, Room EHO 1.05. If you have any queries regarding the above please contact Nick Little Ext 5818.

Owner - Legal Services
Author - Nick Little
Publication Date - 06/05/09

A Non Domino Applications Registration Practice (Sasine Memo 01-2009)

With immediate effect all Dispositions a non domino, including Dispositions that are part a non domino, presented for recording in the General Register of Sasines should be referred to Legal Services.

Legal Services will consider the deed and evidence submitted and make the decision as to whether the deed can be accepted for recording in the General Register of Sasines or should be rejected.

All deeds should be passed to Legal Services, Room EHO 1.05. All enquiries regarding the above should be directed to Nick Little Ext 5818.

Owner - Legal Services
Author - Nick Little
Publication Date - 06/05/09

Britannia Building Society – Transfer of Assets to Co-Operative Bank PLC (Legal Memo 05-2009)

1.1 With effect from 1 August 2009 the business, trading name and all property and liabilities of the Britannia Building Society was transferred to the Co-operative Bank plc by virtue of the Transfer Agreement between the Britannia Building Society, the Co-operative Bank plc and others dated 11 March 2009. This transfer was approved and confirmed by the Financial Services Authority on 23 July 2009 in terms of the Building Societies Act 1986.

1.2 In this Memo the following definitions are used:

• "the transfer date" means 1 August 2009;

• "the Transfer Instrument " means the Transfer Agreement between the Britannia Building Society, the Co-operative Bank plc and others dated 11 March 2009 and confirmed by the Financial Services Authority on 23 July 2009 in terms of the Building Societies Act 1986 .

• “transferred assets" means the mortgages and all that property transferred in terms of the Agreement to the Co-operative Bank plc.

LAND REGISTER EVIDENTIAL REQUIREMENTS FOR BRITANNIA BUILDING SOCIETY MORTGAGES

(A) Deeds executed before the transfer date (1 August 2009) granted by or in favour of the Britannia Building Society

Standard securities and dispositions

2.1 Any deed (such as a standard security or disposition) granted in favour of the Britannia Building Society executed before the transfer date, but submitted as part of an application for registration on or after that day, will be accepted for registration, provided that the following requirements are met, namely:

(a) the application form specifies that the applicant is the Co-operative Bank plc;

(b) the application form specifies that registration is sought in respect of the deed in favour of the Britannia Building Society; and

(c) the Transfer Instrument is listed in the Form 4 submitted with the application but there is no need for the document to be enclosed.

The application forms should be returned for amendment if they do not meet these requirements.

2.2 The entry in the Charges Section of the title sheet will show a standard security in favour of the Britannia Building Society. A note should be added to both the entry and the Charge Certificate as follows:

Note: with effect from 1 August 2009 the interest of the Britannia Building Society in the standard security was transferred to the Co-operative Bank plc by virtue of the Transfer Instrument being the Agreement between the Britannia Building Society, the Co-operative Bank plc and other parties dated 11 March 2009 and confirmed by the Financial Services Authority on 23 July 2009.

The Creditor in the Charge Certificate should be amended to the Co-operative Bank plc.

Discharges

2.3 Discharges granted by the Britannia Building Society must bear to have been executed prior to the transfer date. There is no objection to registering them after that day since no completion of title is involved.

(B) Deeds executed on or after the transfer date

3.1 All deeds (be they standard securities, dispositions or discharges) executed on or after the transfer date must be granted by or be in favour of the Co-operative Bank plc. The Co-operative Bank plc has advised that deeds will be granted by or to "The Co-operative Bank plc incorporated under the Companies Acts and having its registered office at PO Box 101, 1 Balloon Street, Manchester, M60 4EP (TRADING AS BRITANNIA) including its successors, assignees and transferees".

3.2 Where the Co-operative Bank plc grants a discharge of, or a repossession disposition in terms of a standard security registered or recorded prior to the transfer date, where the original grantee was the Britannia Building Society, the Transfer Instrument should be listed in the Form 4. There is no need for the Transfer Instrument to be submitted. It has been examined by Legal Services and added to the Common Links Index. Registration officers are not therefore required to requisition or examine this document.

3.3 If any deed executed on or after the transfer date by or in favour of the Britannia Building Society is submitted the deed should be returned to the agent for amendment and re execution.

Owner - Legal Services
Author - John King
Publication Date - 04/08/09

Britannia Building Society – Transfer of Assets to Co-Operative Bank PLC (Sasine Memo 03-2009)

1.1 With effect from 1 August 2009 the business, trading name and all property and liabilities of the Britannia Building Society was transferred to the Co-operative Bank plc by virtue of a Transfer Agreement between the Britannia Building Society, the Co-operative Bank plc and others dated 11 March 2009. This transfer was approved and confirmed by the Financial Services Authority on 23 July 2009in terms of the Building Societies Act 1986.
1.2 In this Memo the following definitions are used

• "the transfer date" means 1 August 2009;

• "the Transfer Instrument " means the Transfer Agreement between the Britannia Building Society, the Co-operative Bank plc and others dated 11 March 2009 and approved and confirmed by the Financial Services Authority on23 July 2009 in terms of the Building Societies Act 1986;

• "transferred assets" means the mortgages and all that property transferred in terms of the Agreement to the Co-operative Bank plc.

GENERAL REGISTER OF SASINES: EVIDENTIAL REQUIREMENTS FOR BRITANNIA BUILDING SOCIETY MORTGAGES

(A) Deeds executed before the transfer date (1 August 2009) granted by or in favour of the Britannia Building Society
Standard securities and dispositions

2.1 Any deed (such as a standard security or disposition) granted in favour of the Britannia Building Society executed before the transfer date, but submitted for recording after the transfer date should be either (a) docqueted with reference to a Notice of Title on behalf of the Co-operative Bank plc and the two deeds recorded together with the application for the recording of the Notice of Title making reference to the other deed or (b) re-engrossed and re-executed in favour of the Co-operative Bank plc.

The deed should be returned for amendment if these requirements are not met.
Discharges

2.2 Discharges granted by the Britannia Building Society must bear to have been executed prior to the transfer date. There is no objection to registering them after that day since no completion of title is involved.

(B) Deeds executed on or after the transfer date

3.1 All deeds (be they standard securities, dispositions or discharges) executed on or after the transfer date must be granted by or be in favour of the Co-operative Bank plc. The Co-operative Bank plc has advised that deeds will be granted by or to "The

Co-operative Bank plc incorporated under the Companies Acts and having its registered office at PO Box 101, 1 Balloon Street, Manchester, M60 4EP (TRADING AS BRITANNIA) including its successors, assignees and transferees".

3.2 Where the Co-operative Bank plc grants a discharge of a standard security registered or recorded prior to the transfer date, where the original grantee was the Britannia Building Society, the discharge should deduce title from the Britannia Building Society, referring to the Transfer Instrument in the terms similar to the following:

“which standard security was last vested in the said Britannia Building Society as aforesaid and from whom we the said Co-operative Bank plc acquired right by virtue of the Transfer Instrument being the Agreement between the said Britannia Building Society, the said Co-operative Bank plc and others dated 11 March 2009 and confirmed by the Financial Services Authority on 23 July 2009…….. ”3.3 If any deed executed on or after the transfer date by or in favour of the Britannia Building Society is submitted the deed should be returned to the agent for amendment and re-execution.

Owner - Legal Services
Author - John King
Publication Date - 04/08/09

Certificates of Registration of Change
Memo to all Legal staff

1.1. As detailed in section K.4.2. of the Registration Manual, any Standard Security granted by a Limited Company must, in terms of Section 410 of the Companies Act 1985, be registered with the Registrar of Companies within 21 days of the date of registration in the Land Register otherwise it will be void. The Registrar then issues a Certificate of Registration of Charge to the agent which in turn is forwarded to the Keeper to demonstrate that the charge has not been rendered void.

2. Execution of Certificate of the Registration of a Charge

2.1 It has come to the Keeper's attention that the Registrar of Companies has recently altered his practice as regards authentication of Certificates of Registration of Charge. Whereas formerly all such Certificates were signed on behalf of the Registrar, practice is now simply to seal the Certificate. No signature accompanies the seal. For the avoidance of doubt this method of execution is valid in terms of Section 418(2) of the Companies Act 1985. Section 418(2) provides that the Certificate of Registration of Charge "shall either be signed by the registrar, or authenticated by his official seal".

Owner - Ian Davis
Author - Ian Davis
Publication Date - 29/11/09

Common Links (Legal Memo 07-2009)
Common Links Index Access

Staff are reminded that the Common Links Index is maintained to assist in the examination of titles by removing the need for a missing link in title to be requisitioned when it has already been examined by the Keeper (see 3.6 of legal manual).

The index is accessed via the LRS Case Work Desk (under "Tools, Search Common Links") and contains brief details of the parties to any document, what the document is, and also the fiche and starting frame number for the archived document.

The reference in the previous paragraph to fiche reflects the medium that the record has been held on since 1981. As we are no longer producing fiche an alternative means of archiving the documents has been developed, resulting in imaged copies of the documents being accessible in the following directory (O:\Production\All BU\Public\Common Links).
While, as the name implies, a large proportion of the documents that the common links index covers relate to changes in name, particularly companies, the record also includes copies of powers of attorney detailing authorised signatories for the larger financial institutions. Due to the constraints of the index within the LRS it is impossible to give details of all the named authorised signatories within the index, accordingly it is necessary to check the actual document and this can now be accessed directly from your PC.

Within the common links folder the images from each fiche have been converted to an Adobe Acrobat document, the number of the Adobe document relating to the fiche number. Within the Adobe document you can navigate to the image that relates to the document by using the blue arrows on the task bar at the top of the window, typing starting page number of the target document in the field to the right of the blue arrows (and hitting "return/enter"), or using the right hand scroll bar (the page number changes on the task bar). While it will be rare to require a copy of part of the Adobe document this can be done using the print icon on the task bar and then adding the required page numbers to the appropriate field (failure to add page numbers will result in the whole archive being printed).

To create a shortcut to the folder go to the directory "O:\Production\All BU\Public" (the common links folder should be at the top left) right-click on this folder and choose "send to desktop".

All items that are to be added to the record should be sent toMorag Moffat in Room 121, MBH who currently maintains the index. As the index will continue to be accessed through the LRS the existing indexing standard will be applied with documents being collected and batched together into a manageable quantity that would equate to a fiche. Once such a batch is prepared it will be forwarded to the archive team to be added to the imaged record, until that happens Morag would be able to provide a copy of the paper document.

Owner - Registration / Registration Practice
Author - David Lange / Greg Ewing
Publication Date - 19/02/09

Deed of Conditions (Legal Memo 10-2009)
F450/09 Update to Registration Practice Memo 01/2005

Registration Practice memo 01/2005 set out procedures to be followed by legal settlers when registering deeds submitted after 28 Nov 2004 which import the conditions in a Deed of Conditions registered before that date.
In particular, the instructions state that breakaway deeds which import conditions from either:

• a Deed of Conditions registered prior to 4 Apr 1979, or

• a Deed of Conditions registered after 4 Apr 1979 in which Section17 of the Land Registration (Scotland) Act 1979 has been disapplied

must use the following form of wording (as set out in Section 6 and Schedule 1 of the Title Conditions (Scotland) Act 2003) in order for the burdens to be made real:
"There are imported the terms of the title conditions specified in ....." e.g. Deed of Conditions by A, recorded G.R.S. (County) xxx (date).

We have now reviewed our practice in the light of a recent Legal Opinion and it has been decided that the Keeper will accept deeds which do not use this specific form of wording, providing that it is clear from the terms of the breakaway deed that the intention is to import the burdens from the Deed of Conditions and that the Deed of Conditions is itself clearly identified, as in the following example:

"always with and under the whole real burdens, conditions and others specified in the Deed of Conditions by A, dated xxx and registered in the Land Register of Scotland under Title Number xxx on xxx [date]".

Owner - Registration Practice
Author - John King / Greg Ewing
Publication Date - 23/11/09

Discharges with Warrant on behalf of Halifax plc
Halifax Rapid Remortgage Service

Halifax plc has introduced a rapid remortgage service.

Various agents will act on behalf of Halifax plc in a special arrangement, which in addition to the preparation of the new standard security will also involve the preparation of the discharge of the borrower's previous security. As the agents will be representing Halifax plc in the whole process, the warrant on the discharge will be on behalf of Halifax plc, even though it is not actually a party to the discharge. The Halifax clearly has an interest in ensuring that the record is cleared of the borrower's previous security. That is the reason the submitting agents seek to record the discharge bearing a warrant on behalf of Halifax plc. Although the interest of Halifax plc is not evident on the face of the deed, the Keeper has no grounds for refusing a deed bearing such a warrant for registration.

For the avoidance of doubt, it is essential that the correct former creditor actually grants the discharge, with the appropriate deduction of title where necessary.

Owner - Legal Services
Author - Ian Davis
Publication Date - 29/11/09

Dunfermline Building Society – Asset Transfer to Nationwide Building Society (Legal Memo 01-2009)

With effect from 30 March 2009 all of the Dunfermline Building Society's savings accounts, branches, head office and the majority of its residential mortgage book (other than social housing loans) have been transferred to Nationwide Building Society.
The social housing portfolio has been transferred to a limited liability company wholly owned by the Bank of England. It will be called DBS Bridge Bank Ltd. DBS Bridge Bank will manage the loans until they can be sold to a suitable third party in the near future.

The remainder of the Dunfermline Building Society's business, including mortgages acquired from GMAC-RFC Limited and Southern Pacific Mortgage Limited and the commercial loan business, has been placed into a Building Society Special Administration Process.

We have been in dialogue with Dunfermline Building Society, Nationwide Building Society and representatives of the Bank of England to ascertain the registration implications for the General Register of Sasines and the Land Register. These have now been agreed and are set out in staff memos:

Sasine Memo

DUNFERMLINE BUILDING SOCIETY IN ADMINISTRATION: TRANSFER OF ASSETS TO NATIONWIDE BUILDING SOCIETY AND OTHER CHANGES

INTRODUCTION

1.1 With effect from 30 March 2009 the business, trading name and all property and liabilities of the Dunfermline Building Society was transferred to the Nationwide Building Society by virtue of the Dunfermline Building Society Property Transfer Instrument 2009 other than the following excluded property (referred to below as the "retained assets"):

1. commercial loans

2. social housing loans

3. residential loans by GMAC-RFC Limited Southern Pacific Mortgage Limited and Scottish Equitable that had been acquired by the Dunfermline Building Society.

1.2 The assets were transferred to the Nationwide Building Society in terms of the Dunfermline Building Society Property Transfer Instrument 2009 issued by the Bank of England on 30 March 2009. On the same date an Order was issued by the Court of Session for the Special Administration of the Dunfermline Building Society. Both the Transfer Instrument and the Order were granted in terms of the Banking Act 2009.

1.3 The principal results of this transfer and re-organisation are:

1. the transfer of all **residential mortgages** originating from the Dunfermline Building Society to the Nationwide Building Society;

2. the appointment by court order of the Court of Session of Special Administrators of the Dunfermline Building Society who will administer all the **commercial loans** and the above acquired **GMAC-RFC Limited Southern Pacific Mortgage Limited and Scottish Equitable residential loans** retained by the Dunfermline Building Society;

3. the creation by the Bank of England of the Dunfermline Building Society Bridging Bank for the taking over of the **social housing loans** from the Dunfermline Building Society.

1.4 In this Memo the following definitions are used:

- "the transfer date" means 30 March 2009;
- "the Instrument " means the Dunfermline Building Society Property Transfer Instrument 2009 issued by the Bank of England on 30 March 2009 in terms of the Banking Act 2009;
- " transferred assets" means the residential mortgages and all that property transferred in terms of the Instrument to the Nationwide Building Society;
- " retained assets" means all property previously belonging to the Dunfermline Building Society as at the transfer date not transferred by the Instrument;

GENERAL REGISTER OF SASINES: EVIDENTIAL REQUIREMENTS FOR DUNFERMLINE BUILDING SOCIETY RESIDENTIAL MORTGAGES

(A) Deeds executed before the transfer date (30 March 2009) granted by or in favour of the Dunfermline Building Society

Standard securities and dispositions

2.1 Any deed (such as a standard security or disposition) granted in favour of the Dunfermline Building Society executed before the transfer date, but submitted for recording after the transfer date should be either (a) docqueted with reference to a Notice of Title on behalf of the Nationwide Building Society and the two deeds recorded together with the application for the recording of the Notice of Title making reference to the other deed or (b) re-engrossed and re-executed in favour of the Nationwide Building Society.
The deed should be returned for amendment if these requirements are not met.

Discharges
2.2 Discharges granted by the Dunfermline Building Society must bear to have been executed prior to the transfer date. There is no objection to registering them after that day since no completion of title is involved.

(B) Deeds executed on or after the transfer date

3.1 All deeds (be they standard securities, dispositions or discharges) executed on or after the transfer date must be granted by or be in favour of the Nationwide Building Society. The Nationwide Building Society has advised that deeds will be granted by or to the "Nationwide Building Society (trading as Dunfermline Building Society) of Caledonia House, Carnegie Avenue, Dunfermline, Fife KY11 8PJ ".

3.2 Where the Nationwide Building Society grants a discharge of a standard security registered or recorded prior to the transfer date, where the original grantee was the Dunfermline Building Society, the discharge should deduce title from the Dunfermline Building Society, referring to the Instrument in the terms similar to the following:

> *"which standard security was last vested in the said Dunfermline Building Society as aforesaid and from whom we the said Nationwide Building Society acquired right by virtue of the Dunfermline Building Society Property Transfer Instrument 2009"*

3.3 If any deed executed on or after the transfer date by or in favour of the Dunfermline Building Society is submitted the deed should be returned to the agent for amendment and re-execution.

GENERAL REGISTER OF SASINES: EVIDENTIAL REQUIREMENTS FOR DUNFERMLINE BUILDING SOCIETY RETAINED ASSETS: COMMERCIAL LOANS AND RESIDENTIAL LOANS BY GMAC-RFC LTD SOUTHERN PACIFIC MORTGAGE LTD AND SCOTTISH EQUITABLE

4.1 Dunfermline Building Society went in to Special Administration on 30 March 2009. The following persons were appointed to act as Special Administrators on behalf of the Dunfermline Building Society: Richard Heis, Michael Pink and Richard Fleming each of 8 Salisbury Square, London EC4Y 8BB and Blair Carnegie Nimmo of Saltire Court, Castle Terrace, Edinburgh EH1 2EG all appointed as Joint Building Society Special Administrators (the "Joint Building Society Special Administrators") by order of the Court of Session dated 30 March 2009 (the "Court Order")

Deeds executed on or after 30 March 2009

4.2 As noted in paragraph 1.3, the Joint Building Society Special Administrators of the Dunfermline Building Society will administer all the commercial loans previously granted in favour of the Dunfermline Building Society and the loans previously granted in favour of GMAC-RFC Limited Southern Pacific Mortgage Limited and Scottish Equitable. The latter loans were in the main residential loans and Standard Securities in respect of these loans have previously been assigned to the Dunfermline Building Society.

4.3 All deeds (principally discharges though there may be some dispositions) relating to the assets identified in paragraph 4.2 executed on or after the transfer date will be accepted if they are signed by at least one of the Joint Building Society Special

Administrators of Dunfermline Building Society. We have been advised that no new Standard Securities will be granted.

4.4 Discharges will contain the following preamble: " *We Dunfermline Building Society (in Building Society Special Administration), Caledonia House, Carnegie Avenue, Dunfermline KY11 8JP, acting through Richard Heis, Michael Pink and Richard Fleming each of 8 Salisbury Square, London EC4Y 8BB and Blair Carnegie Nimmo of Saltire Court, Castle Terrace, Edinburgh EH1 2EG all appointed as Joint Building Society Special Administrators by order of the Court of Session dated 30 March 2009 (the "Joint Building Society Special Administrators…….")"*

4.6 If any deed executed on or after the transfer date by or in favour of the Dunfermline Building Society is submitted in error the deed should be returned to the agent for amendment and re execution.

GENERAL REGISTER OF SASINES: EVIDENTIAL REQUIREMENTS FOR DUNFERMLINE BUILDING SOCIETY SOCIAL HOUSING LOANS

5.1 On the transfer date (30 March 2009) the Instrument transferred the social housing loans (those by the Dunfermline Building Society to housing associations and similar bodies) to the DBS Bridge Bank Limited, incorporated under the Companies Acts in Scotland (registered number SC356970) and having its registered office at Caledonia House, Carnegie Avenue, Dunfermline, Fife KY11 8PJ (the "Bridging Bank"). Given the above; the normal rules for the subscription of deeds on behalf of limited liability companies will apply for all deeds granted by the Bridging Bank.

Deeds executed after the transfer date

5.2 Where the Bridging Bank grants a discharge, deed of restriction or an assignation of a standard security registered or recorded prior to the transfer date, where the original grantee was the Dunfermline Building Society, the deed should deduce title from the Dunfermline Building Society, referring to the Instrument in terms similar to the following:

> *"which standard security was last vested in the said Dunfermline Building Society as aforesaid and from whom we the said DBS Bridge Bank Limited acquired right by virtue of the Dunfermline Building Society Property Transfer Instrument 2009 dated 30 March 2009"*

Any deed executed on or after the transfer date by or in favour of the Dunfermline Building Society and submitted should be returned to the in giving agent.

John King
Legal Director
7 May 2009

Legal Memo

DUNFERMLINE BUILDING SOCIETY IN ADMINISTRATION: TRANSFER OF ASSETS TO NATIONWIDE BUILDING SOCIETY AND OTHER CHANGES

INTRODUCTION

1.1 With effect from 30 March 2009 the business, trading name and all property and liabilities of the Dunfermline Building Society was transferred to the Nationwide Building Society by virtue of the Dunfermline Building Society Property Transfer Instrument 2009 other than the following excluded property (referred to below as the "retained assets"):

4. commercial loans

5. social housing loans

6. residential loans by GMAC-RFC Limited Southern Pacific Mortgage Limited and Scottish Equitable that had been acquired by the Dunfermline Building Society.

1.2 The assets were transferred to the Nationwide Building Society in terms of the Dunfermline Building Society Property Transfer Instrument 2009 issued by the Bank of England on 30 March 2009. On the same date an Order was issued by the Court of Session for the Special Administration of the Dunfermline Building Society. Both the Transfer Instrument and the Order were granted in terms of the Banking Act 2009.

1.3 The principal results of this transfer and re-organisation are:

4. the transfer of all **residential mortgages** originating from the Dunfermline Building Society to the Nationwide Building Society;

5. the appointment by court order of the Court of Session of Special Administrators of the Dunfermline Building Society who will administer all the **commercial loans** and the above acquired **GMAC-RFC Limited Southern Pacific Mortgage Limited and Scottish Equitable residential loans** retained by the Dunfermline Building Society;

6. the creation by the Bank of England of the Dunfermline Building Society Bridging Bank for the taking over of the **social housing loans** from the Dunfermline Building Society.

1.4 In this Memo the following definitions are used:

- "the transfer date" means 30 March 2009;
- "the Instrument " means the Dunfermline Building Society Property Transfer Instrument 2009 issued by the Bank of England on 30 March 2009 in terms of the Banking Act 2009;

- " transferred assets" means the residential mortgages and all that property transferred in terms of the Instrument to the Nationwide Building Society;
- " retained assets" means all property previously belonging to the Dunfermline Building Society as at the transfer date not transferred by the Instrument;

LAND REGISTER EVIDENTIAL REQUIREMENTS FOR DUNFERMLINE BUILDING SOCIETY RESIDENTIAL MORTGAGES

(A) Deeds executed before the transfer date (30 March 2009) granted by or in favour of the Dunfermline Building Society

Standard securities and dispositions

2.1 Any deed (such as a standard security or disposition) granted in favour of the Dunfermline Building Society executed before the transfer date, but submitted as part of an application for registration on or after that day, will be accepted for registration, provided that the following requirements are met, namely

(a) the application form specifies that the applicant is the Nationwide Building Society;

(b) the application form specifies that registration is sought in respect of the deed in favour of the Dunfermline Building Society; and

(c) the Instrument is listed in the form 4 submitted with the application.

The application forms should be returned for amendment if they do not meet these requirements.

2.2 The entry in the Charges Section of the title sheet will show a standard security in favour of the Dunfermline Building Society. A note should be added to both the entry and the Charge Certificate as follows:

"Note: with effect from 30 March 2009 the interest of the Dunfermline Building Society in the standard security was transferred to the Nationwide Building Society by virtue of the Dunfermline Building Society Property Transfer Instrument 2009"

The Creditor in the Charge Certificate should be amended to Nationwide Building Society.

Discharges

2.3 Discharges granted by the Dunfermline Building Society must bear to have been executed prior to the transfer date. There is no objection to registering them after that day since no completion of title is involved.

(B) Deeds executed on or after the transfer date

3.1 All deeds (be they standard securities, dispositions or discharges) executed on or after the transfer date must be granted by or be in favour of the Nationwide Building Society. The Nationwide Building Society has advised that deeds will be granted by or to the "Nationwide Building Society (trading as Dunfermline Building Society) of Caledonia House, Carnegie Avenue, Dunfermline, Fife KY11 8PJ ". This wording should be used for land certificates, charges sections and charge certificates. A new creditor code will be created on the LRS lender pick list.

3.2 Where the Nationwide Building Society grants a discharge of or a repossession disposition in terms of a standard security registered or recorded prior to the transfer date, where the original grantee was the Dunfermline Building Society, the Instrument should be listed in the form 4. There is no need for the Instrument to be submitted. It has been examined by legal Services and added to the common links index. Registration officers are not therefore required to requisition or examine this document.

3.3 If any deed executed on or after the transfer date by or in favour of the Dunfermline Building Society is submitted the deed should be returned to the agent for amendment and re execution.

LAND REGISTER EVIDENTIAL REQUIREMENTS FOR DUNFERMLINE BUILDING SOCIETY RETAINED ASSETS: COMMERCIAL LOANS AND RESIDENTIAL LOANS BY GMAC-RFC LTD SOUTHERN PACIFIC MORTGAGE LTD AND SCOTTISH EQUITABLE

4.1 Dunfermline Building Society went in to Special Administration on 30 March 2009. The following persons were appointed to act as Special Administrators on behalf of the Dunfermline Building Society: Richard Heis, Michael Pink and Richard Fleming each of 8 Salisbury Square, London EC4Y 8BB and Blair Carnegie Nimmo of Saltire Court, Castle Terrace, Edinburgh EH1 2EG all appointed as Joint Building Society Special Administrators (the “Joint Building Society Special Administrators”) by order of the Court of Session dated 30 March 2009 (the "Court Order")

Deeds executed on or after 30 March 2009

4.2 As noted in paragraph 1.3, the Joint Building Society Special Administrators of the Dunfermline Building Society will administer all the commercial loans previously granted in favour of the Dunfermline Building Society and the loans previously granted in favour of GMAC-RFC Limited Southern Pacific Mortgage Limited and Scottish Equitable. The latter loans were in the main residential loans and Standard Securities in respect of these loans have previously been assigned to the Dunfermline Building Society.

4.3 All deeds (principally discharges though there may be some dispositions) relating to the assets identified in paragraph 4.2 executed on or after the transfer date will be accepted if they are signed by at least one of the Joint Building Society Special

Administrators of the Dunfermline Building Society. We have been advised that no new Standard Securities will be granted.

4.4 Discharges will contain the following preamble: " *We Dunfermline Building Society (in Building Society Special Administration), Caledonia House, Carnegie Avenue, Dunfermline KY11 8JP, acting through Richard Heis, Michael Pink and Richard Fleming each of 8 Salisbury Square, London EC4Y 8BB and Blair Carnegie Nimmo of Saltire Court, Castle Terrace, Edinburgh EH1 2EG all appointed as Joint Building Society Special Administrators by order of the Court of Session dated 30 March 2009 (the "Joint Building Society Special Administrators……")"* A new creditor code will be created on the LRS lender pick list.

4.5 Where the Dunfermline Building Society (in Building Society Special Administration) grants a discharge of a standard security registered or recorded prior to the transfer date for a commercial loan, where the original grantee was the Dunfermline Building Society, the Court Order should be listed in the form 4. The Court Order has been examined and added to the Common Links Index. Registration officers are not required to requisition or examine this document.

4.6 Where the Dunfermline Building Society (in Building Society Special Administration) grants a discharge of a standard security registered or recorded prior to the transfer date for a residential loan by GMAC-RFC Limited or Southern Pacific Mortgage Limited or Scottish Equitable, where the original grantee was GMAC-RFC Limited or Southern Pacific Mortgage Limited or Scottish Equitable, the assignation for the standard security and the Court Order should be listed in the form 4.

4.7 If any deed executed on or after the transfer date by or in favour of the Dunfermline Building Society is submitted in error the deed should be returned to the agent for amendment and re execution.

LAND REGISTER EVIDENTIAL REQUIREMENTS FOR DUNFERMLINE BUILDING SOCIETY SOCIAL HOUSING LOANS

5.1 On the transfer date (30 March 2009) the Instrument transferred the social housing loans (those by the Dunfermline Building Society to housing associations and similar bodies) to the DBS Bridge Bank Limited, incorporated under the Companies Acts in Scotland (registered number SC356970) and having its registered office at Caledonia House, Carnegie Avenue, Dunfermline, Fife KY11 8PJ (the "Bridging Bank"). Given the above; the normal rules for the subscription of deeds on behalf of limited liability companies will apply for all deeds granted by the Bridging Bank.

5.2 Where the Bridging Bank grants a discharge, deed of restriction or an assignation of a standard security registered or recorded prior to the transfer date, where the original grantee was the Dunfermline Building Society, the Instrument should be listed on the inventory form 4. There is no need for the Instrument to be submitted. It has previously been examined by the Keeper.

5.3 If any deed executed on or after the transfer date by or in favour of the Dunfermline Building Society is submitted in error the deed should be returned to the agent for amendment and re execution.

John King
Legal Director
7 May 2009

Legal Policy Group (Legal Memo 11-2009)

Photocopies of birth, death and marriage/civil partnership certificates

At the November meeting of the Legal Policy Group, it was decided that the Keeper should cease to accept photocopies of birth, marriage, civil partnership or death certificates, as evidence in support of applications for registration.

This includes photocopies which have been certified as being a true copy of an extract. The reasons for this change in practice include reducing the potential for fraud to be perpetrated using photocopies, whereas extracts contain inherent security measures. The photocopying of extract certificates produced by the Registrar General, other than for personal record keeping purposes, is also a breach of Crown Copyright.

Further details are in the Legal Manual (click link below).

Related links
Legal Manual Section 2.31.1

Owner - Legal Services / Registration Practice
Author - Sarah Duncan / Greg Ewing
Publication Date - 25/11/09

Legal and Plans Manual Updates (Legal Memo 09 and Plans Memo 01-2009)
Creation, Identification and Transfer of Rights in Common Area Developments

This notice provides clarification on the Keeper's policy and practice following the Lands Tribunal's decision in an appeal by PMP Plus Limited (PMP) against a decision by the Keeper of the Registers of Scotland to register PMP's title under exclusion of indemnity.

Background

The Keeper had decided to register PMP's title under exclusion of indemnity due to concerns that the various residential proprietors of the development within which the land was situated might have rights in the land as forming a common area. PMP appealed to the Lands Tribunal against the Keeper's decision.

The Tribunal's opinion makes clear their view that it is not possible either in terms of property law or registration law to create rights in common areas where the identification of those areas is dependent on a future uncertain event (hereinafter referred to as "unascertained areas") and that where a disposition or title sheet contains such wording, the wording is meaningless and ineffective and no rights are created.

Policy

In registering Development titles it has been the Keeper's policy to reflect in title sheets the terms of the conveyancing in relation to unascertained areas. In relation to existing Developments that policy will continue. This will ensure consistency and equality of treatment of titles within existing Developments.

In relation to new Developments (being those where the first application for registration in the development which seeks to create of new rights and burdens for unascertained areas is received on or after 3 August 2009) the Keeper's policy will change and the Title Sheet will, where feasible, omit reference to such areas.

The legal manual has been updated to reflect this change and full guidance is given in the following sections:

Amenity and Common Areas in Developments (15.6)
Intermingled rights and burdens (10.25 and 10.48)
Property Section - Rights (6.18.2)
Transfers of Part (31.10, 31.12 and 31.17)
The plans manual has been updated in sections 8.7.2.2 and 9.12.3
The Keeper's policy has been publicised to solicitors in Registers Update 27 (see link below).

The A section notes specified in section 15.6 will be added to the LRS pick-list.

Related links
Registers Update 27

Owner - Legal Services / Registration Practice
Author - David Lange / Greg Ewing
Publication Date - 30/07/09

Norwich Union Equity Release Limited – to Aviva Equity Release UK Limited (Legal Memo 04-2009)

Change of Name
With effect from 1 June 2009 (the appointed date) Norwich Union Equity Release Limited will change its name to Aviva Equity Release UK Limited.
Standard Securities executed before the appointed date

Any Standard security granted in favour of Norwich Union Equity Release Limited before the appointed date but submitted as part of an application for registration on or after that date will be acceptable for registration if the following points are met:

• The application form specifies Aviva Equity Release UK Limited as the applicant
• The application form specifies that application for registration is sought in respect of the deed in favour of Aviva Equity Release UK Limited (formerly Norwich Union Equity Release Limited)
• The Certificate of Incorporation of Change of Name should be listed on the Form 4. There is no requirement that the certificate or a copy of the certificate should be produced.
• The entry in the Charges Section of the Title Sheet should be Aviva Equity Release UK Limited.

Discharges executed before the appointed date

Discharges executed by Norwich Union Equity Release Limited must be executed before the appointed date. They can be accepted for registration after that date.

Standard securities and discharges executed on or after the appointed date

On or after the appointed date no standard security or discharge should be granted by or in favour of Norwich Union Equity Release Limited. Registration officers should return any such deed that forms part of an application for registration to the ingiving agent for amendment/re-engrossment. A discharge of a registered or recorded standard security that was in the name of Norwich Union Equity Release Limited should be granted by Aviva Equity Release UK Limited (formerly Norwich Union Equity Release Limited)

Owner - Legal Services
Author - John King
Publication Date - 01/05/09

Norwich Union Equity Release Limited – to Aviva Equity Release UK Limited (Sasine Memo 02-2009)

With effect from 1 June 2009 (the appointed date) Norwich Union Equity Release Limited will change its name to Aviva Equity Release UK Limited.

Standard Securities executed before the appointed date

Any Standard security granted in favour of Norwich Union Equity Release Limited before the appointed date but submitted for recording on or after that date will be acceptable for recording if the following points are met:

• The application form specifies Aviva Equity Release UK Limited as the applicant

Discharges executed before the appointed date

Discharges executed by Norwich Union Equity Release Limited must be executed before the appointed date. They can be accepted for registration after that date.
Standard securities and discharges executed on or after the appointed date

On or after the appointed date no standard security or discharge should be granted by or in favour of Norwich Union Equity Release Limited. Sasine officers should return any such deed for amendment/re-engrossment. A discharge of a recorded standard security that was in the name of Norwich Union Equity Release Limited should be granted by Aviva Equity Release UK Limited (formerly Norwich Union Equity Release Limited)

Owner - Legal Services
Author - John King
Publication Date - 01/05/09

Post Registration Enquiries / Customer Services Centre (Legal Memo 03-2009)

With immediate effect all enquiries relating to a non domino transactions should be passed to Legal Services. Similarly all enquiries relating to the removal of an exclusion note relating to an a non domino title only should be referred to Legal Services.

Legal Services will respond directly to the Agent.

All letter enquiries should be sent to Legal Services, Room EHO 1.05. If you have any queries regarding the above please contact Nick Little Ext 5818.

Owner - Legal Services
Author - Nick Little
Publication Date - 06/05/09

Research Areas

Some time ago a Cost of Quality review was conducted to assess the amount of time spent on corrective work. The exercise was intended to quantify the time more accurately and a report was issued in April 2002. The report identified Research Area instructions as being one of the areas where remedial work had to be undertaken. There are a number of reasons why some Research Area files need to be updated after creation, e.g. new information at first registration, original deeds presented etc. Protocols have since been established between NAP and mainstream production to deal with these issues. However, the investigation completed also highlighted issues with regard to some settlers' use of the files. This memo is intended to clarify the policy with regard to Research Area files.

In all instances where there is a file created that affects a first registration, settlers should follow the file instructions. Settlers should not investigate the decisions made with regard to the file instructions. Further investigation should only be undertaken where there is material evidence to support this course of action. In these instances, the matter should be referred to the officer nominated as the contact point for Research Area queries who will in turn liaise with Registration Services if required. For information, the current contact points are:

Elaine Hunter - SVS
John Brownlee - Angus, Lanark & Stirling - MBH1
Jackie Boreland - Clackmannan, Fife, Kinross and Perth - MBH1
Belinda Fearnley/Alan Brown - MBH2
Shirley Kelegher - MBH3

Settlers are further reminded that research area files all show the date to which they were last updated. It is essential that settlers check the period from that updated date to the date of their breakaway deed for any subsequent deeds that may affect their application. Settlers should also check for any miscellaneous deeds after the breakaway deed that may only affect their title.

Owner - Business Change
Author - Margaret Archer
Publication Date - 22/11/09

SDLT Threshold (Legal Memo 12-2009)

SDLT threshold for residential properties

SDLT threshold for residential properties reverts to £125,000 from 1 January 2010. The Chancellor has confirmed that the Stamp Duty Land Tax threshold for residential properties will revert to £125,000 for transactions with an effective date (usually date of entry or date of settlement) of 1 January 2010 or later.

This does not alter the Keeper's requirements.In terms of section 79(1) of Finance Act 2003 there is an obligation on the Keeper not to accept an application for registration which is not accompanied by an SDLT certificate where this is a notifiable transaction. An SDLT 5 certificate continues to be required for all transfers of property where the consideration is £40,000 or greater.

Owner - Registration Practice
Author - John Glover / Greg Ewing
Publication Date - 31/12/09

Section 53 Title Conditions (Scotland) Act 2003 (Legal Memo 06-2009)

Revised Instructions
Following a review of the impact of the Title Conditions Act on Registration, changes have been introduced to the way that applications that create real burdens in terms of s.53 are processed.
The main changes are that:

• the checks that Legal Settlers need to make to determine whether s.53 can apply have been reduced

• in all cases where it is considered that s.53 can apply to an application, a footnote should now be added to the D Section entry to state that the deed constitutes real burdens in terms of s.53.

These new procedures are further explained in sections 2, 3 and 4 of the updated version of the Section 53 manual which can be accessed by clicking the link below.

In addition, instructions for RO1 Legal Settlers have been produced for settling "hybrid" deeds which have been presented for dual registration and which create real burdens in terms of s.4(2) and 4(5) as well as s.53. These instructions can be accessed by clicking the link below.

Related links
Section 53
Section 53 / Section 4 hybrids

Owner - Registration Practice
Author - Anne Ward / Alice Pirie / Greg Ewing
Publication Date - 27/01/09

Title Conditions (Scotland) Act 2003 (Legal Memo 08-2009)
The Development Management Scheme

With effect from 1 June 2009 Part 6 of the Title Conditions(Scotland) Act 2003 ("the Act") came into force. Part 6 of the Act introduces a model scheme of rules for the management of land that is to be known as the Development Management Scheme ("the Scheme") and provides for the manner in which the Scheme can be applied and disapplied.

The Scheme provides for the management of a development by a manager acting on behalf of an owners' association which is a body corporate (but not a company). The Scheme itself is optional and may be applied to any land (referred to in Part 6 of the Act as 'the development') by registering against the land a 'deed of application' granted by, or on behalf of, the owner (or owners) of the land. The Scheme can be applied to any type of housing or commercial development including tenements and will take effect immediately on the date of registration unless the effect is postponed to a later specified date or to the date of registration of such other deed as may be so specified. In addition to the application of the Scheme, provision is made for the application of the Scheme with such variations as may be specified by the deed of application and any other variations that may subsequently be made to that Scheme.

Once applied to a development by a deed of application, the Scheme continues to apply - subject to variation - unless or until it is formally disapplied. The Scheme may be disapplied to the development or to any part of the development. This is achieved by registering a deed of disapplication granted by the owners' association for the development in accordance with the Scheme. The Act enables the deed of disapplication not only to disapply the Scheme but to impose real burdens to replace the Scheme.

Further information relating to the Development Management Scheme and guidance as to registration practice arising out of the matters set out in the Act will be added to the Title Conditions Manual in due course.

Owner - Legal Services / Registration Practice
Author - Donald Craig / Greg Ewing
Publication Date - 08/07/09

2008

Amalgamations (Reg Practice Memo 01-2008)

Any member of staff undertaking an amalgamation is reminded to read the guidance contained in Section 14 of the Legal Manual and Section 8.14 of the Plans Manual, including giving consideration to whether the amalgamation is both appropriate and possible.

When settling an application or applications identified as potential amalgamations, or an application created as an "add-to", and it is either not feasible or legally inappropriate that the disparate parts of the title be held on a single title sheet (e.g. title to a different party, held under different destinations or in a different capacity) the agent should be provided the opportunity to amend the deed, taking account of the impact on dual registered documents, otherwise the titles must be separate. Registration Officers should bear in mind that the Keeper also has the power to subdivide a title sheet, and so where an amalgamation/add-to has been effected in contradiction of the guidance, a title sheet may properly be divided to reflect the policy.

Owner - Legal Services
Author - John King
Publication Date - 01/01/08

Amending Parent Titles where there are no draft versions (Plans Memo 01-2008)

The purpose of this information paper is to clarify procedures on updating a Parent Title Plan as a result of second timers etc., when subsequent authorised versions exist.

Where a TP has been completed at Plans and sent to Legal Settle and subsequently delayed, for whatever reason, by the time it is returned to Plans for amendment it can often be the case that there are no available draft titles that can be used to access the Parent Title Plan. In this situation the Plans Settler should instigate a MU request following the usual procedures

Owner - Registration
Author - Elizabeth Moran
Publication Date - 24/06/08

Bank of China Limited – transfer to Bank of China (UK) Limited (Legal Memo 05-2008)

(1) Bank of China /Bank of China Limited
This is a company registered under the law of the Republic of China. The Bank of China and Bank of China Limited are the same entity. On the reissue of a business licence under Chinese law the name changed. The nearest equivalent under British law is a change of name but there is no certificate of incorporation as such. To satisfy the Court in relation to the transfer under the Financial Services and Markets Act 2000 that the Bank of China and Bank of China Limited were the same entity advice was sought from International Lawyers in Beijing and their note has been accepted as sufficient evidence of the status of the company. The date of change is given in the documentation provided as 26 August 2004. The documents should be added to our common links with this date being given as the date of change of name.

(2) Transfer from Bank of China Limited to Bank of China (UK) Limited

This is a transfer under the Financial Services and Markets Act 2000. With effect from 15 October 2007 ("the effective date") the business of Bank of China Limited was transferred to and vests in the Bank of China (UK) Limited pursuant to a banking business transfer scheme ('the Scheme') under Part VII of the Financial Services and Markets Act 2000 as approved by Order in the High Court of Justice, Chancery Division on 2 October 2007 ('the Order'). This includes all standard securities executed before the effective date. The Order and Scheme have been examined and should be added to the common links index.
Standard securities executed before the effective date

Any standard security granted in favour of Bank of China Limited executed before the effective date will vest in Bank of China (UK) Limited and will be acceptable for registration when submitted on or after that date as part of an application for registration if the following points are met:-

(a) The application form specifies Bank of China (UK) Limited as the applicant.

(b) The Scheme and Order is listed on the Form 4 submitted with the application. A copy of the Scheme and Order need not be submitted.

(c) The entry in the Charges Section of the Title Sheet will be a standard security in favour of Bank of China Limited. A note should be added to both the entry and the Charge Certificate in following terms:

Note: With effect from 15 October 2007 the business of said Bank of China Limited (formerly Bank of China) vests in Bank of China (UK) Limited pursuant to a banking business transfer scheme under Part VII of the Financial Services and Markets Act 2000 as approved by Order by the High Court of Justice Chancery Division dated 2 October 2007

The creditor in the Charge Certificate should be amended Bank of China (UK) Limited

(see Quality Initiative Update 1 and addendum for instructions). The registered office of the Bank of China (UK) Limited is situated at 90 Cannon Street, London EC4N 6HA

Discharges executed before the effective date

Discharges granted by Bank of China Limited must bear to have been executed before the effective date. There is no objection to recording or registering them on or after that date since no completion of title is involved.

Standard securities and discharges executed on or after the effective date

On or after 15 October 2007 no standard security or discharge should be granted by or in favour of Bank of China Limited. Registration officers should return any such standard security in favour of Bank of China Limited that forms part of an application for registration to the ingiving agent for amendment/re-engrossment.

Where Bank of China (UK) Limited grants a discharge of a registered or recorded standard security that was in the name of Bank of China Limited the Schedule and Order should be listed on the Form 4.

Registration staff should note that a certified copy of the Scheme and Order has been examined and has been added to the Common Links Index. No requisitioning or further examination of these documents is therefore necessary

Owner - Legal services
Author - John King
Publication Date - 01/05/08

Bank of China Limited – transfer to Bank of China (UK) Limited (Sasine Memo 02-2008)

1 With effect from 15 October 2007 ("the effective date") the business of Bank of China Limited transferred to and vests in the Bank of China (UK) Limited pursuant to a banking business transfer scheme ('the scheme') under Part VII of the Financial Services and Markets Act 2000 as approved by Order in the High Court of Justice, Chancery Division on 2 October 2007 ('the order').

Standard securities executed before the effective date

2. Any standard security granted in favour of Bank of China Limited and executed before the effective date will vest in Bank of China (UK) Limited and will be acceptable for recording if application is made by Bank of China (UK) Limited. There is not requirement to have the Standard Security re-executed or a Notice of Title recorded.

Discharges executed before the effective date

3. Discharges granted by Bank of China Limited and presented for recording on or after the effective date must bear to have been executed before the effective date. There is no objection to recording or registering them on or after that date since no completion of title is involved.

Standard securities and discharges executed on or after the appointed date

4. On or after 15 October 2007 no standard security or discharge should be granted by or in favour of Bank of China Limited. Any such deed should be returned to the ingiving agent. Where Bank of China (UK) Limited grants a discharge of a recorded standard security that was in the name of Bank of China Limited the deed should deduce title from Bank of China Limited referring to the Scheme and Order.

Owner - Legal services
Author - John King
Publication Date - 01/02/08

Changes to bankruptcy legislation (Legal memo 02-2008)

Update
Changes to the law governing bankruptcy (or sequestration as it is referred to in legal documents) come into effect on 01 April 2008. The changes have been introduced by the Bankruptcy and Diligence etc. (Scotland) Act 2007 and will alter registration practice when processing an application in respect of a bankrupt's property.

The changes introduced by this Act are not retrospective and only affect those sequestrations which arise after 1 April 2008. Sequestrations made before this date will follow the existing procedure as set out under the Bankruptcy (Scotland) Act 1985.
The main changes introduced by the Bankruptcy and Diligence etc. (Scotland) Act 2007 are:

• debtors will be discharged from bankruptcy after one year instead of three years for pre 1 April 2008 sequestrations; (Note: the inhibitory effect of a sequestration awarded under the 2007 Act continues to be 3 years);

• debtors will now apply to the Accountant in Bankruptcy (AiB) instead of the Sheriff Court for their own bankruptcy. The Act and Warrant will be replaced by a Determination Awarding Sequestration awarded by AiB;

• a trustee in sequestration is precluded from registering title to any heritable property of a debtor until 28 days have elapsed since the award of sequestration was registered. This is in order to allow time for a third party who has purchased property in good faith from a debtor to complete title by registration.

• a number of new deeds will be introduced such as the Determination awarding Sequestration and a Notice of Abandonment. These new deeds will require to be recorded in the Register of Inhibitions;

• the debt threshold for bankruptcy will increase to £3000 for sequestration commenced by creditors but will remain £1500 for sequestrations commenced by debtors.
The Registration Manual has been duly updated and a small number of overview sessions will be held in early April for CAJR staff and certain registration staff.

Owner - Legal Services
Author - John King
Publication Date - 27/03/08

Bankruptcy Legislation – inhibition on the dependence (Legal Memo 04-2008)

With effect from 1 April 2008 certain provisions in Part 6 of the Bankruptcy & Diligence etc (Scotland) Act 2007 ('the 2007 Act') relating to inhibition on the dependence of a court action came into force.

A court may grant warrant to inhibit a person or organisation either as a means of enforcing a court order against that party – typically for payment of a debt – ('inhibition in execution'), or as a means of preventing the defender from disposing of any heritable property while the court action is ongoing ('inhibition on the dependence'). Inhibition effectively prevents the inhibited party from disposing of property, by making any deed granted by the inhibitee reducible.

Prior to 1 April 2008, both forms of inhibition could be used only where the Court of Session granted warrant to inhibit.

There is no change at present to the law relating to inhibition in execution, which continues to be the preserve of the Court of Session. However, with effect from 1 April 2008, certain forms of inhibition on the dependence of a court action may be authorised by the Sheriff Courts.

Warrant to inhibit may be granted:

(i) on the dependence of an action, which can be granted by either the Sheriff Court or the Court of Session, or

(ii) on the dependence of a petition, which is granted by the Court of Session.

Both types of warrant will be recorded in the Register of Inhibitions (ROI).

The wording of the ROI Minute will look slightly different from the wording which registration officers are used to seeing in the Minute of a Summons and Inhibition. However, warrant for inhibition has the same effect as letters of inhibition and summons and inhibition and should be treated accordingly when it is disclosed in a ROI search.

The instructions in paragraphs 4.9ff of the Legal Manual should be followed, but any ROI entry which is disclosed in the title sheet should of course reflect the terms of the ROI Minute, e.g.

Note 2: Certified copy interlocutor, dated xx xx xxxx, granting Warrant for inhibition under section 15xx of the Debtors (Scotland) Act 1987 on the dependence of the [action/petition] in causa [pursuer, designed] - against [defender, designed] with relative execution of inhibition. Per xxxx

Note 3: Indemnity is excluded in terms of section 12(2) of the Land Registration (Scotland) Act 1979 in respect of any loss arising from the reduction of any dealing following the above Inhibition.

Templates for the most common styles will be added to the LRS picklist in due course.

Owner - Legal Services
Author - John King
Publication Date - 16/05/08

Cheltenham & Gloucester PLC – Transfer to Lloyds TSB Bank PLC (Legal Memo 06-2008)

1.1 With effect from 1 October 2007 ("the effective date") the business of Cheltenham & Gloucester plc transferred to and vested in the Lloyds TSB Bank plc pursuant to a banking business transfer scheme ('the scheme') under Part VII of the Financial Services and Markets Act 2000 as approved by Order in the High Court of Justice, Chancery Division on 20 September 2007 ('the order').

Standard securities executed before the effective date

2.1 Any standard security granted in favour of Cheltenham & Gloucester plc executed before the effective date will vest in Lloyds TSB Bank plc and will be acceptable for registration when submitted on or after that date as part of an application for registration if the following points are met:-

(a) The application form specifies Lloyds TSB as the applicant.

(b) The Scheme and Order is listed on the Form 4 submitted with the application. A copy of the Scheme and Order need not be submitted.

(c) The entry in the Charges Section of the Title Sheet will be a standard security in favour of Cheltenham & Gloucester plc. A note should be added to both the entry and the Charge Certificate in following terms:

Note: With effect from 1 October 2007 the business of said Cheltenham & Gloucester plc vests in Lloyds TSB Bank PLC pursuant to a banking business transfer scheme under Part VII of the Financial Services and Markets Act 2000 as approved by Order by the High Court of Justice Chancery Division dated 20 September 2007.

2.2 The creditor in the Charge Certificate should be amended to Lloyds TSB Bank PLC. (see Quality Initiative Update 1 and addendum for instructions).

Discharges executed before the effective date

3.1 Discharges granted by Cheltenham & Gloucester plc must bear to have been executed before the effective date. There is no objection to recording or registering them on or after that date since no completion of title is involved.

Standard securities and discharges executed on or after the effective date

4.1 On or after 1 October 2007 no standard security or discharge should be granted by or in favour of Cheltenham & Gloucester plc. Registration officers should return any such standard security in favour of Cheltenham & Gloucester plc that forms part of an application for registration to the ingiving agent for amendment/re-engrossment.

4.2 Where Lloyds TSB Bank plc grants a discharge of a registered or recorded standard security that was in the name of Cheltenham & Gloucester plc the Schedule

and Order should be listed on the Form 4.

4.3 Registration staff should note that a certified copy of the Scheme and Order has been examined and has been added to the Common Links Index. No requisitioning or further examination of these documents is therefore necessary

Owner - Legal Services
Author - John King
Publication Date - 02/06/08

Cheltenham & Gloucester PLC – Transfer to Lloyds TSB Bank PLC (Sasine Memo 01-2008)

1.1 With effect from 1 October 2007 ("the effective date") the business of Cheltenham & Gloucester plc transferred to and vests in the Lloyds TSB Bank plc pursuant to a banking business transfer scheme ('the scheme') under Part VII of the Financial Services and Markets Act 2000 as approved by Order in the High Court of Justice, Chancery Division on 20 September 2007 ('the order').

Standard securities executed before the effective date

2. Any standard security granted in favour of Cheltenham & Gloucester plc and executed before the effective date but not presented for recording until on or after the effective date will vest in Lloyds TSB Bank plc and can be accepted for recording if application is made by Lloyds TSB Bank plc. There is no requirement to have the standard security re-executed or a Notice of Title recorded.

Discharges executed before the effective date

3. Discharges granted by Cheltenham & Gloucester plc and presented for recording on or after the effective date must bear to have been executed before the effective date. There is no objection to recording or registering them on or after that date since no completion of title is involved.

Standard securities and discharges executed on or after the appointed date

4. On or after 1 October 2007 no standard security or discharge should be granted by or in favour of Cheltenham & Gloucester plc. Any such deed should be returned to the ingiving agent. Where Lloyds TSB Bank plc grants a discharge of a recorded standard security that was in the name of Cheltenham & Gloucester plc the deed should deduce title from Cheltenham & Gloucester plc referring to the scheme and order.

Owner - Legal Services
Author - John King
Publication Date - 01/01/08

Addition to Creditors picklist on LRS

The following entries have been added to the Creditor Code picklists within the LRS -

HALIFAX plc a company incorporated under the Companies Acts, (Registered Number 2367076), Registered Office Trinity Road, Halifax, West Yorkshire HX1 2RG

RBSDL - Royal Bank of Scotland plc

HPLCB should be used in all instances when the creditor is narrated as Halifax PLC, registered office at Trinity Road, Halifax, but the document has been printed using Birmingham Midshires headed paper.
This should not be confused with the current picklist entry of **HPLC5** - Halifax Plc (trading as Birmingham Midshires) registered office at Trinity Road, Halifax.

RBSDL should be used in all instances when the creditor is narrated as Royal Bank of Scotland Plc but the document has been printed using Direct Line headed paper.

Intake and Legal Settlers should take care to ensure that the correct Creditor code is selected from the static picklists made available.

Dispositions a non domino – Removal of Exclusions of Indemnity (Legal Memo 03-2008)

Registration staff are advised that a decision to remove an exclusion of indemnity from a title sheet relating to an a non domino Disposition must always be taken by a Senior Caseworker.
Decisions to remove exclusions of indemnity should not be taken lightly. It is important to consider the circumstances fully and scrutinise the evidence provided as failure to do so may lead to indemnity claims and/or litigation. In considering whether it is appropriate to remove an exclusion of indemnity relating to a Disposition a non domino Senior Caseworkers should give consideration to the following:

• Has 10 years expired since the recording of an ex facie valid deed or date of registration of a non domino title?

• Was the original a non domino disposition recorded in the General Register of Sasines and by A to A? If so the disposition could not be a foundation writ for the purposes of positive prescription. The start of the prescriptive period would therefore have to run from the next ex facie valid recorded deed or date of registration in the Land Register. (See Legal Manual 36.2 Ex facie valid deed and 36.7.1 Registered titles with an exclusion of indemnity that have proceeded on a disposition a non domino by A to A).

• Is the affidavit evidence provided sufficient to demonstrate possession? The affidavits must identify who was in possession. It is not sufficient that they merely indicate only that someone must have been. Affidavits must also cover the requisite period and should be by all parties with an interest in the property during the prescriptive period. Affidavits from third parties (i.e. neighbours) may be appropriate depending on the circumstances. Equally if there is doubt, for instance a competing title holder, Affidavits by themselves may not be sufficient. In such an instance a court decree may be required if the consent of the competing proprietor could not be obtained. (See Legal Manual 36.7 Removal of exclusion of indemnity).

Senior Caseworkers should, in cases of doubt, liaise with Legal Services as to whether the evidence submitted with an application for registration supports the removal of the exclusion of indemnity.

The Registration Manual has been updated accordingly.

Owner - Legal Services
Author - John King
Publication Date - 08/04/08

Using the plotter to print ad-hoc prints larger than A4 (Plans Memo 02-2008)

There are more and more occasions where Plans settlers are sending A4 prints or multi flap Title Plans to the plotter. This is both costly and disruptive to the Agency

• Wasting vast amounts of paper - occasionally supplies of paper have run out due to the numerous extracts being sent.

• Waste of ink

• Ties up the plotter - prevents other users from obtaining prints sometimes for a considerable period of time.
Multi flap Title Plans

When completing multi flap Title Plans it is often advantageous to print a copy of the Title Plan on one sheet rather than use the multi flap Title Plan which will remain in sections until Plans Finishing after Legal Settle. (See Staff Notice F272/07).

In order to do this the "ad hoc" functionality on the Print Settings window must be used - remember to select the correct paper size and orientation so that the whole of the Title is included.

Under no circumstances should the Title Plan option on the Print Settings window be selected.

If the settler selects "Title Plan" the print will be produced as a multi flap Title Plans at A4 size as the "Title Plan" functionality overrides the paper size and orientation settings and uses the preset settings of A4 and portrait.

Batch Printing

When using batch print to print a Title Plan the Title Plan will be queued to your current default colour printer therefore if your default printer is the plotter the system will send the Title Plan to the plotter.

Wrong print sent to Plotter?

Where a settler sends either an A4 print or a multi flap Title Plan to the plotter they must go to the plotter and cancel the print request. Where the print request was a multi flap Title Plan the settler will have to remain at the plotter and cancel each page of the extract as it is sent to the plotter.

Owner - Registration
Author - Elizabeth Moran
Publication Date - 04/02/08

Stamp Duty Land Tax: New evidential requirements (Legal Memo 01-2008)

Update
The 2008 Budget has introduced a number of changes to the SDLT regime with the aim of lessening the regulatory impact on those involved in the conveyancing marketplace. The changes alter the requirements for when a transaction that is the subject of an application for registration or recording must be accompanied by a SDLT Certificate (Revenue or Self-certificate).

Transactions where the chargeable consideration is less than £40,000 no longer required to be notified to the Revenue. Further changes mean that it will no longer be necessary for purchasers to complete a SDLT60 (self-certificate) if the transaction is in respect of a consideration below that new notifiable threshold.

Accordingly an application for registration or recording in respect of a disposition, lease, assignation of lease or other deed that comes within the ambit of the SDLT regime will no longer require to be accompanied by any SDLT certificate (Revenue certificate or self-certificate) if the consideration narrated in such a deed is less than £40,000 (£39,999 and under).

These changes take effect for transactions with an effective date of 12 March 2008. The Regulations that currently prescribe the SDLT60 form do not permit the form to be signed by the solicitor acting for the purchaser. It was announced that HMRC will amend that form by Regulations later in 2008 so that solicitors will be able to sign the declaration in the SDLT60 on behalf of their clients.

Updated Guidance Notes have been issued to Intake and Customer Service staff. Amendments to the Registration Manual will follow.

Owner - Legal Services
Author - John King
Publication Date - 12/03/08

2007

Abolition of Feudal Tenure (Scotland) etc Act 2000

Ground Annuals

Ground Annuals were extinguished on the Appointed Day (28 November 2004) by Section 56 of the Abolition of Feudal Tenure etc (Scotland) Act 2000.

A ground annual is "a payment similar to feuduty, constituted by contract or reservation between disponer and disponee, commonly used in burghs (where feudal tenure could not be created) and on land where the titles prohibited subinfeudation" (Section 10.51, legal manual).

As Contracts of Ground Annual (unlike feu deeds) did not create a new tenure in land, on extinction of the ground annual the holder of the ground annual no longer retains any interest in the subjects, but the question of whether any of the conditions in the contract of ground annual are enforceable by third parties must be considered.

The following procedures should be followed when dealing with an application which refers to a Contract of Ground Annual for burdens:

1. Ground Annual has been redeemed or discharged prior to the Appointed Day
The deed should be edited for third party rights, following the instructions set out in sections 10.65 to 10.70.3 of the legal manual.

Details of the ground annual should not be included in the entry, unless the amount formerly payable affects the interpretation of other conditions (such as the proportion of maintenance obligations of common areas) disclosed in the Title Sheet.

2. Ground Annual has not been redeemed or discharged prior to the Appointed Day - Contract of Ground Annual contains no burdens other than those which relate to payment of the ground annual

No burdens entry for the deed should be made.

3. Ground Annual has not been redeemed or discharged prior to the Appointed Day - Contract of Ground Annual contains burdens in addition to those relating to payment of the ground annual

Edit the deed for third party rights, following the instructions set out in sections 10.65 to 10.70.3 of the legal manual, and use the following preamble:

Contract of Ground Annual containing Disposition by A to B, recorded ...., of (subjects) of which the subjects in this Title form part, contains the following

conditions which subsist notwithstanding the extinction of the ground annual payable under the said Contract by virtue of section 56 of the Abolition of Feudal Tenure etc. (Scotland) Act 2000, viz"
(This has been added to the list of preamble styles on the LRS autotext).

The burden of payment of the ground annual should not be included in the entry, unless the amount formerly payable affects the interpretation of other conditions (such as the proportion of maintenance obligations of common areas) disclosed in the Title Sheet.

If it is necessary to disclose details of the payment of the ground annual for this reason, a note in the following style should be added to the entry:

Note: the ground annual payable under the above Contract of Ground Annual is extinguished by virtue of section 56 of the Abolition of Feudal Tenure etc (Scotland) Act 2000 and is shown only insofar as it affects/assists with the interpretation of other real burdens contained in this Title Sheet [in respect of maintenance obligations, liability for common repairs etc].

(This note has been added to the notes on the LRS autotext).

Titles created in respect of a creditor's interest in Ground Annual only

There are 18 Title Sheets created in respect of the creditor's interest in Ground Annual, and these are all in the County of Glasgow.

These Title Sheets should remain open until further instructions are issued.

Owner - Registration
Author - Anne Ward
Publication Date - 15/05/07

Amenity Areas in Developments

A potential competing title problem has been identified in relation to titles to amenity areas and other open spaces within housing developments. In some developments, the split-off dispositions for the individual house plots convey to the purchaser a right of common ownership (or pro indiviso right or share) with the other house plots in the development to the amenity ground and/or open space areas within the development. This in itself does not cause a problem, however the Keeper is aware of instances where the developer may subsequently attempt to convey ownership of the same amenity ground and/or open space areas to a company or organisation which is to undertake the maintenance of the amenity ground. A developer might also convey to an individual house-owner a part of the amenity area – usually additional ground adjacent to the house-owner's property. This situation may arise in respect of First Registration applications (typically within a research area) and also in respect of Transfer of Part applications and Dealing with Whole applications transferring the residue of the estate.

Where this situation arises, the Keeper cannot simply give effect to the subsequent conveyance in favour of any of the aforementioned parties. If the Keeper were to reflect in the Land Register the terms of that deed, the result would be to create a competition between the apparently exclusive title to the amenity area and/or open space areas and the right of common property interest in these areas in titles to the individual house plots. This opens up the possibility of litigation and a claim against the Keeper's indemnity. Registration staff should therefore take care to ensure that such conflicts in title do not arise.

2. Action for registration staff

2.1 Conveyance of amenity ground

When processing a FR or TP application in which a deed conveys exclusive ownership of amenity ground or other open spaces, particular care should be taken to ensure that the right conveyed does not compete with any title previously registered in the Land Register or recorded in the Sasine Register. If faced with an application to register a disposition of amenity ground and/or open space areas in favour of a maintenance company, Registration Officers should check that no rights in common to the amenity ground and/or open space areas have previously been granted to the proprietors of individual plots. If they have, the agent who submitted the application on behalf of the maintenance company should be advised that the Keeper cannot give effect to that application. The application will require to be cancelled.

In carrying out this check, Registration Officers should bear in mind that rights in common in the split-off dispositions for house plots will usually have been identified by a verbal description rather than by reference to a deed plan. The reference may have been either specifically to amenity ground or more generally to (e.g.) 'the

development with the exception of any parts disponed to the various proprietors'. In the case of registered titles, the area to which those rights pertain may not therefore have been referenced on the index map or shown as a removal from a parent title. In some cases, the Property Section of a title sheet may contain a cross-reference to the rights specified in a Deed of Conditions, and the rights in that deed may include common ownership of amenity ground.

2.2 Conveyance of a house plot

Similarly, when processing a FR or TP application in which the split-off deed conveys a house plot within a development with rights to amenity areas and/or open space areas, care should be taken to ensure that the title to the individual house plot does not conflict with any pre-existing title to amenity ground. This is because some developers may choose to convey title to amenity ground and/or open space areas at the outset of a development. If the Registration Officer encounters this situation, the agent(s) submitting the application(s) for registration of the individual house plots should be contacted and advised of the competition in title. The agent(s) should be advised that the Keeper will not enter the right to the amenity and/or open space areas in the title sheets for the individual house plots (see 2.3 below for the situation where the right is set out in a Deed of Conditions)

To reduce the risk of a future competition in title arising, Registration Officers must ensure that – wherever the terms of the titles permit – areas to which the proprietor has a right of common ownership should be identified on the title plan and the index map, and in the case of a TP application that the right in common is shown as a removal from the parent title. This is the case whether the right is conveyed expressly in the split-off disposition or by reference to the rights in a Deed of Conditions. It should however be noted that in the majority of cases these rights are identified verbally.

2.3 Deeds of Conditions

In some (but not all) cases where difficulties of this sort have been identified, the developer's Deed of Conditions sets out an intention to convey rights in common to the proprietors of house plots, but subject to reservation of a right to the developer to convey the amenity ground to a named company, without the involvement of the proprietors of the house plots. Alternatively, some Deeds of Conditions contain a clause that stipulates an intention to convey amenity ground and/or open space areas to a maintenance company and do not make any mention of conveying rights to individual house plots. Such clauses should not be questioned with the submitting agents when a Deed of Conditions containing these terms is registered.

Whilst it is acceptable for Registration Officers to narrate such clauses in the Burdens Section entry for the Deed of Conditions (as typically the Deed of Conditions is

presented for registration in advance of any actual conveyance of land from the development), the terms of such clauses do not alter the guidance offered above. The key is whether a conveyance of the amenity ground and/or open space areas has taken place, either expressly or by reference to rights specified in the Deed of Conditions. If the developer has conveyed the amenity ground and/or open space areas to the individual house plot proprietors, he cannot then convey the same area of ground to a maintenance company, notwithstanding the purported reservation of a right to convey the same land to a third party. This is because, after the first set of conveyances, the developer no longer has any title to convey the amenity ground and/or open space areas.

2.4 Cases requiring referral

In the event that a disposition of a house plot conveys a right in common to amenity ground but subject to such a reserved right, this reservation should not be reflected in the Property Section of the title sheet. Similarly, if the disposition conveys rights by reference to a Deed of Conditions but these rights appear to include a share of ownership of ground which has already been conveyed to another party, such rights should not be reflected by a cross-reference in the Property Section of the title sheet. First Registration applications of these types should be referred to a Senior Caseworker for advice on how the registration should be progressed; TP applications should be referred to the TP support team.
These instructions will be added to the Legal Manual in due course.

Owner - Legal Services
Author - Ian A. Davis
Publication Date - 04/07/07

Governor and company of the Bank of Scotland Halifax PLC Capital Bank PLC HBOS Treasury Services PLC

Introduction

1.1 Following the merger between Halifax plc and the Governor and Company of the Bank of Scotland in 2004 to form the HBOS Group, HBOS has been looking at ways to remove duplication and streamline the administration of its mortgage business. The result of this exercise is the HBOS Group Reorganisation Act 2006.

1.2 With effect from 17 September 2007 the business and all property and liabilities of Halifax plc, Capital Bank plc and HBOS Treasury Services plc, will transfer to and vest in**Bank of Scotland plc** by virtue of
(1) the HBOS Group Reorganisation Act 2006, and

(2) a Notice in the London, Edinburgh and Belfast Gazettes specifying 17 September 2007 as the appointed day for the transfers.

1.3 In addition, and also with effect from 17 September 2007, the Governor and Company of the Bank of Scotland will be incorporated as a public limited company and its name will change to **Bank of Scotland plc**.
1.4 In this Memo the following definitions are used:-

"the appointed day" means 17 September 2007
"the Act" is the HBOS Group Reorganisation Act 2006
"the Notice" is the notice of the appointed day published in the London, Edinburgh and Belfast Gazettes
"transferor companies" means Halifax plc, Capital Bank plc and HBOS Treasury Services plc

1.5 For the avoidance of doubt, these changes do not affect the status of Halifax Loans Limited, which is also part of the HBOS Group.

Land Register evidential requirements

Deeds executed before the appointed day — by or in favour of the Governor and Company of the Bank of Scotland

Standard securities and dispositions

2.1 Any deed (such as a standard security or disposition) granted in favour of the Governor and Company of Bank of Scotland, executed before the appointed day, but submitted as part of an application for registration on or after that day, will be acceptable for registration, provided that the application form specifies that the applicant is Bank of Scotland plc. The application form should be returned for amendment if it does not refer to Bank of Scotland plc. The change of name is

effected by section 4 of the Act, however there is no need for solicitors to make reference to this on the application form.

2.2 The entry in the Charges Section of the Title Sheet will be a standard security in favour of The Governor and Company of the Bank of Scotland. A note should be added to both the entry and the Charge Certificate in following terms:

'Note: With effect from 17 September 2007, The Governor and Company of the Bank of Scotland changed its name to Bank of Scotland plc by virtue of the HBOS Group Reorganisation Act 2006.'

The creditor in the Charge Certificate should be amended to Bank of Scotland plc (see Quality Initiative Update 1 and addendum for instructions).

Discharges
2.3 Discharges granted by the Governor and Company of the Bank of Scotland must bear to have been executed before the appointed day; however there is no objection to registering them after that day since no completion of title is involved.

Deeds executed before the appointed day — by or in favour of one of the transferor companies

Standard securities and dispositions

3.1 Any deed (for instance a standard security or disposition) granted in favour of one of the transferor companies, executed before the appointed day, but submitted as part of an application for registration on or after that day, will be acceptable for registration if the following requirements are met:-

(a) The application form specifies Bank of Scotland plc as the applicant.

(b) The application form specifies that registration is sought in respect of the deed in favour of one of the transferor companies and the Notice.

(c) The Act and the Notice are listed on the Form 4 submitted with the application. Copies of the documents themselves need not be submitted.

3.2 The entry in the Charges Section of the Title Sheet will be a standard security in favour of the relevant transferor company. A note should be added to both the entry and the Charge Certificate in following terms:

'Note: With effect from 17 September 2007, the business of said [insert name of relevant transferor company] vested in Bank of Scotland plc by virtue of the HBOS Group Reorganisation Act 2006'

The creditor in the Charge Certificate should be amended to Bank of Scotland plc (see Quality Initiative Update 1 and addendum for instructions).

Discharges
3.3 Discharges granted by Halifax plc, Capital Bank plc and HBOS Treasury Services plc, must bear to have been executed before the appointed day; however there is no objection to registering them after that day since no completion of title is involved.

Deeds executed on or after the appointed day

4.1 All deeds (be they standard securities, dispositions or discharges) executed on or after the appointed day must be granted by or be in favour of Bank of Scotland plc. The Bank of Scotland plc has advised that standard securities will in most cases design the Bank with reference to a Division and the address of that division, i.e. Bank of Scotland plc, Halifax Division, PO Box AB, Halifax'. Creditor codes for all divisions of Bank of Scotland plc have been created on the LRS lender picklist.

4.2 Where Bank of Scotland plc grants a Discharge of a Standard Security registered or recorded prior to the appointed day, where the original grantee was one of the transferor companies, the Act and Notice should be listed on the Form 4.
Requisitioning of evidence

5.1 The Act and the Notice in the Gazette have been examined and where appropriate, added to the Common Links Index. Registration officers are not required to requisition or examine these documents.

John King
Legal Director
3 September 2007

Bristol & West PLC – Transfer to Governor and Company of Bank of Ireland

Update

1.1 With effect from 1 October 2007 ("the effective date") the business of Bristol & West PLC transfers to and vests in the United Kingdom Branch of the Governor and Company of the Bank of Ireland pursuant to a banking business transfer scheme ('the scheme') under Part VII of the Financial Services and Markets Act 2000 as approved by Order in the High Court of Justice, Chancery Division on 18 September 2007 ('the order').

Standard securities executed before the effective date

2.1 Any standard security granted in favour of Bristol & West PLC executed before the effective date will vest in the Governor and Company of the Bank of Ireland and will be acceptable for registration when submitted on or after that date as part of an application for registration if the following points are met:-

(a) The application form specifies The Governor and Company of the Bank of Ireland as the applicant.

(b) The Scheme and Order is listed on the Form 4 submitted with the application. A copy of the Scheme and Order need not be submitted.

(c) The entry in the Charges Section of the Title Sheet will be a standard security in favour of Bristol & West PLC. A note should be added to both the entry and the Charge Certificate in following terms:

Note: With effect from 1 October 2007 the business of said Bristol & West PLC vests in Governor and Company of Bank of Ireland pursuant to a banking business transfer scheme under Part VII of the Financial Services and Markets Act 2000as approved by Order by the High Court of Justice Chancery Division dated 18 September 2007.

2.2 The creditor in the Charge Certificate should be amended to Governor and Company Bank of Ireland. (see Quality Initiative Update 1 and addendum for instructions).

Discharges executed before the effective date

3.1 Discharges granted by Bristol & West PLC must bear to have been executed before the appointed date. There is no objection to recording or registering them on or after that date since no completion of title is involved.

Standard securities and discharges executed on or after the effective date

4.1 On or after 1 October 2007 no standard security or discharge should be granted

by or in favour of Bristol & West PLC. Registration officers should return any such standard security in favour of Bristol & West PLC that forms part of an application for registration to the ingiving agent for amendment/re-engrossment.

4.2 Where Governor and Company of the Bank of Ireland grants a discharge of a registered or recorded standard security that was in the name of Bristol & West PLC the Schedule and Order should be listed on the Form 4.

4.3 Registration staff should note that a certified copy of the Scheme and Order has been examined and has been added to the Common Links Index. No requisitioning or further examination of these documents is therefore necessary

Owner - Legal Services
Author - John King
Publication Date - 28/09/07

Bristol & West PLC – Transfer to Governor and Company of Bank of Ireland Sasines Memo

Update

1.1 With effect from 1 October 2007 ("the effective date") the business of Bristol & West PLC transfers to and vests in the United Kingdom Branch of the Governor and Company of the Bank of Ireland pursuant to a banking business transfer scheme ('the scheme') under Part VII of the Financial Services and Markets Act 2000 as approved by Order in the High Court of Justice, Chancery Division on 18 September 2007 ('the order').

Standard securities executed before the effective date

2. Any standard security granted in favour of Bristol & West PLC and executed before the effective date but not presented for recording until on or after the effective date should be either:

(a) re-engrossed in favour of the Governor and Company of the Bank of Ireland, or

(b) docqueted with reference to a Notice of Title on behalf of Governor and Company of Bank of Ireland and the two deeds recorded together with the application form for the recording of the Notice of Title including reference to the standard security.

Discharges executed before the effective date

3. Discharges granted by Bristol & West PLC and presented for recording on or after the effective date must bear to have been executed before the effective date. There is no objection to recording or registering them on or after that date since no completion of title is involved.

Standard securities and discharges executed on or after the appointed date

4. On or after 1 October 2007 no standard security or discharge should be granted by or in favour of Bristol & West PLC. Any such deed should be returned to the ingiving agent. Where Governor and Company of the Bank of Ireland grants a discharge of a recorded standard security that was in the name of Bristol & West PLC, the deed should deduce title from Bristol & West PLC referring to the scheme and order.

Owner - Legal Services
Author - John King
Publication Date - 28/09/07

Common Deeds Index

As part of the Integrated Registration Project (IRP) the Data and Information Unit (DIU), in conjunction with the Agency's IT Partners, BT, have reviewed the contents of the Common Deeds Index. This study has highlighted a number of inconsistencies in both the entries in the Deeds Index data fields and the versions associated with these entries. Whilst some of the areas of concern were highlighted in Staff Notice F34/06, additional textual issues have now been identified. To avoid unnecessary duplication, it has been recognised that the style to be used for certain types of textual information in D Section entries must be formalised and an Agency standard adopted.

There are currently 1.8 million Deed versions in the LRS. In the most extreme cases there are more than 190 versions of the same deed. For a variety of reasons, the Agency is attempting to reduce the volume of these versions. The drivers include:

- Improving the efficiency of the Legal Settle process
- Migration of LRS data to E-Settle
- The need to update Title Sheets as a result of Feudal Abolition

The Declutter functionality that was recently developed by ROS and BT has been utilised by DIU to cleanse historical versions of deeds where differences only relate to deviations from the standardised text entries highlighted in the annexes to this notice.

Now that the initial operation has been carried out it is important that, from this stage onwards, no further unnecessary versions are added.

The annexes to this notice set out the Agency standard to be adopted when entering certain information in the Title Sheet. Please ensure that you familiarise yourself with these standards which should be applied with immediate effect.

If you have any questions regarding these instructions please contact your Team Leader in the first instance.

Annex 1
Standardised Text
Please note that a significant number of duplicated entries occur due to incorrect formatting. Care should be taken to ensure the correct formatting including punctuation as noted below is applied.

Register(s)

Register	Agency Standard
General Register of Sasines	G.R.S.
Particular Register of Sasines	P.R.S.
General Register	G.R.
Burgh Register	B.R.
Books of Council and Session	Books of C. and S.

Reference to Register in Deed	Agency standard
recorded in the General Register of Sasines for the County of Banff	recorded G.R.S. (Banff) 13 Jun. 1960
recorded in the Particular Register of Sasines for the County of Orkney	recorded P.R.S. (Orkney) 27 Jul. 1842
recorded in the General Register of Sasines	recorded G.R. 18 Aug. 1842
recorded in the Burgh Register for the burgh of Arbroath	recorded in Arbroath B.R. 28 Aug. 1941
recorded in the Books of Council and Session	registered in the Books of C. and S. 13 Jun. 1972
registered in the Books of Council and Session	registered in the Books of C. and S. 13 Jun. 1972
recorded in the Land Register	registered 8 May 2003
registered in the Land Register	registered 8 May 2003

Annexe 2
Miscellaneous Textual Items
The undernoted table sets out the standard to be applied to the most common textual variations and abbreviations used in the Agency. This standard should be applied irrespective of the spelling or formatting within a deed.

Textual Variation	Agency Standard
Feu Duty	feuduty
Feu-Duty	feuduty
Feu duty	feuduty
Feu-duty	feuduty
Feuduty	feuduty
feu duty	feuduty
feu-duty	feuduty
Title plan	Title Plan
Title plans	Title Plan
Title Plans	Title Plan
Supplementary plan	Supplementary Plan
Supple Plan	Supplementary Plan
Supple. Plan	Supplementary Plan
Supple plan	Supplementary Plan
Supple. plan	Supplementary Plan
Sup Plan	Supplementary Plan
Sup. Plan	Supplementary Plan
sup plan	Supplementary Plan
sup. plan	Supplementary Plan
sup Plan	Supplementary Plan
sup. Plan	Supplementary Plan

Supplementary plans	Supplementary Plans
Supple plans	Supplementary Plans
Supple. Plans	Supplementary Plans
Sup Plans	Supplementary Plans
Sup. Plans	Supplementary Plans
sup plans	Supplementary Plans
sup. plans	Supplementary Plans
sup Plans	Supplementary Plans
sup. Plans	Supplementary Plans
Subject in this Title	subjects in this Title
Subjects in this Title	subjects in this Title
S.I.T.T.	subjects in this Title
SITT	subjects in this Title
s.i.t.t.	subjects in this Title
sitt	subjects in this Title
dwelling house	dwellinghouse
dwelling-house	dwellinghouse
dwelling houses	dwellinghouses
dwelling-houses	dwellinghouses
dwelling-house(s)	dwellinghouse(s)

Owner - Registration
Author - Anne Ward
Publication Date - 12/11/07

Portman Building Society – Merger with Nationwide Building Society

Update

1. With effect from 28 August 2007 ("the appointed date") the business of Portman Building Society transfers to and vests in Nationwide Building Society by virtue of Instrument of Transfer of Engagements dated 2 March 2007 as confirmed by the Financial Services Authority on 26 July 2007.

Standard securities executed before the appointed date

2. Any standard security granted in favour of Portman Building Society before the appointed date but submitted as part of an application for registration on or after that date will be acceptable for registration if the following points are met:-

(a) The application form specifies Nationwide Building Society as the applicant.

(b) The application form specifies that application for registration is sought in respect of the deed in favour of Nationwide Building Society and the Instrument of Transfer.

(c) The Instrument of Transfer is listed on the Form 4 submitted with the application. A copy of the Instrument need not be submitted.

(d) The entry in the Charges Section of the Title Sheet will be a standard security in favour of Portman Building Society. A note should be added to both the entry and the Charge Certificate in following terms:

Note: With effect from 28 August 2007 the business of said Portman Building Society vest in Nationwide Building Society by virtue of Instrument of Transfer of Engagements.

The creditor in the Charge Certificate should be amended to Nationwide Building Society (see Quality Initiative Update 1 and addendum for instructions).

Discharges executed before the appointed date

3. Discharges granted by Portman Building Society must bear to have been executed before the appointed date. There is no objection to recording or registering them after that date since no completion of title is involved.

Standard securities and discharges executed on or after the appointed date

4. On or after 28 August 2007 it is not legally competent for a standard security or a discharge to be granted by or in favour of Portman Building Society. Registration officers should return any such deed that forms part of an application for registration

to the ingiving agent for amendment/re-engrossment.

4.1 Where Nationwide Building Society grants a discharge of a registered or recorded standard security that was in the name of Portman Building Society the Instrument of Transfer should be listed on the Form 4.

Owner - Legal Services
Author - John King
Publication Date - 06/06/07

Progressive Financial Services Limited – Company Number 016825240 & Welcome Financial Services Limited

Change of names

On 1 December 2006 the above two companies, who are creditors and have a number of securities granted in their favour, exchanged names. Both companies have the same registered office address. Neither the securities nor the discharges refer to the company number which is the only consistent unique identifier of the company. It has been brought to the Keeper's attention that following the exchange of names officers have had difficulty in confirming whether the correct company is discharging the recorded or registered securities.

The position is as follows:

1 Welcome Financial Services Limited (formerly Progressive Financial Services Limited) - Company Number 00133540 - Registered Office: Kingston House Centre 27 Business Park Woodhead Birstall Batley West Yorkshire WF17 9TD

On 1 December 2006 Company Number 00133540 changed its name from Progressive Financial Services Limited to Welcome Financial Services Limited.

A standard security granted to Progressive Financial Services Limited between 23/12/2002 and 01/12/2006 should be discharged by Welcome Financial Services Limited formerly Progressive Financial Services Limited (i.e Company Number 00133540. Reference to the certificate of incorporation on change of name should be made in the deed when designing the company or, in a Land Registration transaction, the certificate of incorporation on change of name should be exhibited as a link in title.

A Standard Security granted to Welcome Financial Services Limited after 1/12/2006 should be discharged by Welcome Financial Services Limited (Again Company Number 00133540).

2 Progressive Financial Services Limited (formerly Welcome Financial Services Limited) - Company Number 016825240 - Registered Office: Kingston House Centre 27 Business Park Woodhead Birstall Batley West Yorkshire WF17 9TD

On 1 December 2006 Company number 016825240 changed its name from Welcome Financial Services Limited to Progressive Financial Services Limited.

A Standard Security granted to Welcome Financial Services between 1/12/1989 and 1/12/2006 should be discharged by Progressive Financial Services Limited (formerly Welcome Financial Services Limited) (i.e. Company Number 016825240). Reference to the certificate of incorporation on change of name should be made in the deed

when designing the company or, in a Land Registration transaction, the certificate of incorporation on change of name should be exhibited as a link in title.

A Standard Security granted to Progressive Financial Services after 1 December 2006 should be discharged by Progressive Financial Services (i.e. Company Number 01682540).
Where a discharge by the wrong company is presented, this should be returned to the agent advising that it has not been granted by the creditor.

Owner - Legal Services
Author - John King
Publication Date - 09/05/07

Title Conditions (Scotland) Act 2003 – Real Burdens Changes under The Title Conditions Act

The Title Conditions Act introduced changes to the way in which real burdens are created and these changes took effect from 28 November 2004.
Training on deeds which create real burdens in terms of section 53 of the Act has been delivered to all FR and TP legal settlers. Training on deeds which create real burdens and require dual registration has been provided for a number of legal settlers and the remainder of the training will be delivered in due course.

Please be aware that real burdens can now be created in all types of deeds and in all types of applications - FRs, TPs and DWs and these should only be settled if the appropriate training has been attended.

FR and TP applications may also be affected by deeds creating real burdens registered after 28 November 2004 but prior to the DIR, and these applications should also only be settled by those who have attended the appropriate training course.

Applications which contain a deed registered after 28 November 2004 which varies/waives/discharges real burdens or servitudes should continue to be referred to the Dedicated Teams.

Owner - Registration
Author - Anne Ward
Publication Date - 23/05/07

West Bromwich Mortgage Company Limited
pro forma Standard Security

The Keeper has been alerted to the fact that a style of pro forma Standard Security issued by the above mortgage company contains an error. The word 'Limited' has been omitted from the name of the company in the 'Lender' box on the first page of the deed. Since the operative clause refers to the security having been granted 'in favour of the Lender', this means that the grantee of the deed is not correctly identified. (The company's full name is shown in the header at the top of the first page, but this does not cure the defect).

Such deeds should not be given effect to in either the Land Register or the Sasine Register.
In the case of a Land Register application, registration officers should contact the submitting agents and advise them to amend and re-engross the deed. The deed should be amended (or a replacement deed provided) to narrate the correct name of the company in the 'Lender' box. Provided that a corrective deed, signed by the granters, is received within 60 days of the requisition being issued by the registration officer, the application should not be cancelled; instead, the original date of registration should be retained.

In the case of an application for recording in the Sasine Register, the submitting agent should be contacted and informed that the Keeper intends to reject the application and return the deed. The agent should be advised to have a corrective deed drawn up and presented for recording.

It is possible that a number of deeds in this style may already have been registered or recorded. Discharges or Deeds of Restriction of such securities can be accepted for registration/ recording. However, any other transaction affecting such a security (e.g. Assignation to a new lender, or Disposition in exercise of a power of sale) should be referred to Legal Services.

Legal Services has contacted the West Bromwich Mortgage Company Limited to advise of the error in the pro forma Standard

Owner - Registration
Author - Ian Davis
Publication Date - 08/08/07

2006

Cleansing of the Deeds Index

(originally published as notice F34/06)

In preparation of the de-clutter process of the Deeds Index a number of issues relating to the duplication of entries and unnecessary cloning of versions have been identified.

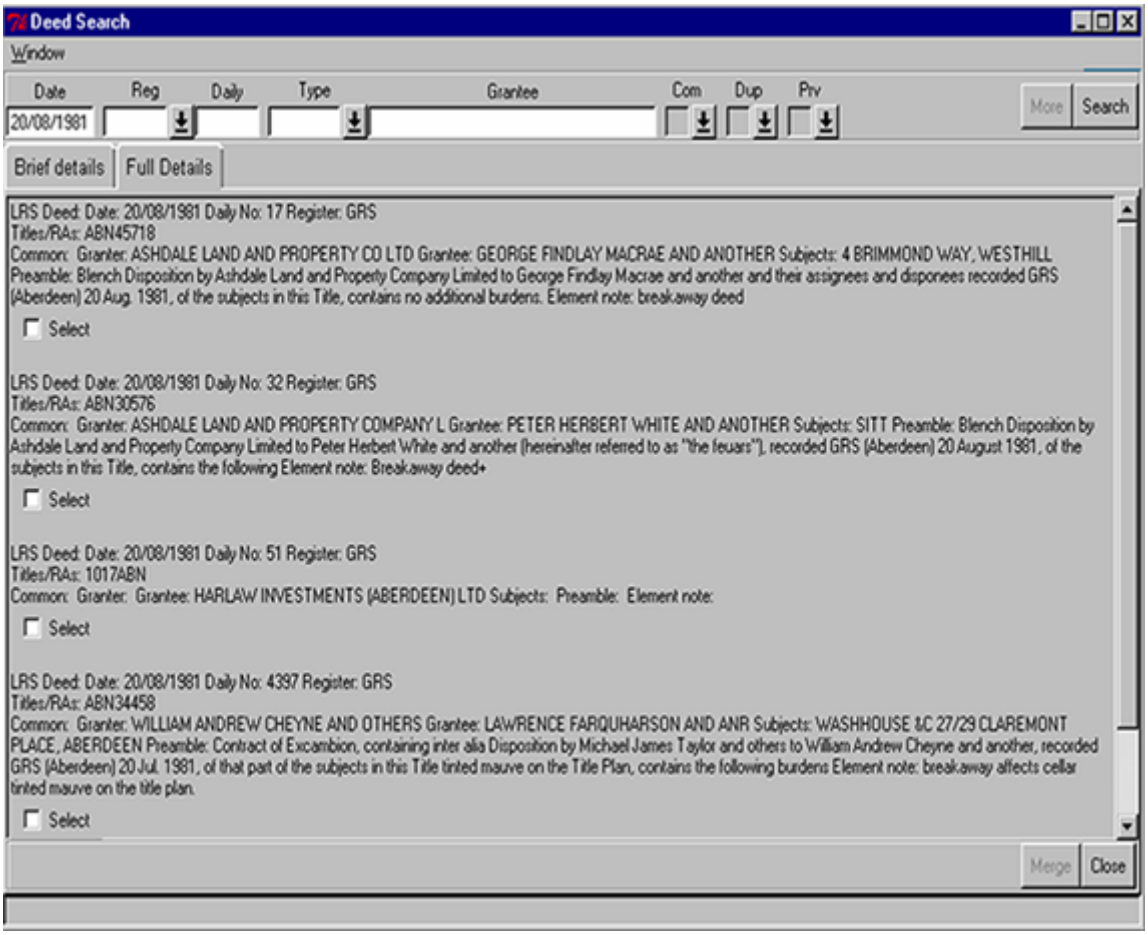
A significant number of entries in the deeds index have been created unnecessarily over the years due to the lack of detail in existing entries. The following guidance will assist future remedial work to cleanse the Deeds Index and prevent further duplicate entries being created.

DEEDS INDEX ENTRIES

EXISTING ENTRIES

Whilst **searching existing** entries that contain blanks, the following fields must be completed by enabling the amend function tab: -

Note: In most cases the information relating to Granter/Grantees and subjects can be found in the "full details" screen in the Deeds Index (see screen shot below) or by hovering the mouse over the blue "T" in the Deed View Screen within the Burdens Section.



• **Granters and Grantees**
In the case of unilateral deeds e.g. Deeds of Conditions it has now been agreed that both fields should be populated with the party to the deed's name. This is because, currently only the Grantees field can be searched.
Where appropriate the Granters/Grantees picklist should be used to ensure uniformity in searching (See Registration Practice Memo 01/2004). If a commonly used Granter/Grantee name is not available on the picklist, an e-mail should be sent to LRS Support to have the entry considered for inclusion.

• **Subjects**
Inclusion of short particulars of the subjects e.g. postal address, extent, street name and town or extent and name of farm and lands/estate.

• **Book and Folio/Fiche and Frame**
If available.
It should be noted that in the case of Burgh Register (B.R.) recorded deeds, only the register should be included, as the B.R. references do not identify a specific deed but relate to a number of deeds recorded across a period.

• **Daily Running Number**
If available.

● **Register**
The picklist should be used and care should be taken to identify the correct register. It should be noted that where a register is not included in the picklist e.g. G.R.S. (Glasgow) being required in the County of Dumbarton, an e-mail to LRS Support should be sent to have the relevant register added to the picklist.

NEW ENTRIES
When **creating a new deed index entry all fields must be completed** to eliminate the creation of duplicate entries. Care should be exercised when inputting all information but especially the Book and folio/Fiche and Frame, which assists in the unique identification of the Sasine Register recorded deeds.

Issues relating to the identification of Land Register registered deeds and dual registrations are currently under consideration.

VERSIONS
A significant number of versions for deeds index entries are created to amend formatting or minor typographical errors, resulting in a bulky and on some occasions an unusable Deed Index entry.

In the circumstances set out above a new version **must not** be created but the original versions amended. If such errors are identified, the Dedicated Officers in each Business Unit with Burden Amend and Research Area permissions should be contacted.

If a new version is required e.g. plans reference to be added to the preamble, or omitted text to be included, the newly created version should contain a brief note in the Element Note to advise the reason for the creation of the version. A picklist for the Element Note is available and should be where ever possible be used to ensure uniformity. It should be noted that the picklist is not exhaustive and that free text entries are permitted.

Please note that as part of the Feudal Abolition Title Updating Project new versions are being created by the Updating Team. In the first instance this is for the county of East Lothian. These versions can be identified by Element Notes and RA comments as they will include the terms “AFT/TCA” or “S56 applies”. If you come across any of these versions they must not be deleted or amended without referring to the Updating Team first.

Full details relating to the amendment and cloning of versions are contained in the LRS Support website.

Owner - Production
Author - Andy Smith

Procedure for Production System Amendments

To ensure all IRP system requirements are captured and that appropriate communication to affected users is carried out, it is vital to track and record any amendments made to current Production Systems.

Any small but essential amendments to current Production Systems must be requested using the Production System Amendment Form located on the Registration homepage of the Intranet.

Examples of small Production System amendments may include:

- LRS standard letters
- LRS notes
- LRS pick lists (except additions to the Granters/Grantees/Creditors picklist which should be sent to LRS Support to have the entry considered for inclusion)
- Returns/cancellation logs pick lists
- Addition of new Deed Codes.

The completed form should be passed via Team Leader/Manager to Anne Ward (room MBH101) for approval. Once approved, Business Change Team will co-ordinate the change process with BT and ensure appropriate publication of the change.

This process will ensure:

- All amendments are authorised appropriately
- Changes are logged and therefore costed appropriately
- Communication activities e.g. staff notices are carried out
- Changes are logged to feed into future IRP system requirements.

Owner - Business change Team / Registration Practice
Author - Lyn Allan / Greg Ewing
Publication Date - 30/06/10

2005

Deeds of Conditions – update to Registration Practice memo 01/2005

Registration Practice memo 01/2005 set out procedures to be followed by legal settlers when registering deeds submitted after 28 Nov 2004 which import the conditions in a Deed of Conditions registered before that date.

In particular, the instructions state that breakaway deeds which import conditions from either:

- a Deed of Conditions registered prior to 4 Apr 1979, or
- a Deed of Conditions registered after 4 Apr 1979 in which Section17 of the Land Registration (Scotland) Act 1979 has been disapplied

must use the following form of wording (as set out in Section 6 and Schedule 1 of the Title Conditions (Scotland) Act 2003) in order for the burdens to be made real:

"There are imported the terms of the title conditions specified in ....." e.g. Deed of Conditions by A, recorded G.R.S. (County) xxx (date).

We have now reviewed our practice in the light of a recent Legal Opinion and it has been decided that the Keeper will accept deeds which do not use this specific form of wording, providing that it is clear from the terms of the breakaway deed that the intention is to import the burdens from the Deed of Conditions and that the Deed of Conditions is itself clearly identified, as in the following example:

"always with and under the whole real burdens, conditions and others specified in the Deed of Conditions by A, dated xxx and registered in the Land Register of Scotland under Title Number xxx on xxx [date]".

Owner - Registration
Author - John King
Publication Date - 23/11/09

Dispositions a non domino by A to A

1. Introduction 1.1 In the case of The Board of Management of Aberdeen College v Stewart Watt Youngson and another [2005] CSOH 31 the Outer House decided that a disposition by a person in favour of himself in exactly the same status or category is invalid ex facie. It is not a foundation writ for the purposes of positive prescription in terms of section 1 of the Prescription and Limitation (Scotland) Act 1973.

1 .2 The result is that it is not possible to use section 1(1)(a) of the 1973 Act to establish a title that is exempt from challenge on the basis of a disposition recorded in the General Register of Sasines by a person in favour of himself. This is because section 1(2)(a) disapplies section 1(1) where the deed is invalid ex facie.

2. Impact on General Register of Sasines

2.1 From 25 February 2005 dispositions a non domino by a person in favour of himself (A to A) should no longer be accepted for recording in the General Register of Sasines.

2.2 In order to adopt a consistent approach in the General Register of Sasines and the Land Register, the Keeper will also reject an application for registration in the Land Register which is founded on a disposition a non domino by A to A.

2.3 Dispositions a non domino by a person to a third party (A to B) presented for recording in the General Register of Sasines or registration in the Land Register should continue to be considered in line with the Keeper's current a non domino policy on speculative or vexatious dispositions.

Owner - Legal Services
Author - Ian Davies
Publication Date - 04/05/05

Feudal Abolition – correcetive conveyancing by Local Authorities
Procedural update

A problem sometimes encountered when examining applications for registration of former Local Authority properties is that conveyancing inconsistencies come to light, particularly in relation to common rights, and these may affect registered subjects.

Procedures prior to the Appointed Day (28 Nov 2004):

Prior to the Appointed Day a procedure commonly used to resolve such inconsistencies where the subjects had been feued was for the agent to register a Disposition ad perpetuam remanentiam (Disp ad rem) whereby the vassal's interest in the subjects was returned to the superior, and the superiority and property interests merged. The superior then granted a new (corrected) feu of the subjects.

In the situation where the property interest was already registered in the Land Register, but the superiority interest remained in the Sasine Register, the property interest was absorbed into the superiority interest in the Sasine Register and the property title sheet was closed. A new title sheet was created for the subjects in the corrected conveyance.

Post-Appointed Day procedures

Since the Appointed Day this remedy is no longer available as deeds which deal with a feudal interest in land are no longer competent. The proprietor could dispone the subjects back to the Local Authority by means of an ordinary Disposition (as a DW), but the property would remain in the Land Register. A subsequent corrected conveyance by the Local Authority could be complicated as it may be necessary for it to be part TP and part FA, with parts remaining in the original title.

To simplify the process, it has been decided that Dispositions which convey subjects back to a Local Authority with the purpose of correcting inaccuracies in the original title will be treated in a similar way to pre-Appointed Day Disps ad rem.

Agents planning to follow this course of action should be advised to submit a covering letter explaining the purpose of their application

Instructions for legal settlers

Registered title: The Disposition returning the subjects to the Local Authority should be submitted with a Form 2 as a DW over the registered title. This title should be closed, and a note in the following form should be added to the Title Notes and Instructions explaining the reason for closure.

Title closed - subjects disponed to XXX (Local Authority), SS XXX (Search Sheet number) as corrective conveyancing required.

Sasines Register. A note in the following form should be added to the Local Authority Search Sheet from which the subjects were originally feued:

Disposition in favour of xxx (Council), of subjects xxx (postal address etc) referred to in Feu

Disposition to xxx, recorded xxx - From xxx (Title number)

This should be sent by e-mail to one of the Sasine Register TL1s.

New Title: The new Disposition containing the corrected description of the subjects should be submitted as an FR and will be allocated a new title number. A closing note should be added to the Local Authority Search Sheet as normal.

Owner - Registration
Author - Anne Ward
Publication Date - 10/06/05

Feudal Abolition – new rules for Deeds of Conditions

Procedures to be followed by settlers

The Title Conditions (Scotland) Act 2003 (the 2003 Act) introduced a prescribed form of wording to be used in deeds submitted after 28 November 2004 importing the terms of Deeds of Conditions recorded/registered prior to that date.
The following instructions set out procedures to be followed by settlers.

1. DIR is the breakaway deed and refers to a Deed of Conditions recorded before 4 April 1979

The deed must use the following form of wording except where the burdens have already been made real by being referred to in a prior transfer of the development:

"There are imported the terms of the title conditions specified in ....." e.g. Deed of Conditions by A, recorded G.R.S. (Aberdeen) 1 Mar 1975

If the correct form of wording is used or the burdens have been made real, the Deed of Conditions can be entered in D Section as normal.

No note is necessary after the Deed of Conditions entry.

If the correct form of wording is not used, the DIR should be returned to the agent with an L75 stating the following:

"The Disposition in favour of your clients attempts to import burdens contained in a Deed of Conditions, but does not comply with the terms of Section 6 and Schedule 1 of the Title Conditions (Scotland) Act 2003".

If the Agent chooses not to amend, the conditions have not been created as real burdens and the following note should be added after the D Section entry:

"The conditions in the foregoing Deed of Conditions have not been created as real burdens in respect of the subjects in this Title by being imported by reference in a subsequently registered deed in terms of section 6 of the Title Conditions (Scotland) Act 2003."

(Autotext Picklist: Not real TC Act 2003)

2. DIR is the breakaway deed and refers to a Deed of Conditions recorded or registered after 4 April 1979 - Section 17 of the Land Registration (Scotland) Act 1979 has been disapplied

The prescribed form of wording narrated in 1 above must be used in the deed.
If the correct form of wording is used, the following note should be added after the D Section entry:

"The foregoing Deed of Conditions contains a declaration that section 17 of the

Land Registration (Scotland) Act 1979 is not to apply. The conditions therein have been created as real burdens in respect of the subjects in this Title by being imported by reference in a subsequently registered deed in terms of section 6 of the Title Conditions (Scotland) Act 2003."

(Autotext Picklist: Post 79 made real TC Act 2003)

If the correct form of wording is not used, the DIR should be returned to the Agent with an L75 as in 1 above. If the Agent chooses not to amend, the conditions have not been created as real burdens and the following note should be added after the D Section entry:

"The foregoing Deed of Conditions contains a declaration that section 17 of the Land Registration (Scotland) Act 1979 is not to apply. The conditions therein have not been created as real burdens in respect of the subjects in this Title by being imported by reference in a subsequently registered deed in terms of section 6 of the Title Conditions (Scotland) Act 2003."

(Autotext Picklist: Post 79 not real TC Act 2003)

If the burdens have already been made real by being referred to in a prior transfer of the development the original note will stand.

3. DIR is the breakaway deed and refers to a Deed of Conditions recorded or registered after 4 April 1979 - Section 17 has not been disapplied

As the conditions were made real on registration of the Deed of Conditions the reference does not need to follow the prescribed style. No note is required.

4. DIR is not the breakaway deed

Where the terms of the Deed of Conditions have already been made real by reference in a recorded or registered deed, the reference in the DIR to the Deed of Conditions is not a statutory requirement and so does not need to be in the form prescribed by the 2003 Act.
No note is necessary after the Deed of Conditions entry.

The Legal Manual is currently being updated to take account of these instructions
Notes:

1. If any of the following circumstances apply, the application should be referred to the Dedicated Team:

- The application does not comply with any of the situations set out in the above instructions
- The DIR is the breakaway deed and refers to a Deed of Conditions recorded or registered after 28 November 2004
- The DIR creates new real burdens or servitudes in addition to those contained in the Deed of Conditions

2. If a Deed of Conditions falls within a Research Area and a new note is to be added, the Research Area amendment officer should be informed and a new version of the deed created.

If the subjects form part of a Parent Title and a new version of the Deed of Conditions is required, the Senior Caseworker responsible for first removals should be informed.

Owner - Registration
Author - Anne Ward
Publication Date - 10/06/05

Housing (Scotland) Act 2001 – Scottish Homes

The Housing (Scotland) Act 2001 (Transfer of Scottish Homes Property and Liabilities) Order 2005

By section 84 of the Housing (Scotland) Act 2001 the functions of Scottish Homes were transferred to the Scottish Ministers. Section 85(1) of the Act provided that the Scottish Ministers may make Orders to deal with the transfer to the Ministers or such other person as specified in the Order, the property and liabilities to which Scottish Homes is entitled or subject to.
The purpose of the Order is to complete the transfer of all outstanding assets and liabilities from Scottish Homes to Scottish Ministers. This includes all Minutes of Agreement for large scale voluntary transfers since December 2003, standard securities, and all debtors and creditors etc. This process is consistent with the intention set out in the Housing (Scotland) Act 2001, to wind up Scottish Homes.

From 1 October 2005 all rights and interests of Scottish Homes in, and all liabilities of Scottish Homes in relation to, any of the property and liabilities to which Scottish Homes was entitled or subject and in particular relation to -

(a) any property and interests in relation to a loan or security by an individual who was formerly a secure tenant, created in consequence of the exercise conferred on Scottish Homes under Section1(3)(b) of the Housing (Scotland) Act 1988; and

(b) the Minutes of Agreement specified in the Annexe hereto

are transferred to and vested in the Scottish Ministers in terms of an Order by the Scottish Ministers in exercise of the powers conferred by Section 85(1) and Section 109 (2) of the Housing (Scotland) Act 2001.

The Keeper's requirements

In the light of the 2005 Order, the Keeper has new requirements, set out below, in respect of recording practice.

The term "Scottish Ministers" refers to all Scottish Ministers as a group. They will not be individually identified by name.

Sasine Register

Deeds executed before 1 October 2005

Deeds should be granted by Scottish Homes. In the event that any deed executed in favour of Scottish Homes before 1 October 2005 but presented for recording after the date, Sasine Staff should be aware that the Disposition will have to be docqueted with reference to a Notice of Title on behalf of the Scottish Ministers. The application form (one form, but it must refer to the Disposition and the Notice of Title in Box 7) will be on behalf of the Scottish Ministers. The same procedure should also be followed if it is a Standard Security.

NB: A Notice of Title should narrate the Act and Order as links in title

Deeds executed on or after 1 October 2005

Deeds should be granted by the Scottish Ministers using the Act and Order as links in title. Likewise where a Standard Security is discharged by the Scottish Ministers the same links will be required.

ANNEX

1. Minute of Agreement between South Lanarkshire Council and Scottish Homes dated 14th and 20th October both 2004 and registered in the Books of Council and Session on 6th January in the year 2005.

2. Minute of Agreement between Cumbernauld Housing Partnership Limited and Scottish Homes dated 11th and 13th January both 2005 and registered in the Books of Council and Session on 19th January in the year 2005.

3. Minute of Agreement between Govan Housing Association Limited and Scottish Homes dated 29th November 2004 and registered in the Books of Council and Session on 1st December in the year 2004.

4. Minute of Agreement between Clyde Valley Housing Association Limited and Scottish Homes dated 12th and 13th May both 2005 and registered in the Books of Council and Session on 24th May in the year 2005.

5. Minute of Agreement between Shetland Islands Council and Scottish Homes dated 25th and 28th January both 2005 and registered in the Books of Council and Session on 15th April in the year 2005.

6. Minute of Agreement between North View Housing Association Limited and Scottish Homes dated 20th May 2005 and registered in the Books of Council and Session on 26th May in the year 2005.

7. Minute of Agreement between Home in Scotland Limited and Scottish Homes dated 22nd and 24th September both 2004 and registered in the Books of Council and Session on 6th October in the year 2004.

8. Minute of Agreement between Clydesdale Housing Association Limited and Scottish Homes dated 6th November 2003.

9. Minute of Agreement between Clyde Valley Housing Association Limited and Scottish Homes dated 26th September 2003.

10. Minute of Agreement between Sanctuary Scotland Housing Association Limited and Scottish Homes dated 27th June 2005.

11. Minute of Agreement between Comhairle nan Eilean Siar and Scottish Homes dated 29th April and 6th May both 2004.

Owner - Legal Services
Author - Ian Davis
Publication Date - 18/10/05

Leases of land subject to crofting tenure

The Keeper has been advised that the Scottish Ministers are raising an action to establish whether it is competent for a landlord of a crofting estate to grant a lease of the croft land/crofting common grazings land to a third party, subject to the crofting tenants' rights.
The question has arisen in connection with proposed windfarm developments in the Western Isles where concerns have been raised concerning the validity of such leases. It has been agreed that the Scottish Ministers will seek a determination from the Land Court on whether the leases in question are valid or void. It is also possible that legislative changes may follow on this matter.

We are aware of a number of such leases currently pending registration in the Land Register. No action is to be taken to complete registration of any lease by a crofting landlord of croft land/common grazings land until the legal position is finally determined. Any current application to register a lease of croft land/crofting common grazings should be placed in standover until further notice and details of the application should be emailed to Anne Bell, Legal Services.

New applications should be taken on and idented in the normal manner but then placed in standover with details being emailed to Anne Bell, Legal Services.

This instruction applies to all applications for registration of leases of land in any of the crofting counties (Argyll, Inverness, Ross and Cromarty, Sutherland, Caithness and Orkney and Shetland) which is subject to crofting tenure, whether or not related to windfarm development.

However this does not apply to leases which only confer mineral or sporting rights on the tenant. Such leases are permissible and can be registered in the usual manner.

Where there is any doubt, the matter should be referred to Legal Services.

Owner - Legal Services
Author - Anne Bell
Publication Date - 01/12/05

Local Authorities – Subscription of Improvement/repairs Grant Notices

The Keeper has, from time to time, received Notices of Payment of Improvement Grant or Repair Grant that have been executed by means of a facsimile signature. Previous guidance (Sasine Memo 97/2004) has been that the execution of certain Local Authority documents by means of a facsimile signature was permitted. However, this facility was repealed by schedule 14 of the Local Government (Scotland) Act 1994.

Therefore, deeds executed with any form of facsimile signature are invalidly executed and should be returned to the submitting agent. For the avoidance of doubt, such Notices require to be witnessed or sealed in compliance with the requirements of Section 6 and schedule 2 of the Requirements of Writing (Scotland) Act 1995.

Owner - Legal Services Improvement Grant Repair
Author - Ian Davis
Publication Date - 12/05/05

New Application Type Conditions Update (CU)

Staff will be aware that a new application type Conditions Update (CU), has been introduced to the LRS to allow the updating of registered titles.

This notice is to remind staff of the procedures set out Registration Practice Memo 2/2001 as to regarding the use of title versions on the LRS. In particular, staff creating applications affected by a CU application must follow the guidelines in the memo to ensure that updates to a title are brought forward correctly.

This will particularly affect Intake/DW staff and staff processing miscellaneous applications such as the issue of Office Copies and Substitute Certificates for the county of East Lothian in the first instance.

Reprinting of Land Certificates

Land Certificates are not being re-called or re-issued as part of the updating process. Staff **must** therefore remember to re-print all sections of the Title Sheet when an application is next received after a title has been updated. Staff will be able to identify updated titles from the Next Application Note that will appear in the Application Record in the following format:-

"There have been omitted or removed from the title sheet real burdens which, in the Keeper's view, were extinguished by virtue of s.17 of the Abolition of Feudal Tenure etc (Scotland) Act 2000 and s.49 of the Title Conditions (Scotland) Act 2003. Where the Keeper is satisfied that any of the real burdens in the title sheet subsist by virtue of the implied rights of enforcement constituted in said Act of 2003, a statement or statements to that effect have also been entered".

Enquiries

General enquiries from the Legal profession will be handled in the normal manner through Customer Services and can be referred to the Updating Team through Alan Paterson, Room 121, MBH, Ext. 3682.

Owner - Registration
Author - Anne Ward
Publication Date - 01/03/05

Notices Of Potential Liability for Costs

Sasine Memo

The Tenements (Scotland) Act 2004 (hereinafter referred to as 'the 2004 Act') came into force on 28th November 2004.

From a registration perspective, the major innovation is the introduction of a new form of deed that is capable of being recorded in the General Register of Sasines or registered in the Land Register of Scotland. This is the 'notice of potential liability for costs'. The 2004 Act makes provision for the registration of this notice in respect of a flat or flats in sections 12, 13 and Schedule 2 of the Act.

In addition to this, the 2004 Act amends section 10 of the Title Conditions (Scotland) Act 2003 ('the 2003 Act'), to make a similar provision allowing registration of notices against the title to burdened properties in terms of that Act. This is also called a notice of potential liability for costs. For registration purposes, the handling of the two types of notice is the same.

These instructions set out background information on the legislation and registration requirements and procedures.
2. 2004 Act notices - statutory material

2.1 Background

Section 11 of the 2004 Act provides rules for determining when a flat owner's liability arises to contribute to certain costs, such as those of common repairs or a communal insurance premium. Normally when a payment has become due, liability lies with the owner of the flat at the time and does not transmit to successor proprietors. Section 12 of the 2004 Act introduces a new rule. In addition to the present owner, an incoming owner may also become severally liable for these costs if a 'notice of potential liability for costs' is registered in the relevant property register 14 days before the date on which the new owner acquires the flat.

2.2 Form and Content of the notice of potential liability for costs (tenement)

The notice must be in, or as near, as may be in, the following form given in Schedule 2 to the 2004 Act: -

"NOTICE OF POTENTIAL LIABILITY FOR COSTS

This notice gives details of certain maintenance or work carried out or to be carried out in relation to the flat specified in the notice. The effect of the notice is that a person may, on becoming the owner of the flat, be liable by virtue of section 12(3) of the Tenements (Scotland) Act 2004 (asp 11) for any outstanding costs relating to the maintenance or work

Flat to which notice relates. [This must describe the flat in a way that is sufficient to identify it. Where the flat has a postal address, the description must include that address. Where the flat has been registered in the Land Register, the description must make reference to the Title Number of the flat or the larger subjects of which it forms part. Otherwise, the description should normally refer to and identify a deed recorded in a specified Division of the Register of Sasines.]

Description of the maintenance or work to which the notice relates. [The maintenance or work is to be described in general terms.]

Person giving notice. [The name and address of the person applying for registration of the notice ("the applicant") or the applicant's name and the name and address of the applicant's agent. Agency guidance will encourage agents to also enter here a statement that the applicant is either owner of a flat in the tenement or the manager of the tenement.]

Signature. [The notice must be signed by or on behalf of the applicant. As explained later, the execution must be self-proving.]

Date of signing."
2.3 Who may register a notice of potential liability for costs (tenement)?

An application for registration of a notice may only be made by (or on behalf of) one of the following:

· the owner of the flat against which the notice is to be registered
· the owner of any other flat in the tenement
· any manager of the tenement. 'Manager' is defined as 'any person appointed to manage the tenement.'

2.4 When notice of potential liability for costs (tenement) may be recorded or registered against more than one flat.

A notice of potential liability for costs (tenement) may be recorded or registered in relation to more than one flat so long as it is in respect of the same maintenance or work. However a single notice cannot narrate different work or maintenance applying to different flats.

2.5 How long does the effect of a notice of potential liability for costs last?

The notice will expire at the end of a period of 3 years beginning with the recording date, unless it is renewed by being registered again before the end of that period.

2.6 Is there a facility for discharging a notice of potential liability for costs?

The 2004 Act does not make any provision for the discharge of notices or clearing them from the register. Until further instruction is given, any enquiries regarding this or situations in which a purported discharge is presented should be referred to Legal

Services

3 Registration practicalities - 2004 Act notices

3.1 Form and content of notice

Notices must be in, or as nearly as may be in, the statutory form. Minor variations from the style in format and layout are therefore acceptable. However, a notice will be rejected if it does not include the minimum content required by the statute (and detailed at 2.2 above.)

3.2 Whether applicant entitled to seek registration

It must be ascertained that the person giving notice is owner of the particular flat, or of another flat in the tenement, or is manager of the tenement. The necessary confirmation may be given within the text entered in the 'person giving notice' section of the notice as discussed at section 2.2. If so, this may be accepted without further question.

However if no such confirmation is given, it must be obtained. It is acceptable to telephone the agent. Assuming confirmation of the position is given a note should be added to the Computerised Search Sheet - e.g. 'agent confirms person giving notice is owner of a flat in this tenement' or 'agent confirms party giving notice is manager of this tenement.' The Keeper simply requires the applicant or their agent to state that the applicant is owner of a flat in the tenement or manager of the tenement. Evidence such as deeds or minutes of meetings appointing factors is not required and need not be examined.

3.3 Requirement for self-proving execution

The notice must be signed by or on behalf of the applicant. In addition, in terms of section 6 of the Requirements of Writing (Scotland) Act 1995 it must be self-proving. This will normally mean that one witness should attest the subscription of the notice and that the name and address of that witness should be provided in the deed.

3.4 Recording Fee

A Miscellaneous Event fee of £25 is payable. A single fee of £25 applies to any one notice irrespective of the number of search sheets affected and even if the notice relates also to flats with titles registered in the Land Register.

3.5 Summary of key points

It should be checked

· that the property description gives a postal address as well as description by reference (or other sufficient description)
· that name and address (or agents' address) of the person giving notice has been

completed
· that the applicant is entitled to register (see section 3.2), and;
· that the requirement for self-proving execution is met

Note The Keeper will not check or pass any comment upon the description of the maintenance or work to which the notice relates.

3.6 Style of Minute

Notice of Potential Liability for Costs in terms of section 12 of the Tenements (Scotland) Act 2004 by [party] in respect of costs relating to maintenance or work described therein as [enter description of maintenance or work contained in the Notice*] in relation to [description of flat(s) to which Notice relates] dated [date of signing.]

* The description of work or maintenance will normally be short and, if so, should be narrated at length in the minute. However descriptions which extend to more than three or four sentences should not be reproduced at length. In that situation the minute should read ...in respect of costs of maintenance or works described at length therein ...

4. 2003 Act Notices

4.1 Background

The 2003 Act notice procedure applies to work or maintenance costs becoming payable in the context of the relationship between burdened and benefited proprietors in a real burden. It operates in the same was as 2004 Act type to make successor burdened proprietors severally liable

4.2 Form and content of notice of potential liability for costs (Title Conditions)
The notice must be in, as near as may be, the following form given in Schedule 1A to the 2003 Act: -

"NOTICE OF POTENTIAL LIABILITY FOR COSTS

This notice gives details of certain maintenance or work carried out in relation the property specified in the notice. The effect of the notice is that a person may, on becoming the owner of the property, be liable by virtue of section 10(2A) of the Title Conditions (Scotland) Act 2003 (asp 9) for any outstanding costs relating to the maintenance or work.

Property to which the notice relates: [This must describe the property in a way that is sufficient to identify it. Where the property has a postal address, the description must include that address. Where title to the property has been registered in the Land Register of Scotland, the description must refer to the title number of the property or of the larger subjects of which it forms part. Otherwise, the description should normally refer to and identify a deed recorded in a specified division of the

Register of Sasines.]
(see note 1 below)
Description of the maintenance or work to which notice relates:
[the maintenance or work is to be described in general terms]
Person giving notice: [The name and address of the person applying for registration of the notice ("the applicant") or the applicant's name and the name and address of the applicant's agent. Agency guidance will encourage agents to also enter here a statement that the applicant is either (1) owner of the burdened property, (2) owner of the benefited property or (3) a manager of either or both of benefitted and burdened properties]
Signature: [The notice must be signed by or on behalf of the applicant.]
Date of signing:"
4.3 Registration instructions

Whereas in the context of the 2004 Act type of notice, only an owner of a flat in the tenement or a manager of the tenement might seek registration, in the 2003 Act type registration is limited to: -

· The owner of the burdened property
· The owner of the benefited property
· A manager of either or both properties

The instruction given at section 3.2 applies subject to that modification.

The style of Minute is as follows: -

Notice of Potential Liability for Costs in terms of section 10 of the Title Conditions (Scotland) Act 2003 by [party] in respect of costs relating to maintenance or work described therein as [enter description of maintenance or work contained in the Notice] in relation to [description of property to which Notice relates] dated [date of signing.]

In respect of the instruction at section 3.5, burdened properties will not necessarily have a postal address.
In all other respects the instructions given in part 3 of this memo apply to 2003 Act type notices in the same way as they apply to 2004 Act type notices.

Owner - Registration
Author - Ian Davis
Publication Date - 01/04/05

Yorkshire Bank PLC – Clydesdale Bank PLC

With effect from 1 December 2004 the business of Yorkshire Bank PLC transfers to and vests in Clydesdale Bank PLC by virtue of (1) National Australia Group Europe Act 2001, and (2) Resolution by the Boards of Clydesdale Bank PLC and Yorkshire Bank PLC passed 16 November 2004.

2. In this Memo the following definitions are used:-

"the appointed date" means 1 December 2004
"business" includes property, rights and liabilities
"the Act" is the National Australia Group Europe Act 2001
"the Resolution" is Resolution by the Boards of Clydesdale Bank PLC and Yorkshire Bank PLC passed 16 November 2004.

THE KEEPER'S REQUIREMENTS

3. Deeds executed before the appointed date
Land Register

3.1 Any deed granted in favour of Yorkshire Bank PLC and executed before the appointed date but submitted as part of an application on or after that date will be acceptable if the following points are met:

(a) The Application Form specifies Clydesdale Bank PLC as the Applicant.

(b) The Resolution is included in the box on the Application Form headed 'Name of deed in respect of which registration is required'.

(c) The Application Form specifies on page one that application for registration is sought in respect of the deed in favour of Yorkshire Bank PLC and the Resolution.

(d) The Act and the Resolution are listed on the Form 4 submitted with the application. Copies of the documents themselves need not be submitted.

3.2 Discharges granted by Yorkshire Bank PLC must bear to have been executed before the appointed date; but there is no objection to recording or registering them after that date since no completion of title is involved.

4. Deeds executed on or after the appointed date

4.1 Such deeds must be granted by or be in favour of Clydesdale Bank PLC. Where Clydesdale Bank PLC grants a Discharge of a registered or recorded Standard Security, which was in the name of Yorkshire Bank PLC, the Act and Resolution should be listed on the Form 4 and referred to in a deduction of title if appropriate.

5. Settlers should note that the Act and a certified copy of the Resolution have been examined and the Resolution has been added to the Common Links Index. No requisitioning or further examination of these documents is therefore necessary.

Owner - Legal Services
Author - Ian Davis
Publication Date - 02/06/05

Yorkshire Bank PLC – Clydesdale Bank PLC Sasine Memo

With effect from 1 December 2004 the business of Yorkshire Bank PLC transfers to and vests in Clydesdale Bank PLC by virtue of (1) National Australia Group Europe Act 2001, and (2) Resolution by the Boards of Clydesdale Bank PLC and Yorkshire Bank PLC passed 16 November 2004.
2. In this Memo the following definitions are used:-

"the appointed date" means 1 December 2004
"business" includes property, rights and liabilities
"the Act" is the National Australia Group Europe Act 2001
"the Resolution" is Resolution by the Boards of Clydesdale Bank PLC and Yorkshire Bank PLC passed 16 November 2004.

THE KEEPER'S REQUIREMENTS

Sasine Register

3. Deeds executed before the appointed date

3.1 Standard Securities granted in favour of Yorkshire Bank PLC but not recorded before the appointed date should be either (a) re-engrossed in favour of Clydesdale Bank PLC or (b) docqueted with reference to a Notice of Title on behalf of the latter and the two deeds recorded together, with the application for recording of the Notice of Title including reference to the Standard Security.

3.2 Discharges granted by Yorkshire Bank PLC must bear to have been executed before the appointed date; but there is no objection to recording them after that date since no completion of title is involved.

4. Deeds executed on or after the appointed date

4.1 Such deeds must be granted by or be in favour of Clydesdale Bank PLC. Where Clydesdale Bank PLC grants a Discharge of a Standard Security which was in the name of Yorkshire Bank PLC the deed should deduce title from Yorkshire Bank PLC and refer to the Act and Resolution.

Owner - Legal Services
Author - Ian Davis
Publication Date - 02/06/05

2004

Register of Community Interests in Land

1. Introduction

1.1 On 14 June 2004, the Register of Community Interests ("RCIL") will come into existence, by virtue of Part 2 of the Land Reform (Scotland) Act 2003 ("the Act").

1.2 The Act creates the rural community right to buy. This is a first option to purchase rural land, when the landowner decides to dispose of his or her interest. Only a community body (which is a company limited by guarantee) can exercise the right to buy. In order to do so the community body must have pre-registered their interest in particular land in the RCIL.

1.3 The community body must firstly apply to Scottish Ministers. When Ministers receive an application they will instruct the Keeper to make an opening entry on the RCIL, as a pending application. A consultation exercise then takes place with the landowner and any heritable creditor. If following this consultation Ministers approve the application, the entry will become a registered entry in the RCIL.

1.4 Registrations in RCIL are expected to be relatively uncommon.

2. Effect of registration in RCIL

Where there is a pending or a registered entry, the landowner is prohibited from transferring the land, or from taking any action with a view to transferring the land, without first giving the community body the opportunity to purchase. A transfer in breach of this prohibition is void unless it is an exempt transfer.

3. Impact on General Register of Sasines

3.1 There is no requirement to consider or ascertain if a particular deed submitted for recording is affected by an entry in RCIL.

3.2 Dispositions of land affected by an entry in RCIL may contain a declaration that the particular transfer is exempt by virtue of the provisions of the Act. Such declarations should not be referred to in the Minute nor noted on the Search Sheet.

Owner - Legal Services
Author - Ian Davis
Publication Date - 10/06/04

Local Authorities – Subscription of Improvement / Repairs Grant Notices Update

In terms of Section 193 of the Local Government (Scotland) Act 1973 any Notice of Improvement Grant or Repair Grant is validly executed if it bears the signature or facsimile signature of the proper officer. The deed also requires to be attested by one witness or sealed with the seal of the Local Authority before being accepted for recording in the Sasine Register.
Any Notices which are not witnessed or sealed should be returned to the agent with the following explanation:

"The deed either requires to be attested by one witness, or sealed with the common seal of the authority in compliance with the requirements of Section 6 and schedule 2 (Local Authorities) of the Requirements of Writing (Scotland) Act 1995".

Owner - Legal Services
Author - Ian Davis
Publication Date - 29/01/04

Title Conditions (Scotland) Act 2003
Compulsory Acquisition – real burdens and servitudes

Sections 106 (in respect of compulsory acquisition) and 107 (in respect of acquisition by agreement) of the Title Conditions (Scotland) Act 2003 came into force on 1 November 2003. They are intended to clarify the law in respect of the extinction of burdens, and servitudes, following on compulsory acquisition and also in the case of acquisition by agreement. In addition provisions are made for burdens to be saved or varied on such acquisition, provided that certain procedures are followed.

The acquiring authority is now required to notify, in addition to owners, lessees and occupiers of a property, those parties with rights to enforce real burdens which would be extinguished or varied as a result of the compulsory acquisition.
Section 106 provides that if land is acquired compulsorily following on a compulsory purchase order then, except as provided otherwise, any real burden or servitude over the land shall be extinguished and any development management scheme shall be disapplied. (Provisions for such schemes are made in the 2003 Act but are not yet in force and such schemes cannot yet be created or applied to land). Section 107 makes similar provisions in respect of acquisition by agreement.

Recording of Compulsory Purchase Order
The main significance of these provisions will lie in the general vesting declaration or conveyance following on the compulsory purchase order (or indeed in a conveyance by agreement) which will induce first registration in the Land Register. However, you may encounter provisions in the compulsory purchase order for preserving or varying the burdens and/or the inclusion of benefited proprietors or the holders of personal real burdens in the schedule along with proprietors of the subjects being acquired. Such parties should be included in the minute.
The new provisions will apply to compulsory purchase orders where notices are served after 1 November 2003. Therefore if notices were served before that date, the compulsory purchase order would still be under the old regime.

Recording of Undertakings
Sections 109 and 110 of the Act (which amend the First Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 and Schedule 5 to the Forestry Act 1967 respectively) introduce a new procedure which provides that the acquiring authority may grant a person with a right to enforce a real burden, who has made an objection, with a written undertaking that the title condition in question will not be varied or extinguished in respect of the enforcement rights of that person, or that the development management scheme will not be disapplied.

Irrespective of the section under which a particular undertaking is made, and in addition to the usual registration requirements (such as self-proving execution), they must :

- identify the benefited property (if any) and burdened property (or the development to which the development management scheme applies)

- identify the order
- set out the manner in which the conveyance will fulfil the undertaking
  Note that there will not be a benefited property in the case of a personal real burden. The undertaking must be recorded against the property that is subject to the CPO, that is the burdened property.
  The effect of registering such an undertaking against the burdened property will be that the subsequent conveyance will be subject to the terms of the undertaking, irrespective of the terms of the conveyance.

Suggested minute for undertaking
There is no statutory style for these written undertakings, and the format may vary. The minute set out below is merely a suggestion.

Undertaking in terms of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 [or as appropriate Forestry Act 1967] by [enter acquiring authority and designation] in favour of [enter benefited proprietor's details], as proprietor of [enter description of benefited property] undertaking that, in respect of the compulsory purchase of [enter details of burdened property, property subject to the acquisition procedure] in terms of [enter details of CPO], that real burden/s contained in [enter details of burden and writ referred to] shall not be varied or extinguished, and that the conveyance in implement of said order shall [enter details of how conveyance will implement undertaking as defined therein]. Dated etc

Owner - Legal Services
Author - Ian Davies
Publication Date - 08/01/04

Woolwich PLC – Barclays PLC

1. With effect from 1 December 2003 the business of Woolwich PLC transfers to and vests in Barclays Bank PLC by virtue of (1) Barclays Group Reorganisation Act 2002, and (2) Resolution by the Board of Barclays Bank passed 29 July 2003.

2. In this notice the following definitions are used:-
"the appointed date" means 1 December 2003
"business" includes property, rights and liabilities
"the Act" is the Barclays Group Reorganisation Act 2002
"the Resolution" is Resolution by the Board of Barclays Bank passed 29 July 2003.

THE KEEPER'S REQUIREMENTS
Land Register
3. Deeds executed before the appointed date
3.1 Any deed granted in favour of Woolwich PLC and executed before the appointed date but submitted as part of an application on or after that date will be acceptable if the following points are met:-
(a) The Application Form specifies Barclays Bank PLC as the Applicant.
(b) The Resolution is included in the box on the Application Form headed 'Name of deed in respect of which registration is required.'
(c) The Application Form specifies on page one that application for registration is sought in respect of the deed in favour of Woolwich PLC and the Resolution.
(d) The Act and the Resolution are listed on the Form 4 submitted with the application. Copies of the documents themselves need not be submitted.
3.2 Discharges granted by Woolwich PLC must bear to have been executed before the appointed date; but there is no objection to recording or registering them after that date since no infeftment is involved.

4. Deeds executed on or after the appointed date
4.1 Such deeds must be granted by or be in favour of Barclays Bank PLC. Where Barclays Bank PLC grants a Discharge of a registered or recorded Standard Security, which was in the name of the Woolwich PLC, the Act and Resolution should be listed on the Form 4 and referred to in a deduction of title if appropriate.
5. Settlers should note that the Act and a certified copy of the Resolution have been examined and the Resolution has been added to the Common Links Index. No requisitioning or further examination of these documents is therefore necessary.

Owner - Legal Services
Author - Ian Davis
Publication Date - 01/01/04

Woolwich PLC – Barclays Bank PLC – Sasine Memo

1. With effect from 1 December 2003 the business of Woolwich PLC transfers to and vests in Barclays Bank PLC by virtue of (1) Barclays Group Reorganisation Act 2002, and (2) Resolution by the Board of Barclays Bank passed 29 July 2003.

2 . In this Memo the following definitions are used:-
"the appointed date" means 1 December 2003
"business" includes property, rights and liabilities
"the Act" is the Barclays Group Reorganisation Act 2002
"the Resolution" is Resolution by the Board of Barclays Bank passed 29 July 2003.

THE KEEPER'S REQUIREMENTS
Sasine Register
3. Deeds executed before the appointed date
3.1 Standard Securities granted in favour of Woolwich PLC but not recorded before the appointed date should be either (a) re-engrossed in favour of Barclays Bank PLC or (b) docqueted with reference to a Notice of Title on behalf of the latter and the two deeds recorded together, with the Warrant on the Notice of Title incorporating reference to the Standard Security (see s.10(4) of the Conveyancing (Scotland) Act 1924).
3.2 Discharges granted by Woolwich PLC must bear to have been executed before the appointed date; but there is no objection to recording them after that date since no infeftment is involved.

4. Deeds executed on or after the appointed date
4.1 Such deeds must be granted by or be in favour of Barclays Bank PLC. Where Barclays Bank PLC grants a Discharge of a Standard Security which was in the name of Woolwich PLC the deed should deduce title from Woolwich PLC and refer to the Act and Resolution.

Owner - Legal Services
Author - Ian Davis
Publication Date - 19/04/04

2003

Abolition of Feudal Tenure etc (Scotland) Act 2000
Savings notices etc

The Abolition of Feudal Tenure etc. (Scotland) Act 2000 and the Title Conditions (Scotland) Act 2003 are both now on the statute books. The main provisions of each Act will not however come into force until 28 November 2004 ('the Appointed Day'). On that date the feudal system of land tenure will be abolished and a new regime for the creation, variation and extinction of burdens will be introduced. There is thus a close interaction between the two Acts.

Part 4 of the Abolition of Feudal Tenure etc (Scotland) Act 2000 will come into force on 1 November 2003 (which is known as the First Appointed Day). From this First Appointed Day up to and including 27 November 2004, superiors can register various savings notices and other deeds in order to preserve or convert feudal burdens which will otherwise be extinguished on the Appointed Day. For example, superiors will be able to nominate neighbouring land of which they are proprietor of the dominium utile and from the appointed day next year, that land will be the benefited property, i.e. the proprietor of that nominated land will have the right to enforce the appropriate burdens. In some cases the superior can convert a feudal real burden into a personal real burden, that is a burden which is enforceable by a person in his or own right and not in the capacity as a proprietor of land.
It is to be noted that these new deed types (**except** for the Notices reserving right to compensation in respect of extinction of development value burden - **see below**) have no effect until 28 November 2004.

Meantime, given that these notices will only be registrable for a limited period, a small dedicated team will deal with the initial registration of these. Therefore any application to either the Land Register or the Register of Sasines relating to any such notice or agreement should be referred immediately in accordance with the forthcoming practice memo.
The 2000 Act makes provision for the following types of Notice etc:

Notice prospectively nominating dominant tenement (section18) - whereby the superior, subject to certain conditions, can nominate other land owned by him/her as the dominant tenement or benefited property.

Notice prospectively converting real burden into personal pre-emption (or redemption) burden (section18A) - whereby a superior's right in a pre-emption will be converted to a new type of real burden known as a personal real burden, i.e. the enforcement rights will not attach to any land.

Notice prospectively converting real burden into economic development burden(section 18B) - whereby the right of a local authority or the Scottish Ministers in a real burden imposed for the purpose of promoting economic development will be converted into a personal real burden

Notice prospectively converting real burden into health care burden (section 18C) - whereby the right of a National Health Service trust or the Scottish Ministers in a real burden imposed for the purpose of promoting the provision of facilities for health care will be converted into a personal real burden.
(section 19) - whereby the superior and the owner of the dominium utile agree to the reallotment of a real burden.

Notice intimating application to Lands Tribunal under section 20 (1) - where the superior fails to reach agreement with the owner of the dominium utile, and does not meet the conditions for a s18 Notice, he/he may apply to the Lands Tribunal and must as part of that process register this notice.

Lands Tribunal Order realloting real burden (section 20)- if the Lands Tribunal is satisfied there would be material detriment to the applicant's ownership should the burden be extinguished, an order will be granted reallotting the burden on the prospective dominant tenement.

Notice preserving right to enforce conservation burden (section 27) - whereby the right of a conservation body or the Scottish Ministers to a burden imposed for the purpose of preserving or protecting architectural, historical or other special characteristics of the land will be preserved as a personal real burden.

Notice nominating conservation body or Scottish Ministers to have title to enforce real burden (section 27A) - whereby a superior having right therein may nominate a conservation body or the Scottish Ministers to have right to enforce a conservation type burden.

Notice reserving right to compensation in respect of extinction of development value burden (section 33) - where land is feued subject to a real burden reserving to the superior the benefit of any development value of the land, the superior can reserve the right to claim compensation in respect of a later breach of real burden extinguished on the appointed day next year. Note that, unlike the others which take effect from the Appointed Day, these notices take immediate effect on registration. They have the immediate effect of severing the right from the superiority. Should the superiority be sold, the reserved right in terms of the Notice would have to be expressly assigned in the conveyance transferring the superiority interest for the new superior to be the owner of the reserved right. In theory these reserved rights can be assigned or discharged by registration of the appropriate deed against the property currently subject to the burden. In the case of a transfer of the superior's interest which contains in gremio an assignation of the right to compensation, referral should be made through the normal channels to SLG.

Notice prospectively converting sporting rights into tenement in land (section 65A) - where a dominium utile is subject to sporting rights enforceable by the superior, the superior may register a notice preserving those rights by converting them into a tenement in land.

Should you encounter any such notice it should be referred immediately to the dedicated team as mentioned in the relevant practice memo.

Owner - Legal Services
Author - Ian Davies
Publication Date - 24/10/03

Case Movement and MIS
Update

Registration Practice Memo No 5/2002 set out some basic rules on the movement of casework and in particular the use of the refer and recall capabilities on the LRS. Following the issuing of that Memo there was a marked improvement in the way cases were being moved. However, as with most systems and procedures, occasional rogue practices creep in which need to be looked at and possibly corrected. Currently, in case movement, there are three instances involving the use of referral where incorrect procedures are causing problems.

The first instance involves cases being put into standover while on referral. Referral effectively allows casework to be moved within and between departments without altering the status of a case. What has been happening, however, is that some officers who have the cases on referral have been putting them into standover while working on the case, rather than releasing the case back to the officer who referred it. The net result of this is that the overnight MIS extract, which takes statistics from the LRS, fails because it treats any case on referral being put into standover as an illegal movement. Good practice would suggest that the officer who referred the case should be the owner of the case and if the answer or solution to any referral is going to take some time to deliver, the case should go back to the owner who can then put it into standover.

The second instance involves cases being released back to the person who referred them after a referral and are then recalled by the referee. Again this breaks the referral loop with the net result that the overnight MIS extract again fails because it treats the recall event on a referral return as an illegal movement.

The third instance involves the use of the support facility for referral cases. Referral is set up to allow cases to be sent between departments and individuals within departments. Although the support officer will normally act as the go-between for the case, it was never intended that he/she should take the case on. It may well be that in some areas cases on referral are being placed on shelves rather than going to individuals as was intended. However, irrespective of local practices, any case referred from plans department to the legal department and vice versa or to individuals within departments should never be taken on by support staff before being put on a shelf or passed to an individual. Support staff taking the case on effectively break the referral loop with a knock on affect on the MIS status. It also means that the case when released back does not go to the individual who referred it.

To summarise, cases on referral should never be placed into standover or taken on by support staff unless the support officer can deal with the referral.

Owner - Regsitration
Author - David Cant
Publication Date - 13/03/03

Limited Liability Partnerships Act 2000
Standard Securities granted by LLPs

Further to Sasine Memo 87, it should be noted that standard securities granted by limited liability partnerships do require to be registered in the Register of Charges maintained by the Companies Registrar within the usual period. Therefore there is good reason, in accordance with the Agency's policy, to confirm the date of registration to the Agent.

The final sentence of para 2.1 of Sasine Memo 87 should therefore be amended accordingly.

Owner - Legal Services
Author - Ian Davis
Publication Date - 13/11/03

Udal tenure
Introduction

Orkney and Shetland are among the counties which become Land Register operational areas on 1 April 2003. Udal law is relevant to titles to land in Orkney and Shetland. This memo explains the background to udal law and the practical implications for Sasine Register staff.

Background

Udal tenure derives from the Norse legal system which applied in Orkney and Shetland when these islands were part of the Norwegian kingdom centuries ago. In principle, udal law still applies, insofar as it has not been superseded by United Kingdom or Scots law. In practice, udal law now applies only to certain aspects of land tenure, as described in the following paragraph.

The nature of udal tenure is that it is allodial. A udal landowner holds an absolute title, free of any interest of the Crown or any intervening superior. Udal law had no concept of feudal grant or feudal relationship, and probably did not include a concept of title burdens. Under udal law, there is no requirement for written title deeds; a good title can be obtained by possession and succession. However, only a very small proportion of land in the islands is now held without written and recorded titles.

Types of titles in Orkney and Shetland

Sasine-recorded titles to land in Orkney and Shetland fall into one of four categories:
1. Unwritten udal titles. Such titles are extremely rare.

2. Recorded udal titles. This is the most common form of title in Orkney and Shetland. Where titles have been recorded in the Sasine Register, these use the same form of deeds as are found in mainland Scotland. Recording a title does not, however, convert the tenure from udal to feudal; it merely provides evidence of the existence of the udal title, and gives the benefit of prescription under section 1 of the Prescription and Limitation (Scotland) Act 1973.

3. Titles deriving from the Crown. Some udal proprietors conveyed their lands back to the Crown in exchange for a Crown grant of feudal title. The Sasine titles should be regarded as feudal rather than udal.

4. Quasi-feudal titles. There are many instances of 'feudal' grants without evidence that the granter's title derives from the Crown. For example, the Islands Councils have routinely granted Feu Dispositions on the sale of former Council houses under the 'right to buy' legislation. It is uncertain whether such actions genuinely create a feudal relationship.
It will not always be apparent - even after tracing the history of a particular title through the search sheets - which of the above categories applies. The presumption is that the title is udal unless it derives from a Crown grant.

Transfers of udal title
In terms of section 2(1)(a)(v) of the Land Registration (Scotland) Act 1979, first registration is induced by any transfer on or after 1 April 2003 ('the commencement date') of an interest held under udal tenure. Under section 3(3) of the Act, on or after the commencement date an incoming udal proprietor can only obtain a real right by registration in the Land Register.
It should be noted that, for udal titles, first registration is not limited to transfers for valuable consideration; instead, all transfers of udal title (including gratuitous transfers, e.g. for 'love, favour and affection') will induce first registration. In terms of section 8 of the 1979 Act, the Keeper is bound to reject any deed presented to the Sasine Register where the transaction induces first registration.
Practical implications for Sasine Register staff
The implications for Sasine Register staff handling deeds relating to properties in Orkney and Shetland are as follows:
1. For any deed transferring title which is presented to the Sasine Register on or after the commencement date, the first question is whether the transfer 'occurred' before or after that date. If the deed of conveyance (e.g. disposition) was delivered to the grantee before the commencement date, then the deed may be recorded in Sasines. If the deed was delivered to the grantee on or after the commencement date, then the points below should be taken into account.

2. A conveyance delivered to the grantee on or after the commencement date cannot be accepted in the Sasine Register, unless it is clear from the search sheets or the agent gives an assurance that the interest is feudal (i.e. deriving from a Crown grant). The fact that a 'feu disposition' of the property was granted in the past does not necessarily mean that the interest derives ultimately from the Crown, as explained under Quasi-feudal titles above.
3. Where there is doubt as to the nature of the interest, the applicant should be encouraged to apply for registration in the Land Register.
It is stressed that these instructions apply only to transfers of title, not to other deeds such as standard securities where the granter already holds a recorded title. It is also stressed that these instructions apply only to Orkney and Shetland, not to the other counties which become operational areas on 1 April 2003.

Senior Legal Group (ext. 5184) will advise on any udal law questions relating to deeds presented for recording in Sasines.

Owner - Legal Services
Author - Ian Davis
Publication Date - 01/04/03

Title Conditions (Scotland) Act 2003
Conservation Burdens, Maritime Burdens, Economic Development Burdens and Health Care Burdens

1 Introduction

The main provisions of the Title Conditions (Scotland) Act 2003 will come into force on 28 November 2004 ('the Appointed Day'). On that date a new regime for the creation, variation and extinction of burdens will be introduced. The Act introduces new types of burdens and introduces new terminology. Generally when creating new burdens, the constitutive deed will have to identify both the burdened property and also the benefited property, that is the land to which the right of enforcement attaches. However, the Act also introduces a new type of burden called a personal real burden, which will not attach to a benefited property. The party who has right to the burden, or title condition, is known as the holder of the burden. These new personal real burdens can be created from 1 November 2003.

Part 3 (except section 43) of the Title Condition (Scotland) Act 2003 comes into force on 1 November 2003. This part of the Act makes provision for the creation of a new class of burden called personal real burdens: these are conservation burdens, maritime burdens, economic development burdens and health care burdens. See below for details of each type. (There are provisions for other types of personal real burden to be created, but these are not yet in force). Personal real burdens do not require a benefited property, but they cannot be created in favour of any person. A conservation burden may only be created in favour of a conservation body or the Scottish Ministers, a maritime burden may only be created in favour of the Crown, an economic development burden may only be created in favour of a local authority or the Scottish Ministers and a health care burden may only be created in favour of a National Health Service trust or the Scottish Ministers.

The Act specifies that a standard security cannot be created over a personal real burden. The right to a conservation burden may be assigned, but a right to any of the others (maritime burden, economic development burden, or health care burden) may not be assigned.

2 Conservation burdens

In terms of section 38 of the Act it shall be competent from 1 November 2003 to create a real burden in favour of a conservation body, or of the Scottish Ministers, for the purpose of preserving, or protecting, for the benefit of the public (a) the architectural or historical characteristics of any land or (b) any other special characteristics of any land (including flora, fauna or general appearance of the land), and any such burden shall be known as a conservation burden. For the list of conservation bodies prescribed by the Scottish Ministers see below.
A conservation burden may be created by anyone (being the owner of the burdened property) but may be created only in favour of a conservation body or the Scottish Ministers. If the conservation burden is to be created other than by the conservation body or the Scottish Ministers, the consent of the conservation body or the Scottish Ministers must be obtained before the constitutive deed is registered. The Keeper

would prefer that the relevant consent is contained in gremio of the deed but cannot insist on this.

It shall not be competent to grant a standard security over a conservation burden. However, Section 39 of the Act provides that the right to a conservation burden may be assigned or otherwise transferred to any conservation body or to the Scottish Ministers, and any such assignation takes effect on registration.

A conservation burden is enforceable by the holder of the burden irrespective of whether the holder, the body having right thereto, has completed title to the burden. The holder of a conservation burden may complete title thereto by recording a Notice of Title, or may grant a deed assigning the right to the burden or a deed discharging the burden (in whole or in part) provided the holder deduces title to the burden.

The Conservation Bodies
The Scottish Ministers have prescribed the following bodies as Conservation Bodies for the purposes of the 2003 Act.

I Local Authorities
All of the local authorities as currently named are included.

II Other Bodies
Castles of Scotland Preservation Trust
Edinburgh World Heritage Trust
Glasgow Building Preservation Trust
Highland Buildings Preservation Trust
Plantlife - The Wild-Plant Conservation Charity
Scottish Natural Heritage
Solway Heritage
St Vincent Crescent Preservation Trust
Strathclyde Building Preservation Trust
The John Muir Trust
The National Trust for Scotland for Places of Historic Interest and Natural Beauty
The Royal Society for the Protection of Birds
The Trustees of The Landmark Trust
The Trustees of the New Lanark Conservation Trust
The Woodland Trust

3 Maritime burdens
In terms of section 44 of the Act it shall be competent from 1 November 2003 to create a real burden over the sea bed or foreshore in favour of the Crown for the benefit of the public. This shall be known as a maritime burden. It is only competent to create a maritime burden in favour of the Crown, though conservation burdens could be created over foreshore sold by bodies other than the Crown.
The right of the Crown to a maritime burden may not be assigned or otherwise transferred.

4 Economic development burdens
In terms of section 45 of the Act it shall be competent from 1 November 2003 to create a real burden in favour of a local authority, or of the Scottish Ministers, for the purpose of promoting economic development. This new category of personal real burden shall be known as an economic development burden.
These burdens may be created by anyone (being the owner of the burdened property) but can only be in favour of a local authority or the Scottish Ministers. If the economic development burden is to be created other than by the local authority or the Scottish Ministers, the consent of that body or the Scottish Ministers must be obtained before the constitutive deed is registered. The Keeper would prefer that the relevant consent is contained in gremio of the deed, but cannot insist on this.

An economic development burden may comprise an obligation to pay a sum of money (the sum or the method of determining it being specified in the deed) to the local authority or the Scottish Ministers, for example where the value of the land may increase. It is not competent to create an obligation to make periodical payments.

It shall not be competent to grant a standard security over or assign the right to an economic development burden.

An economic development burden is enforceable by the holder of the burden irrespective of whether the holder, the body having right thereto, has completed title to the burden. The holder of the burden may complete title thereto by recording a Notice of Title, or may grant a deed discharging the burden (in whole or in part) provided the holder deduces title to the burden.

5 Health care burdens
In terms of section 46 of the Act it shall be competent from 1 November 2003 to create a real burden in favour of a National Health Service trust, or of the Scottish Ministers, for the purpose of promoting the provision of facilities for health care. These burdens may be created by anyone (being the owner of the burdened property) but can only be in favour of a National Health Service trust or the Scottish Ministers. If the health care burden is to be created other than by the NHS trust or the Scottish Ministers, the consent of that body or the Scottish Ministers must be obtained before the constitutive deed is registered. The Keeper would prefer that the relevant consent is contained in gremio of the deed, but cannot insist on this.

A health care burden can be created where land is being sold, but it is intended that it should continue to be used for health care purposes, or where a developer is to build accommodation for hospital staff. A health care burden may comprise an obligation to pay a sum of money (the sum or the method of determining it being specified in the deed) to the trust or the Scottish Ministers, for example where the value of the land may increase because it is developed in a different manner. It is not competent to create an obligation to make periodical payments.

It shall not be competent to grant a standard security over or assign the right to a health care burden.

A health care burden is enforceable by the holder of the burden irrespective of whether the holder, the body having right thereto, has completed title to the burden. The holder of the burden may complete title thereto by recording a Notice of Title, or may grant a deed discharging the burden (in whole or in part) provided the holder deduces title to the burden.

Owner - Legal Services
Author - Ian Davis
Publication Date - 24/10/03

2002

Adults with Incapacity (Scotland) Act 2000 – Part 6
Guardianship and Intervention – Position from 1 Apr 2002

1 Introduction

Part 6 of the Adults with Incapacity (Scotland) Act 2000 (hereinafter referred to as "the Act") came into force on 1 Apr 2002. This part of the Act, amongst other matters, makes provision for guardianship and intervention orders, two new forms of court appointment to replace the position of curator bonis. The Sheriff will pronounce an intervention order where only a single transaction with the incapable adult's property requires to be carried out. If there is a need for long term, ongoing management of the adult's affairs, the Sheriff will appoint a guardian to act for the adult. This memo considers those orders and deeds following on from such orders, so far as these require to be recorded in the Sasine Register.

2 General points

2.1 A right of management and not of property, is transferred

Neither type of order transfers the ownership of the adult's property to the guardian or authorised person. The adult remains owner. The interlocutor transfers only a personal right of management to the guardian or authorised person, limited to the extent specified by the Sheriff.

2.2 Interlocutor may fall to be recorded contemporaneously with the adult's title

The interlocutor cannot be recorded in advance of the adult's real right to specific subjects. Two main situations arise where the interlocutor should be recorded at the same time as the adult's real right:

- Where the authorised person or guardian has been authorised to acquire heritable property for the adult. The interlocutor should be recorded along with the disposition in favour of the adult
- Where the adult is an uninfeft proprietor. Where the title of the previously infeft proprietor is recorded in the Register of Sasines, the interlocutor should be recorded, along with a Notice of Title in the adult's favour.

2.3 Certification of copy interlocutors

Unless the intervention order or guardianship order is an extract decree, that is, one authenticated by the court, the Keeper requires that the copy interlocutor to be recorded must be certified a true copy. The Keeper will accept certification by a solicitor, clerk of court or a member of the Public Guardian's staff. The acceptance of certified copy interlocutors in the case of guardianship and intervention orders does not alter the Keeper's general policy toward certified copy deeds being recorded in the Register of Sasines. Except as specified in this Memo, certified copy deeds are not acceptable for recording.

2.4 Interlocutors do not induce first registration

The grant of an intervention or guardianship order in relation to any given heritable

subjects is not an event which induces first registration of those subjects in the Land Register (s2 (1) of the Land Registration (Scotland) Act 1979).

3 Recording of Guardianship and Intervention Orders in the Sasine Register

The Act requires and authorises the registration of orders, which vest in an authorised person or guardian a right to deal with, convey or manage an interest in heritable property. The interest of the adult must itself be recorded or capable of being recorded (see ss 56(1) and 61(1) of the Act). In the Keeper's interpretation, the requirement to record is for interlocutors empowering dealings, conveyances or management activities of authorised persons or guardians where these alter the real or quasi real heritable rights of the adult.

It is not possible to provide an exhaustive list of interlocutors, which should be recorded, but some examples follow.

3.1 Examples of orders which should be recorded

- An order permitting the authorised person or guardian to acquire or dispose of heritable subjects; to grant, assign or renounce a long lease; to grant or vary a heritable security; to renounce or vary a proper liferent
- An order permitting the authorised person or guardian to renounce, waive or vary a recorded title condition
- An order permitting a guardian or authorised person to enter into an agreement creating real or quasi real rights or conditions affecting the adult's heritable property, such as an agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 or a boundary agreement in terms of Section 19 of the Land Registration (Scotland) Act 1979

3.2 Orders which are not capable of recording

- An order that permits the authorised person or guardian to renounce or assign the adult's right as lessee in a short lease (e.g. a council house tenancy). The adult's right is not capable of being recorded. Therefore, there would be no value in recording the interlocutor.
- An order authorising the authorised person or guardian to arrange maintenance to or insurance of, the adult's heritable property, but which otherwise confers no power to alter the real rights or conditions over the property.

It is anticipated that there may be cases where doubt exists as to whether it is appropriate to record a specific interlocutor. These cases should be referred to Senior Legal Group. Only if the order is clearly incapable of entering the Sasine Register or the application does not meet the requirements set out at 3.3 and 3.4 should the interlocutor be refused recording.

3.3 Recording of Intervention Order

Section 56(4) of the Act requires that an application for recording contain:

- Name and address of the person authorised to intervene
- A statement that the person has powers relating to each property specified in the order
- A copy of the interlocutor

The authorised person's details should be entered in the grantee space on the CPB2 form. The statement may be entered upon the additional information box on the

CPB2 form, or as an alternative in a covering letter. As previously stated, the copy of the interlocutor must be either in the form of an extract decree or a certified copy.
A warrant of registration must be endorsed upon the certified copy interlocutor or extract decree, in the name of the authorised person. The appropriate fee is the miscellaneous event fee.

3.4 Recording of Guardianship Order

Section 61(4) of the Act requires that an application for recording contain:

- Name and address of the guardian
- Statement that the guardian has powers relating to each property specified in the order
- A copy of the interlocutor

The guardian's details should be entered in the grantee space on the CPB2 form. The statement may be entered upon the additional information box on the CPB2 form, or as an alternative in a covering letter. As previously stated, the copy of the interlocutor must be either in the form of an extract decree or a certified copy.
A warrant of registration must be endorsed upon the certified copy interlocutor or extract decree, in the name of the guardian. The appropriate fee is the miscellaneous event fee.

3.5 Checklist for recording of orders

- Copy interlocutor (certified copy or extract decree)
- Warrant endorsed on copy interlocutor, on behalf of authorised person or guardian as appropriate
- CPB2 form with details of authorised person's or guardian's name and address
- Statement in terms of section 56(4) or section 61(4) in CPB2 or covering letter
- 'Miscellaneous event' recording fee

3.6 Forms of Minute

Intervention Order

Certified Copy Interlocutor of the Sheriff of Lothian and Borders at Peebles dated [ ] vesting in A.B. [authorised person-design] as authorised person, management powers of C.D. [adult's name-design] in terms of Section 53 of the Adults with Incapacity (Scotland) Act 2000, containing {inter alia} power to agree and execute a long lease of [subjects] on such terms as may be approved by the Public Guardian, with statement in terms of Section 56(4)(b) of the said Act.

Guardianship Order

Certified Copy Interlocutor of the Sheriff of Lothian and Borders at Peebles dated [ ] vesting in A.B. [guardian-design] as guardian, management powers of C.D. [adult's name-design] in terms of Sections 57 and 58 of the Adults with Incapacity (Scotland) Act 2000, containing {inter alia} power to agree and execute a long lease of [subjects] on such terms as may be approved by the Public Guardian, with statement in terms of Section 61(4)(b) of the said Act.
Appropriate amendments can be made for Extract Decrees.

4 Deeds following upon Intervention or Guardianship Orders

Whilst the following paragraphs will not cover every eventuality, they will hopefully

serve to outline the Keeper's position in the situations which are most likely to arise in practice These are anticipated to be the dispositions selling the adult's property, the purchase of property for the adult, or discharges of standard securities.

4.1 Form of Disposition on Sale of Adult's subjects
The adult remains proprietor of his or her heritable interests, as the guardianship order or intervention order only transfers power to convey to the authorised person or guardian. Since the order divests the adult of the power to convey, where a deed purports to be a conveyance by the adult, even where the deed bears to have been signed by the authorised person or guardian, the matter should be referred to a Senior Team Leader and the matter should be discussed with the agent.
The narrative of the disposition granted in terms of an intervention order or guardianship order should be similar to the following:
I, X.Y (authorised person-design) being authorised person/guardian under an intervention order [or guardianship order as appropriate] in terms of section 53 [or section 57 in case of guardianship order] of the Adults with Incapacity (Scotland) Act 2000 in respect of the affairs of A.B. (adult-design), heritable proprietor of the subjects and others, in consideration of the sum of £ paid to me by C.D. DO HEREBY DISPONE....

4.2 Recording of disposition by authorised person or guardian
The interlocutor should already be recorded or should be presented for recording (with the items specified in 3.5) contemporaneously with the disposition by the authorised person or guardian. In the event of such a disposition being presented where no interlocutor has been recorded and has not been presented with the disposition, the agent should be contacted by telephone and asked to provide information indicating why it is expedient to record the disposition in advance, unless the reasons are presented in the form of a covering letter. The matter should be referred to a Team Leader.

4.3 Acquisition of subjects by authorised person or guardian for adult
The grantee of the disposition or conveyance should be the adult although the deed may narrate the consideration was paid by the authorised person or guardian in that capacity. The warrant of registration should be on behalf of the adult. See the comments above at 2.2.

4.4 Discharge of Standard Security
Adult is proprietor/debtor:
The grantee of the discharge should always be the adult, though the narrative may set out that the guardian or authorised party has repaid the loan. The warrant of registration should be on behalf of the adult.
Adult is creditor:
As the granting of the discharge is an exercise of management powers, the granter should be the guardian or authorised person. The interlocutor should have been or be recorded contemporaneously against the title of the security subjects.
Other queries arising in specific transactions pertaining to recording in the Sasine Register may be referred through the usual channels.

Owner - Legal Services
Author - Ian Davis
Publication Date - 22/09/02
Editing deeds submitted under The Ancient Monuments Archaeological Areas Act 1979
Update

Historic Scotland submit a number of deeds for registration under the above Act. Because the deeds are also required for purposes other than registration, concerns have been expressed to the Keeper on a number of occasions about his staff's editing marks on the original documents. Agreement has now been reached with Historic Scotland on completing the registration of future deeds without the requirement to edit the deed itself.

Accordingly, when presenting future applications for registration under the above Act, Historic Scotland will include within the documentation a prepared minute of the deed for annotation by the Keeper. The minute will be based on an electronic template provided by the Keeper which sets out the style of entry to be inserted into the D Section and Historic Scotland will merely complete the details pertaining to the description as appropriate. Settlers are therefore instructed to use the minute for editing in the future and not the original deed. The Legal Manual will be updated accordingly. The style of the template provided is set out below.

Entry in the Schedule of Monuments, registered (1)…… by the Scottish Ministers whereby the Monument known as (2)…… shown tinted (3)…….. on the Title Plan and forming part of the subjects in this title is included in the Schedule of Monuments appearing to the Scottish Ministers to be of national importance compiled by them under section 1(1) of the Ancient Monuments and Archaeological Areas Act 1979.

(1) To be completed by the Keeper
(2) Please enter full description of monument. The Keeper will amend as appropriate.
(3) To be completed by the Keeper

Owner - Legal Services
Author - David Cant
Publication Date - 26/04/02

Archive/Despatch Review
Recommendations

The recent review of the Archive/Despatch process has made a number of recommendations. Some of these relate specifically to the operational process. However, the review also highlighted the important supplier-customer relationship that exists between the Legal Settle and Workflow process stages. Legal settlers may not be fully aware of the impact on the Archive/Despatch process of their actions prior to releasing their casework into that process. By following the instructions set out below, settlers will contribute greatly to ensuring the efficiency of the Archive/Despatch operation and this will be much appreciated by your colleagues in that area.

1. Archive numbering.
When numbering up pages for archiving, it is important to consider the position and weight of number as this can affect the success of the scanning process. Settlers are requested to ensure that the page number is located in the bottom righthand corner of the document and that the number is clearly imprinted. To ensure a readable imprint, Settlers are requested to use H2B Pencils.

2. Archive instructions
Archive instructions must be completed for all cases on the LRS and a numbered copy should be printed for the archive/despatch staff. The archive process is set out in section 47 of the manual.

3. Categorisation
Categorisation of casework should be completed in the designated box on the flysheet . No annotation should be made on the flysheet in the Tile Number box. Support staff will be instructed to follow the recognised procedure but settlers should remove any flysheet with an annotation in the Title Number box they come across as these affect the ability of the document to be successfully scanned.

4. Despatch instructions
Despatch instructions must be completed on the LRS and a numbered copy should be printed for the archive/despatch staff

5. Stop at Despatch (SAD)
Settlers should ensure that any SAD case contains appropriate instructions in the application N&I. Many cases are ticked as SAD but contain no information as to why or where the case is to be returned. Picklist options are avaialable for users, and should be marked for despatch complete.
NB: SAD process is being reviewed to allow users remote access to place instruction on cases.

6. Release of cases
Settlers are reminded of the importance of releasing cases correctly to the next destination.

7. ROI
Settlers are reminded to include at least page one of ROI in the casebag, numbered up for archive purposes. Settlers who have been using the annotation of L1A to identify the ROI form are requested to desist this practice. The L1A is now obsolete and the annotation ROI should be used. The ROI should be archived after despatch instructions. The masks on the archive picklists will be updated in due course.

8. Title certification date.
Settlers are reminded to ensure the accuracy of the instruction to despatch staff as to the date to which the title is brought down to. It is not uncommon for the ROI to show a date beyond that instructed for stamping in the inside cover of the Land and Charge Certificates.

9. Invoices
Settlers are reminded that Pre-payment was introduced in April 1996 and that there are still a number of post payment cases in the system. When dealing with a post payment case, the instruction for the despatcher should be to despatch an invoice not a receipt.
Any required amendments to SPI's will be completed in due course.

Owner - Business Change
Author - Margaret Archer
Publication Date - 20/11/02

Archive/Despatch Review – Changes to procedure
Update

The recent review of the Archive/Despatch process has made a number of recommendations. Some of these relate specifically to the operational process of both functions. The following recommendations have been accepted for implementation and will come into effect as of 1 July 2002. Team Leaders will co-ordinate the changes in their area.

Specific Archive recommendations
1. Application forms received in A3 size should be cut to A4 to facilitate scanning
2. Removal of blank or non-numbered pages after scanning is no longer a requirement. These pages should remain on the archive system in future.
3. Swipers should be used for bulk movement in batching process and release to despatch function.

Specific Despatch recommendations
1. Despatch staff should discontinue checking the ROI date against the date certified for stamping the inside cover of the Land and Charge Certificates.
2. Application forms should not be returned to the submitting agent.
3. Despatch staff should cease any check of discarded papers for deeds. Staff under training will continue to have their work checked.
4. Staff are no longer required to seal the back cover of the Land Certificate.
5. Multi-flap plans should be sealed only once on Title Number section.
6. Land and Charge Certificate covers can be batch sealed in advance to reduce sealing time at the actual despatch stage.

A number of other recommendations are also being implemented, including hardware additions and upgrade to existing seals and printers, and staff will be informed of these in due course. Standard Practice Instructions will be reviewed and updated to reflect all changes in due course.

Owner - Business Change
Author - Margaret Archer
Publication Date - 20/06/02

Budget 2002 – Changes to Stamp Duty
Update

Dispositions executed on or after 23 April 2002
With effect from 23 April 2002, all transfers of goodwill will be exempt from stamp duty. The most common situation which may be encountered involving goodwill is in dispositions of licensed premises where an apportionment of the purchase price is made between the heritable property and goodwill. Only the part allocated to heritage will be liable to ad valorem stamp duty, under the proviso that the apportionment must be just and reasonable. In most cases the deed will have been stamped but in the unlikely scenario of an apportionment in the disposition reducing the element of the purchase price liable to stamp duty below the threshold of £60000, the usual certificate of value will suffice.
In cases of doubt the deed can be referred to the Stamp Office.

Owner - Legal Services
Author - Ian Davis
Publication Date - 01/04/02

Certified Plans and Plans Annexed to Deeds Inducing Registration

Background

The Land Register is a plan/map based system and as we move into the more rural northern counties we expect that it will be a common occurrence for many applications for first registration not to have deed plans defining the extent applied for. Mapping in rural areas is something the Agency has been dealing with since Registration of Title was introduced in 1981 and the rules for defining the registered extent have been clarified over time. Questions 1, 2 and 3 on the Form 1 are the most important in terms of defining and establishing legal extent and occupation of any subjects for which an application for registration is made. Last year the use of the P45 or certified plan methodology, which is dealt with as a note to question 1 on the Form 1, was clarified by Senior Legal Group and all such plans have to be authorised and agreed by officers at Senior Caseworker level or equivalent. In short, it is not sufficient for the Keeper to accept a certified plan unless he is satisfied that the titles submitted with the application for first registration support the extent certified. Where any reasonable doubt exists as to the ability of the titles to include all or part of the area applied for, the Keeper is entitled to exclude indemnity.

Property Definition Services

With Midlothian becoming an operational county in April last year, many of the Edinburgh based solicitors had their first encounter with Registration of Title and, in particular, the problems with defining the extent of the area being registered. The opening up of access to our registers through Registers Direct, in particular, has presented firms or individuals in the market place with opportunities for providing new services. The Keeper is aware that there are firms who are offering plan based services such as "property definition reports" to help solicitors with their applications for first registration. These are clearly useful services which the Keeper accepts as being potentially beneficial to the registration process and in particular the pre registration preparatory work which he knows to his cost is not always done. However, while these services may be beneficial to solicitors in preparing applications for first registration, we should remain careful about accepting such plans for the registered extent without question. Just because the solicitor has gone to the trouble of getting a plan drawn up and annexed it to the deed inducing registration, it does not mean that we automatically register to the extent defined on the plan. The rules as to certified plans, whether they are separate plans or annexed to the deed inducing registration, remain in place, and it is the Keeper's responsibility to ensure that the title deeds submitted support the certified extent. This includes plans defining not only exclusive ground, but also shared/common ground such as paths and drying greens. If the areas shown on these certified plans are not supported by deed plans and the boundaries are not already defined on our copy of the Ordnance Map, then we should be careful about registering with full indemnity. If in any doubt the rule of thumb is to refer to someone at Senior Caseworker level or equivalent.

Owner - Registration
Author - David Cant
Publication Date - 23/01/02

Updating Charge Certificates
Update

The Keeper has received a number of complaints from solicitors about his policy of insisting on the submission of a Form 8 and charging a fee of £25 for updating the information contained on the certification page of a Charge Certificate when giving effect to a Discharge of another security. Although this is prescribed for in the Land Register Rules, the Keeper has agreed to waive the additional fee if the outstanding Charge Certificate(s) is submitted along with the Discharge and the Charge Certificate for the security being discharged.

The Keeper will be clarifying his policy on dealing with Discharges in the Land Register in the next instalment of Keeper's Corner in the Law Society Journal. Although it should only be of immediate interest to the Intake and Dealings staff, who deal with these problems, here is a copy of the text for the Journal.

"I have been asked to restate my policy with regard to Discharges in the Land Register particularly in respect of the fees chargeable in any given situation and the question of updating Charges Certificates. For clarity it is better to proceed by way of examples.
Example 1 - Application for registration of a Discharge of existing Charge, a Disposition and a Standard Security all submitted together with existing Land and Charge Certificates submitted as appropriate - new/updated Land Certificate and new Charge Certificate issued by Keeper.
Fees
Disposition - Ad valorem
Standard Security - £22.00
Discharge - £22.00

Example 2 - Application for registration of a Disposition and a Standard Security. Form 4 inventory reveals a Discharge of existing security marked to follow. Land Certificate submitted where one exists. Discharge and Charge Certificate for existing security received within 60 days. New/updated Land Certificate and new Charge Certificate issued by Keeper.
Fees
Disposition - ad valorem
Standard Security - £22.00
Discharge - ad valorem

Example 3 - As in Example 2, but a Discharge of existing security is not submitted within 60 days. Application processed by Keeper's staff without requesting Discharge of security. New/updated Land Certificate issued showing both existing and new security in C Section. Charge Certificate issued for new security showing existing security as a prior ranking Charge.
Fees
Disposition - ad valorem
Standard Security - £22.00

Example 4 - Application to register a Disposition and a Standard Security. There is an existing security but the Form 4 inventory is not marked Discharge to follow. Keeper's staff process application without comment. New/updated Land Certificate issued showing both existing and new Standard Securities in the C Section. Charge Certificate issued for new security showing the existing security as a prior ranking Charge.
Fees
Disposition - ad valorem
Standard Security - £22.00

Example 5 - The scenario in either Examples 3 or 4 has happened. It is desired to register a Discharge of the prior ranking security. Application for registration requires Land Certificate and Charge Certificate for prior ranking security to be submitted. It is not essential that the new Charge Certificate be submitted and if it is not the Keeper does not ask for it. In such a case, an updated Land Certificate showing only the new security in the C Section is issued.
Fees
Discharge ad valorem
No fee charged for updating Land Certificate
With effect from 1 April 2002 if the Charge Certificate for the new security is submitted with the application to register the Discharge of the prior security, that Charge Certificate will also be updated free of charge.

Example 6 - Subsequent to the issue of an updated Land Certificate consequent upon the Discharge of the prior ranking security the Charge Certificate for the later security is submitted with a Form 8 request that it be updated. A new Charge Certificate will be issued with no reference to the prior security.
Fee - £25.00
It should be noted that where the Land Certificate has been updated as a result of the registration of a Discharge of a prior ranking security, but the Charge Certificate for the remaining security has not, there is, strictly speaking, no need to have the latter updated. If the Land Certificate is brought down to a date later than that of the Charge Certificate, what it shows rules. If the Land Certificate, which mirrors the Title Sheet, contains no detail of the prior security any reference to it in the Charge Certificate can be ignored."
Aside from the change in policy the main point to note is that it will come into effect for any new applications received on or after 1st of April 2002. The policy will not be retrospective for work received prior to that date. If in doubt, staff should refer to their team leader.

Owner - Registration
Author - David Cant
Publication Date - 29/03/02

Creditors' picklist in LRS – Introduction

As part of the Agency's ongoing work to improve quality, issues were identified with the various pick-lists available on the LRS and the ability of staff to search and use these pick-lists quickly and efficiently. In particular the creditors' pick-list, available on the Application Work Desk as well as the C Section, came in for some criticism as it had become rather unwieldy - at the last count it contained 515 items - and was deemed not to be user friendly.

A team from within the LRS Support and Data Amendment Team was tasked with looking at the problem and coming up with a more user-friendly product for all users. The team has completed its work and the following improvements have been made:-

- The number of items on the pick-list has been reduced by around 50% and the resultant new look pick-list will be available on 24 September 2002.
- Items used 20 times or less have been removed from the pick-list.
- Councils and Housing Associations have been made county specific and any duplicates hidden.
- Duplicate entries of other creditors have also been hidden.
- Entries with similar (not different) designations have been revised and one entry will be available on the pick-list. This entry will contain the most comprehensive information. The other entries will be hidden.
  There will be an incremental search function on pick-lists. It is not available yet, as it is currently being developed by our supplier. More details and user guidelines will be issued in due course. However, what this means is that if you hit C it will drop down to the beginning of the Cs without the need to scroll from top to bottom.

Guidelines for Users

- Notwithstanding the actual wording in the deed or application form, users should choose the item that is available on the pick-list, provided it is the same address or close to it. There will still be various entries for creditors where there are completely different addresses.
- Users should request any additions or changes to the pick-list items by e-mailing LRS Support, who, in conjunction with IT Services, will maintain and update this pick-list, reviewing it on a regular basis.
- Entries that have been hidden are still in the database because of the impact on existing titles which have used them, but users will not be able to select them from the pick-list.
- Users will still be able to add creditors manually as at present.
  The above is a policy decision and our customers will be informed in the Law Society Journal October issue. Any enquiries about the above should be made to LRS Support.

Owner - Registration
Author - Pam Dower
Publication Date - 24/09/02

Creditors' picklist in LRS – Update

Further to Practice Memo 10/2002, Intake users and Legal Settlers have raised a number of issues. This addendum is intended to clarify matters.

- Councils and Housing Associations were made county specific. Users have subsequently advised LRS Support that certain entries were missing from certain counties. and these have been added. If any user considers any Council or Housing Association has been omitted from a county picklist, please inform LRS Support by e-mail.

- Several enquires were made as regards the perceived "most common" entries such as HPLC8, LLSTB, RBS5 and the fact that those now no longer appear on the picklist.

Halifax PLC
Creditor Code HPLC7 should be used where before users used HPLC8. The difference being that HPLC7 contains additional information ("a company registered under the Companies Acts, (Registered Number 2367076)") to that contained in HPLC8.

Lloyds TSB Scotland plc
Creditor Code LLTS3 should be used where before users used LLTSB. Again, there is additional information in LLTS3 ("a company registered under the Companies Acts").

Royal Bank of Scotland PLC
Creditor Code RBS2 should be used where before users used RBS5. Again RBS2 amplifies the designation in RBS5 (includes "Royal Bank House").
For the avoidance of doubt, creditor names will always reflect the deed, but the designation entered onto the Title Sheet, while not at odds, may contain additional information not noted on the deed or application form, e.g.

1. If the designation of the creditor in the deed has similar, but less information, than the picklist item, the picklist item should be selected. Example;
   The deed states Company plc, having its registered office at Some Road, Town.
   The picklist does not contain an exact match, but does contain Company plc, a company incorporated under the Companies Acts, (Registered Number XX) and having its Registered Office at Some Road, Town, Postcode. The entry should be used as it amplifies the designation in the deed.
2. If the designation of the creditor in the deed has similar, but more information than the picklist item, contact LRS Support by e-mail with the full name and designation of the Creditor from the deed and the picklist will be updated.
3. If the name and designation of the creditor in the deed does not appear at all in the picklist or the designation is completely different (e.g. a different address), contact LRS Support by e-mail with the full name and designation of the Creditor from the deed and the picklist will be updated.

Owner - Registration
Author - Pam Dower
Publication Date - 17/10/02

Exclusive Garden Ground in Tenement Properties

Keeper's policy

In the December edition of the Law Society Journal there will be an article by the Deputy Keeper, Alistair Rennie, which is meant to clarify for the legal profession the Keeper's policy in respect of exclusive garden ground in tenement steadings. Here is a copy of that article.

"Since Midlothian became an operational area for registration of title the Keeper has encountered an increasing number of cases where an applicant for first registration is uncertain what to do where the subjects sought to be registered are a tenement flat which has, as a pertinent, exclusive garden ground. The problem arises where that exclusive ground has only ever been described verbally in the prior titles. Some guidance regarding the Keeper's requirements is clearly called for to avoid additional expense being incurred when it is not necessary.

There have been suggestions that in all cases the deed inducing registration has to have a plan annexed to it showing the location and extent of that exclusive ground within the tenement steading. This, however, is not necessarily the case. There may well be cases where it is possible to still continue to rely upon the verbal description and in other cases supplying a plan might not be enough.

In considering relying on the verbal description two scenarios exist. Firstly, if the verbal description is adequate to allow somebody on the ground to identify the location within the red edge on the Title Plan, no problem exists. A verbal description can simply be included in the Title Sheet without any exclusion of indemnity. An example of this might be the situation where a ground floor flat has the exclusive right to the garden ground ex adverso the flat lying between the front building line of the tenement and the road. It is perfectly obvious where that garden ground lies. If, however, the verbal description is too vague and merely locates the ground somewhere within the tenement steading the only way the verbal description could be used by the Keeper would be under an exclusion of indemnity as regards location and extent.

If you have the latter kind of description and your client wants the exclusive garden ground defined on the Title Plan then you will certainly need a plan of it, but that will not be enough. Because of the peculiar nature of tenement properties, and the capacity for dispute between flat owners, the Keeper will require something more. Two choices exist. Firstly, the plan can be accompanied by Affidavits from all the proprietors of the flat to which the exclusive ground pertains covering the prescriptive period to the effect that they have possessed that area openly, peaceably and without judicial interruption as the exclusive garden ground referred to in the deeds. Alternatively Letters of Consent from the proprietors of all other properties which have rights effeiring to the area within which the exclusive ground is said to lie agreeing that the ground in question does belong to the proprietor who is claiming it. If neither of those pieces of evidence can be produced the Keeper could only show the exclusive garden ground on the Title Plan under exclusion of indemnity. Naturally the running of prescription thereafter would lead to the removal of that exclusion."

The questions on the Form 1 (Application for First Registration) were revised a few years ago and in particular a new Question 1 was added in an attempt to make solicitors more aware of the need for a plan to support registration of title in a plans based system. We now know that this has resulted in an increase in the use of certified plans and Registration Practice Memo No 1, issued in January this year, set out some basic guidelines on how to deal with these plans. Unfortunately, notwithstanding the fact that the N.B. to Question 1 on the Form 1 specifically excludes tenement property from the requirement for a plan, the Keeper has been receiving such plans. In reality it is the exclusively owned ground which is at the root of the problem. The Land Register is a plans based system and ideally any exclusive ground should be referenced on the title plan if at all possible. Alistair gives a very good example of a verbal description where it is so obvious where the ground lies, there would be little risk to the Keeper in referencing this on the title plan even if there was no certified plan. However, experience shows that this is invariably ground to the front of the tenement. We know from experience that other ground within tenement steadings, particularly back ground, is usually shared and unless the title deeds submitted with the application support exclusive ownership, then any attempt to apportion ground by reference to newly drawn up plans should be dealt with cautiously. It is virtually impossible to set out hard and fast rules for all eventualities. The guidelines set out in Practice Memo No 1 stand and these guidelines are now backed up by Alistair's guidelines to solicitors. The fact that the Keeper sees fit to exclude indemnity in any registration is to protect himself in the event of a claim. He has to consider what lies in the other titles within the tenement without going to the expense of ordering up the deeds and carrying out a full examination. If in any doubt problems with these types of applications should be referred to a senior officer.

Owner - Registration
Author - David Cant
Publication Date - 12/12/02

Guardianship and Intervention
Legal update

Part 6 of the Adults with Incapacity (Scotland) Act 2000 came into force on 1 April 2002. This part introduced two new forms of court appointment to replace the position of curator bonis. These court appointments are known as intervention orders and guardianship orders.
It is provided that some intervention and guardianship orders are to be recorded in the Register of Sasines, or given effect to in the Land Register.

An increasing number of orders are now being received for recording and registration.
Staff are reminded of the update to the Legal manual (see Specialist Topics | Legal Capacity) and Sasine Memo 90, which set out the Keeper's policy and practice in relation to orders submitted for registration or recording.
Queries arising in specific transactions should be referred through the usual channels.

Owner - Legal Services
Author - Sarah Duncan
Publication Date - 30/10/02

LRS Movement of Casework / Permissions Update

Movement of Casework Information on casework locations and movements is transferred from the LRS to EIS and is used to determine arrears, outputs and a range of other management information including the calculation of unit costs. The introduction of the fixed route methodology was the first stage in ensuring that the information on the LRS is accurate and it is now critically important that casework is moved through the system in the correct manner. IT Services staff have reported that they are receiving requests from users to move casework on the LRS for a variety of reasons. Unfortunately, some of these requests impact on the fixed route methodology.

Examples of some of the requests are:-

- Casework is in the wrong department (i.e. in Legal Settle but has not yet been Plans settled).
- Users have released casework to the wrong destination and are not using the RECALL function.
- Users want casework to be released to a specific user.
- Users want casework which has been incorrectly routed moved.
- Users do not have the correct permission to take casework on.

From Monday 17 June 2002, IT Services staff will no longer move casework for users, but, instead, advise them to contact their Lead User if they are having problems.

Users should be aware of the correct methods to move casework on LRS. There are five departments or "gates" through which casework is counted in EIS – Intake, Plans, Legal, Archive and Despatch. For a case to be counted through the gate it must be RELEASED on the system to the next destination. Once released forward it counts as an output for that week (the extraction for EIS is run on Saturday night). Effectively any case released to the next destination can only be worked on again if it is referred back or recalled.

Recalling Casework

The RECALL function, available on the Case Work Desk under Tools, can be used to take a case back if you have released a case in error or to an incorrect department. This function will only allow you to recall a case if

- You RELEASED the case.
- The case is still in transit (i.e. it has not been taken on by an individual in the next department or is not AT LOCATION).
- The EIS extraction has not been run since the case was released (Saturday night).

Note: Recalling the case only gives you control over the case. It is exactly the same as having the case referred back. When you next release the case it will not count as an output - notwithstanding the statement on the move check - as the EIS will have counted it on the first release.

Releasing Casework to a Specific User

To release a case to a specific user within your department, click on the RELEASE button and you will be presented with the Fixed Route destination screen. Click on OTHER button, highlight the department, click on the plus sign and specified locations will appear. Clicking on the plus sign next to the locations will reveal specific users.

Referring Casework

Casework should be REFERRED when it is either being sent back to a prior department, or being sent forward to a future department, but has not yet been completed within the present department. The most common occurrence of this is between the Plans and Legal departments where there is often a need for the plans officer to seek advice before completing the mapping of a case or for the legal officer to send the case back for re-map or additional references. The system is set up to return the case to the person who originally referred it when the RELEASE button is pressed. To change the recipient on RELEASE, click the button marked OTHER, highlight the department, click on the plus sign and specified locations will appear. Clicking on the plus sign next to the locations will reveal specific users. Note that you can simply select the department and location (i.e. Plans settle) instead of a specific user.

When a case is released to standover following on a refer from a lower to a higher department (e.g. plans to legal) it is counted by EIS as having moved through the gate to the higher department (i.e. Plans to Legal). **With immediate effect, if a case referred to a higher department requires to be placed into standover, it should be released BACK to the user in the lower department who referred it, who should then RELEASE it to standover.**

Multi Referred Casework

Sometimes casework is referred on the back of a refer, thus setting up a chain through which the case must travel before it can be sent to its eventual destination. Please follow this chain through correctly.

If a case is to be directed for cancellation, it should be referred to the authorising officer. The release to Legal Cancel function should not be used as it is the authorising officer who enacts that case movement.

Note: Although a case may be marked for a specific user, it can be taken on by any other user with the same department and function permissions.

Support Staff

Support staff should have the relevant permissions to allow casework to be released forward or referred back between departments as necessary.

LRS Permissions

The LRS Support Team, under Pam Dower, will commence a full review of all users permissions with a view to ensuring that users have the correct permissions. All future requests for LRS permissions should be approved by a Team Leader and sent by e-mail to Pam Dower for Edinburgh staff or Stephen Hickman for Glasgow staff. The e-mail should state the users name, CPF number, NT sign on as well as the permission and counties required. Only permissions relevant to the user's role will be provided.

Owner - Registration
Author - David Cant
Publication Date - 13/06/02

Mapping to Legal Extent and Questions 2 and 3 on the Form 1 Update

Two recent Applications for Rectification of the Register have involved title sheets where the Keeper has registered title based on deed plans which are clearly not compatible with the fenced or occupied extent. On both occasions the title plan shows the "legal title" extent and this has resulted in boundaries being plotted on to the Ordnance Map which run through at least one firm feature shown on the map. Unfortunately, on both occasions, question 3 on the Form 1, which deals with possession or occupation of the subjects being registered, has been answered in the negative and this has not been challenged by the settler.

Question 3 on the Form 1 is without doubt the most important question when establishing the extent of the subjects being registered. Scots Law is fundamentally different from English Law in respect of giving title based on the occupation or possession of subjects. In Scots Law any occupation or possession must be fortified by a legal title which clearly supports or is considered habile to include the occupied extent. On the other hand, it is not sufficient for the Keeper to give a good title to someone who applies for it based on a legal title when it appears from the Ordnance Map that any part of that title is not being possessed or occupied. At the very least the Keeper must seek clarification of the occupied position and, in particular, he should refer any solicitor to question 2 on the Form 1, which specifically deals with how he/she should have dealt with any discrepancy prior to applying for registration.

Some years ago, as part of an initiative to speed up the registration process, a policy was introduced which encouraged the Keeper's staff to map to legal title, on certain occasions, rather than resolve obvious discrepancies. Unfortunately, this policy may have been misinterpreted and it may well be that this is why the two titles mentioned above have been settled the way they were. For the avoidance of any doubt, if there is a discrepancy and question 3 is answered in the negative, then the settler should revert to the solicitor to seek clarification of the difference and possibly obtain further evidence re the possession or occupation. If question 3 has been answered in the positive, then that clarification or evidence should already be in the case to allow the settler to make a decision.
From today's date, any case, where it is clear that the legal entitlement is different from the occupied extent, must be referred to staff at Senior Caseworker level or equivalent who must then ensure that any potential dispute is dealt with before the title sheet is completed. What the Keeper cannot allow to happen, which unfortunately is what has happened with the two rectification cases, is that the Land Certificate is used as a lever to have the proprietors who are occupying the subjects evicted. All that leads to is that the proprietor in possession then challenges the Keeper's decision and the Keeper is then left to try and bring the problem to a satisfactory conclusion. It is better for the Keeper if the two sets of solicitors resolve the problem prior to or during the registration process rather than after he has registered one of the titles.

If there are any doubts as to how such problems should be dealt with, then the case or cases should be referred to Registration Services.

Owner - Registration
Author - David Cant
Publication Date - 27/08/02

Registration Practice Memo
Update

The Data Amendment Unit is responsible for reconstituting missing information and amending incorrect data on LRS. Most of the missing data has been identified by IT services and is currently being worked on. Users of Registers Direct also inform us of incorrect or confusing data held on that system, which we investigate and amend if and as necessary.

Agency users of LRS also have a part to play and to this end there will be a new feedback form (IDA) available on the LRS website and through Help on the various LRS work desks from Wednesday 30 October 2002. Unfortunately, the form will not be able to be sent by users on DMS, therefore hard copies of the form should be sent to DAU, Room 404, MBH.

When received these requests for amendment will be dealt with by DAU but will be given a lower priority than those raised by our external customers. However, if an outstanding application is relying on the investigation and amendment being made, this will be given higher priority and will be dealt with as quickly as possible. This should be noted on the IDA. All users will be informed by e-mail or telephone of any action taken.
Note: This form should be used to report perceived errors that are noticed "by chance" and not to report errors on a case that a user is working on, with the exception of unattached DWs - see below.

ALL USERS
If you notice that a section of a Title Sheet is blank (when it should be populated), incomplete or if you consider that there is an error in the data that is there, please use the new form to advise Data Amendment Unit, completing all the relevant boxes and providing a short explanation of the problem.
Title Plans
The form should also be used to notify DAU of any perceived problems with existing Title Plan versions. DAU will have access to the experience within Map Base Maintenance to deal with title plan problems.

UNATTACHED DWS

- When an error is noticed or there is missing data from the LRS for a current DW application, the settler should decide with their TL whether the application should be referred to the DAU. (It will be at the TLs discretion as to whether it is sent to DAU or dealt with in the section, although DAU will have the right to reject any inappropriate referral.)
- The application should be REFERRED to DAU Amend on the LRS and the case physically sent to DAU, currently in Room 404 MBH. Information as regards the problem should be in the casebag. SVS staff should not physically send the case, but instead fax a copy of the relevant section of the Land Certificate, if available, to DAU (Ext 3937). The covering note should state the Title Number and Application Number of the case, the perceived problem and the names of both the settler and the TL.
- DAU will investigate the problem and amend the Title Sheet where appropriate.

- When dealt with, the case will be returned to the Settler via the internal delivery runs (for Edinburgh staff) and RELEASED on the LRS. An e-mail will also be sent to the Settler and copied to the TL stating that the application has been dealt with and can now proceed.

  Owner - Registration
  Author - Pam Dower
  Publication Date - 30/10/02

Standard Practice Instructions / Cancellation Procedures Update

1. Standard Practice Instructions (SPIs)
SPIs have been compiled for FR and DW cancellation procedures — see Cancellation Procedures below. All FR and DW plans and legal settle SPIs have been updated to take account of:

- **the new Cancellation procedures for FRs and DWs and**
- **the Requisition and Rejection Policy and Practice published last year.**

SPIs for TP legal and plans settling will be updated and published in the near future, once TP cancellation procedures are finalised.

All SPIs are now available in PDF format. This provides improved image quality and navigation and the ability to print from the Intranet.

2. Cancellation Procedures
As part of the ongoing work to produce Standard Practice Instructions for all our Land Register processes, a Bias for Action initiative involving the Business Change Team and selected production staff has resulted in a review of existing cancellation procedures. New procedures for cancelling FR and DW applications are now available on the SPI site. As already stated TP cancellation procedures will be published shortly. Cancelling applications for registration has always been a problem for us in the Land Register and the new procedures reflect the complexity of the process and the need to ensure that at each stage of the process the links with the other systems — Sasines, Finance and DMS — are removed. The new procedures streamline the process by introducing a fixed route path for processing cases identified for cancellation and only nominated cancellation officers with the appropriate permissions will have the ability to cancel applications. The new procedures supersede all previous procedures. The main changes are as follows:

- cancellation officers will have overall responsibility for completing the process
- applications being cancelled must be processed expeditiously; and
- there is no longer a requirement to inform Reports that an application has been cancelled.
-

A series of workshops will be arranged for those cancellation officers nominated to participate by Business Managers/Team Leaders. These workshops will include the rollout of the Cancellations element of the Returns Log (referred to in the FR and DW Cancellation SPIs).

Owner - Registration
Author - David Cant
Publication Date - 01/02/02

Title Sheets Amended by Data Amendment Unit - Update

The specialist team in the Data Amendment Unit is currently working its way through those title sheets where errors or omissions have been identified as a result of the Agency's own checking procedures or through DA1 enquiries received from our customers. When an error or omission in the title sheet is identified, consideration is always given to the type of error or omission and, more importantly, whether or not the Land Certificate was issued with the error in it. In some instances, if the error or omission is deemed to be a material one, the Land Certificate will be recalled. Procedures are in place to deal with recalling Land Certificates.

Where the Data Amendment Unit team have decided not to recall the Land Certificate and the title sheet has been re-constituted or the error fixed from our own records, an internal (i.e. not visible to the Registers Direct customer) Next Application Note in the following terms or similar will have been added.

A/B/C/D Section restored/amended by DAU, DD/MM/YYYY. On next submission of Land Certificate please compare with registered version of the title sheet on LRS. If details differ, refer to your team leader.
As far as our own settling procedures are concerned, it will nearly always be the DW Settlers, or occasionally the TP Support Groups, who next deal with these title sheets. Unless the DW being done is being processed without the Land and Charge Certificates being submitted, the DW Settler should give effect to the instructions in the Next Application Note and then delete it. The creation and deletion of Next Application Notes is causing some concern and a separate Practice Memo, setting out instructions on when to use Next Application Notes and when to delete them, will follow.

Owner - Registration
Author - David Cant
Publication Date - 12/06/02

Bankruptcy (Scotland) Act 1985
Sequestration — Expiry of 3-year period

1. Introduction
1.1 Section 14(1) of the Bankruptcy (Scotland) Act 1985 provides that the Clerk of Court shall forthwith after the date of sequestration send a certified copy of the relevant court order (either the award of sequestration or the warrant to cite the debtor) to the Keeper for recording in the Register of Inhibitions and Adjudications. Recording under section 14(1) has the effect of an inhibition for 3 years from the date of sequestration. Section 14(4) provides that the undischarged trustee may renew the effect of the memorandum before the end of the 3-year period by recording a memorandum of renewal in the ROI. A review by the Legal Policy Group into the appropriate evidence required in connection with transactions by a bankrupt/former bankrupt following the expiry of the 3 year period (or longer if renewed) has led to the undernoted change to the Keeper's policy. (Note: all statutory references are to the 1985 Act unless otherwise qualified.)

2. **The policy to be changed**
2.1 The Keeper's practice till now in processing transactions by an apparent former bankrupt is detailed in the Registration Manual at J.6.4.7 and in the Registration of Title Practice Book at 5.43. The manual states:
'When a heritable proprietor has been sequestrated, the lapse of the initial 3-year period or other evidence of his own discharge will not, of itself, be sufficient to allow the Keeper to register any dealing by that proprietor without exclusion of indemnity in respect of loss arising from the enforcement of the trustee's right under the Act and Warrant. Evidence of the trustee's discharge is required.'
2.2 This policy derived from the terms of the Bankruptcy (Scotland) Act 1985 which provided that title to any property held by the bankrupt or acquired by the bankrupt whilst a sequestration is ongoing vests in the permanent trustee in sequestration by virtue of the Act and Warrant issued by the Court on confirmation of the trustee's appointment. Whereas section 54(1) provides for the automatic discharge of the debtor/bankrupt on the expiry of the original 3 year period, or subsequent 3 year period if there has been a renewal recorded in the ROI, this does not end the sequestration.
2.3 The permanent trustee may continue in office and administer the estate transferred to him. It is only when the permanent trustee obtains a certificate of his own discharge from the Accountant in Bankruptcy, or otherwise abandons the estate, that the sequestration can be said to be finally ended. Thus, the trustee could, after the expiry of the 3 year period, transfer any property vest in him as a result of the sequestration. This has resulted in some confusion regarding the evidence to be sought in connection with transactions by the bankrupt/former bankrupt, as opposed to the trustee, after the expiry of the 3 year period.

3. **Revised policy**
3.1 With immediate effect the policy highlighted in paragraph 2.1 above is rescinded.

When presented with an application in which a bankrupt/former bankrupt is transacting with property after the expiry of the 3 year period (or longer if renewed) legal settlers need no longer seek evidence of the permanent trustee's (or indeed the bankrupt's) discharge. Authority for this revised policy can be found in section 44(4)(c) of the Conveyancing (Scotland) Act 1924. It states:
'No deed, decree, instrument or writing, granted or expede by a person whose estates have been sequestrated under...the Bankruptcy (Scotland) Act 1985...relative to any land or lease or heritable security belonging to such person at the date of such sequestration or subsequently acquired by him shall be challengeable or denied effect on the ground of sequestration if such deed, decree, instrument or writing shall have been granted or expede, or shall come into operation at a date when the effect of recording....under subsection 1(a) of section 14 of the Bankruptcy (Scotland) Act 1985 the certified copy of an order shall have expired by virtue of subsection (3) of that section, unless the trustee shall before the recording of such deed....in the appropriate Register of Sasines (and Land Register)...have completed his title to such land...'
3.2 In short, any transaction by the former bankrupt **after the 3-year period** (or longer where there has been a renewal) is free from challenge. Consequently, neither evidence of the discharge of the permanent trustee nor evidence of the discharge of the debtor is required. It follows that indemnity should **not** be excluded in respect of any loss the permanent trustee may incur through the inability to enforce his rights under the Act and Warrant. This contrasts with the very different situation **during the 3 year period** (and subsequent period of renewal if there is one) whereby section 32(9) authorises the trustee in sequestration to reduce any dealing in relation to the bankrupt's property that he does not consent to. Section J.6.5. of the Registration Manual details the procedure to follow in the event of such a transaction. It is stressed that this power to reduce terminates when the debtor is automatically discharged under section 54(1).
3.3 For the avoidance of doubt, it is still competent for the trustee in sequestration to transact with the bankrupt's property after the expiry of the aforementioned 3-year period. As explained in paragraph 2.3 the sequestration itself does not automatically terminate on the expiry of such a period. The trustee therefore remains vest in the property and is able to transact with it. In that event the only evidence the Keeper requires to examine is the Act and Warrant issued by the Court on confirmation of the trustee's appointment.

Owner - Legal Services
Author - Ken Young
Publication Date - 06/09/01

Bradford & Bingley Building Society

1. With effect from 4 December 2000 the business of Bradford and Bingley Building Society transfers to and vests in Bradford and Bingley plc by virtue of a Transfer Agreement dated 9 May 2000 and two Supplemental agreements dated 16 October 2000 and 30 November 2000 with the Building Societies Commission's Confirmation dated 28 September 2000.

2. In this Memo the following definitions are used:-
"the vesting date" means 4 December 2000
"business" includes property, rights and liabilities
"the Society" means Bradford and Bingley Building Society
"the Successor" is Bradford and Bingley plc
"the Agreement" is the Transfer Agreement
"the Confirmation" is the Building Societies Commission's Confirmation.

The Keeper's Requirements

Land Register

3. **Deeds executed before the vesting date**

3.1 Any deed granted in favour of the Society and executed before the vesting date but submitted as part of an application on or after that date will be acceptable if the following points are met:-

(a) The Application Form specifies the Successor as the Applicant.

(b) The Agreement and the Confirmation are included in the box on the Application Form headed 'Name of deed in respect of which registration is required.'

(c) The Application Form specifies on page one that application for registration is sought in respect of the deed in favour of the Building Society and the Agreement and the Confirmation.

(d) The Agreement, and the Confirmation are listed on the Form 4 submitted with the application. Copies of the documents themselves need not be submitted.

3.2 Discharges granted by the Society must bear to have been executed before the vesting date; but there is no objection to recording or registering them after that date since no infeftment is involved.

4. Deeds executed on or after the vesting date

4.1 Such deeds must be granted by or be in favour of the Successor. Where the Successor grants a Discharge of a registered or recorded Standard Security which was in the name of the Society, the Agreement and the Confirmation should be listed on the Form 4 and referred to in a deduction of title if appropriate.

5. Settlers should note that certified copies of the Agreement and the Confirmation have been examined and added to the Common Links Index. No requisitioning or further examination of these documents is therefore necessary.

Sasine Register

6. **Deeds executed before the vesting date**

6.1 Standard Securities granted in favour of the Society but not recorded before the vesting date should be either (a) re-engrossed in favour of the Successor or (b) docqueted with reference to a Notice of Title on behalf of the latter and the two

deeds recorded together, with the Warrant on the Notice of Title incorporating reference to the Standard Security (see s.10(4) of the Conveyancing (Scotland) Act 1924).
6.2 Discharges granted by the Society must bear to have been executed before the vesting date; but there is no objection to recording them after that date since no infeftment is involved.

7. **Deeds executed on or after the vesting date**
7.1 Such deeds must be granted by or be in favour of the Successor. Where the Successor grants a Discharge of a Standard Security which was in the name of the Society the deed should deduce title from the Society and refer to the Agreement and Confirmation.

Owner - Legal Services
Author - Ian Davis
Publication Date - 31/01/01

Certified Plans as a means of establishing extent
Memo to Legal staff

1. Introduction

Over the past few years, there has been an increase in the number of cases in which agents have been invited to submit certified plans as an aid to identifying the location and extent of the property to be registered. Such plans have normally been requisitioned by the Plans Settler, who has supplied an extract of the Ordnance Map on which the applicant's agents have been invited to certify the extent of the subjects to which their client intends to take title.

This practice has given rise to a number of difficulties. Firstly, it is not always clear on what basis the applicant's agents have made the certification. At best, they may have indicated what they believe to be the current occupied extent, but this may not reflect the extent which is supported by the titles and validated by prescriptive possession. Secondly, it appears that some settlers may have assumed that such a plan indicates not just the extent to which the applicant wishes to obtain title but also the extent to which the Keeper can safely issue a fully indemnified title. Thirdly, where the Keeper supplies O.S. extracts for agents to certify, this has copyright implications.

Where such a plan is used as the basis for a fully-indemnified registered title, a subsequent challenge may present both the Keeper and the challenger with considerable difficulties. A neighbouring proprietor who has a title validated by prescription may be put to the inconvenience and expense of seeking rectification (perhaps involving court action) to vindicate his title. Whether or not rectification can be achieved, there is the potential for substantial indemnity claims. The Keeper has in fact received a number of claims relating to the use of certified plans, ranging from cases which have eventually been settled by agreement between the parties to one case which resulted in court proceedings and a claim for a sum in excess of £70,000.

Following a 3-month trial period, when all requests to agents for certified plans were routed through STLs or Plans RO1s and monitored by Registration Services, revised instructions have now been agreed. These should be adopted by Settlers with immediate effect; they will in due course be incorporated in the Plans and Legal Manuals. The only exception to this policy is where the Keeper has already committed himself as a result of a written pre-registration enquiry to follow a different course of action in an individual case.

2. Requests for certified plans

Plans Settlers should as far as possible map applications for first registration on the basis of the descriptions in the breakaway deed and the titles forming the prescriptive progress. Where these descriptions prove difficult to interpret, Settlers should requisition any additional evidence which may help to identify location and extent, consulting with their team leader as appropriate. Requesting a certified plan should be seen only as a last resort.

In circumstances where the extent to be registered cannot be established by any other means, Plans Settlers may request the applicant's agents to provide a suitable plan showing the extent to which their client wishes to take title. However, the policy on the requisitioning of such plans is now as follows:

- The onus is on the agents to provide a suitable plan which meets the Keeper's criteria; they may if they wish obtain an Ordnance Survey extract from an approved supplier, but the Keeper will not in any circumstances issue an extract of the current O.S. map for the agents to use.
- It is no longer sufficient for the plan to be certified on the applicant's behalf by his agents; it must be certified personally by the applicant(s) and must also be certified personally by the seller(s). This is a significant change, which is designed to ensure that the Keeper is aware both of the purchaser's understanding of the current occupied extent and of the seller's understanding of the extent to which the prior titles relate.
- It must be made clear to the agents that the provision of a certified plan is merely the start of an investigative process; they should not assume either that the Keeper will issue a registered title to the extent shown on the plan or that such a title will be fully indemnified.

A revised style of requisition letter, replacing the former P45 letter, is attached. The letter sets out the current policy and suggests a modified form of docquet to be added to the plan.

3. Settling procedure

Once the certified plan has been received, the case should be forwarded to Registration Services for consideration. A senior caseworker in Registration Services will make the assessment as to whether title may be registered to the extent shown on the plan. The senior caseworker will also decide whether the Keeper is justified in assuming (a) that the extent on the plan is the extent which the prescriptive progress of titles is habile to support and (b) that the title has been validated by prescriptive possession. Where appropriate, the senior caseworker will instruct an exclusion of indemnity, or suggest further evidence which might obviate the need for an exclusion.

Once the case is returned from Registration Services, it is the responsibility of the Plans Settler to ensure that the mapping is properly completed according to the senior caseworker's instructions. Where the senior caseworker has instructed an exclusion of indemnity or the requisitioning of further evidence, the Legal Settler is responsible for ensuring that the exclusion is inserted in the title sheet or that the relevant evidence has been supplied and is acceptable. In any case where doubt remains at legal settle stage, the Settler should refer the case back to Registration Services for further instructions.

4. Tenement steadings

The instructions above apply not only to circumstances where a certified plan is obtained to assist in plotting the extent of the title being registered, but also where a certified plan is requisitioned in order to establish the extent of the steading, back court or common areas etc. of a tenement of which the subjects of the application

form part. Plans staff have been given a separate style of requisition letter to use in such circumstances.

5. Plans annexed to the DIR

Instead of requesting a certified plan, some Settlers have been in the habit of asking the applicant's agents to incorporate a plan in the deed inducing registration. They may have considered that a plan annexed to the DIR implied greater protection for the Keeper than a separate certified plan. Unfortunately, this is not necessarily the case. Accordingly, where the Settler considers that a new plan is required, the agents should not be requested to amend the DIR to include a plan; instead the procedure in parts 2 and 3 of this memo should be followed.

In the situation where the agents have effectively pre-empted the certified plan procedure by including in the DIR a description based on a new plan, the Settler should bear in mind that this does not necessarily reflect the extent to which the Keeper can issued a fully-indemnified registered title. If the extent can be established only from the DIR, the case should be referred to Registration Services in line with part 3 of this memo.

(For the avoidance of doubt, the instructions in part 5 of this memo do not apply where the DIR is the breakaway deed and it is clear that the granter has good title to the extent on the plan).

6. Notification of policy change to the legal profession

The Keeper will in the near future be publicising the new requirements as set out in paragraph 2 and the reasons for the change of policy. In the meantime, any solicitors who have general enquiries or complaints with regard to the underlying policy should be invited to write to the Pre-Registration Enquiries Section or Senior Legal Group as appropriate.

KEN YOUNG
Director, Legal Services
27 April 2001

Appendix – Style for requisition letter

Dear Sirs
APPLICANT(S):
SUBJECTS:
TITLE NO.:

I refer to your application for first registration of the above subjects.

Unfortunately, the evidence which you have supplied is not sufficient to comply with the requirements for identification in Section 4(2)(a) of the Land Registration (Scotland) Act 1979. The Keeper therefore requires further information from you, to enable him to identify the subjects in relation to the Ordnance Map. This may take the form of a plan, certified as showing the extent to which the prescriptive progress of titles is believed to relate.

The plan should be drawn in conformity with the Keeper's recommended criteria as set out in Appendix 1 to Chapter 4 of the Registration of Title Practice Book (second edition). Subject to the relevant copyright restrictions, you may if you wish base this plan on an extract from the current edition of the Ordnance Survey map at an appropriate scale. The extent of the subjects should be identified by red edging on

the plan. You should ensure that this extent accurately reflects the current occupied extent, but you should also ensure that this coincides with the extent which the prior titles are believed to support and the extent which is believed to have been possessed for the prescriptive period. Your answers to the relevant questions on Form 1 will be read on the assumption that you are satisfied on these points.

A docquet in the following style should be endorsed on the plan:

'WE CERTIFY THAT THE SUBJECTS EDGED RED HEREON ARE THE SUBJECTS FOR WHICH AN APPLICATION FOR FIRST REGISTRATION ON BEHALF OF ..... WAS RECEIVED BY THE KEEPER ON ..... AND HAS BEEN ALLOCATED TITLE NUMBER .....'

The docquet should be signed by the granter(s) and the grantee(s) of the deed inducing first registration. (Please note that the docquet requires to be signed by both parties, and that it should not be signed on their behalf by their agents).

I must make it clear that the provision of this plan is merely part of the Keeper's investigative process, and will be examined in conjunction with the other documents presented and your answers to the relevant questions on Form 1. The Keeper will not necessarily be able to issue a registered title to the full extent shown on your plan, and he may consider it necessary to exclude indemnity in respect of part or all of that extent. However, once he has investigated matters further he will of course advise you if there is any difficulty with issuing a registered title to the full extent, and he may if necessary requisition additional evidence from you.

I draw your attention to the terms of Rule 12 of the Land Registration (Scotland) Rules 1980. If you do not comply with this requisition within 60 days hereof, or show good cause why the Keeper should not proceed as set out in that Rule, the Keeper will cancel your application and charge the appropriate cancellation fee.

Yours faithfully

Owner - Legal Services
Author - Ken Young
Publication Date - 27/04/01

Discharge Requisition Policy
Background

In the initial issue of the 2nd edition of the Registration of Title Practice Book there was a contradiction on our policy of processing applications where a discharge was marked "to follow" on the Inventory Form 4. This was addressed in later issues as part of an errata included with the book. The policy of not requisitioning discharges arose from a Managing Continuous Improvement initiative that addressed issues surrounding delays in processing cases. However, with the improved turnround times being achieved for dealings, and the introduction of "zero arrears" settling, a different problem occurs with the applications being processed before the agent has clear funds to facilitate the discharge of the outstanding security.

While the fee for registration of the deed is no different, whatever stage the discharge is submitted, there is an additional fee to update a Charge Certificate. This matter was raised at the last meeting of the Joint Consultative Committee, where the Law Society made representations seeking an amendment to the policy. This has been agreed as follows.

Policy
Discharge marked "to follow":
The Keeper will not requisition a discharge for an outstanding security, but will allow 60 days grace for the Agent to submit the deed as a separate application. This time runs from the date of receipt of the application and if the case falls to be legally examined within the 60 days, and the discharge has not yet been received, it should be placed in standover for the remainder of the 60 day period. (As the Land Register System has set standover periods, settlers should ensure that the case is removed from standover 60 days after its receipt). Once 60 days has elapsed since the receipt of the application, the case should be removed from standover and completed showing the outstanding Standard Security in the Charges Section.

Discharge not marked "to follow":
If the Discharge has not been marked "to follow" on the Inventory Form 4 and the deed has not been submitted as a separate application when the case comes to be settled, the title should be completed showing the outstanding Standard Security in the Charges Section.

General:
Consideration must be given to the disclosure of the undischarged Standard Security in a schedule of Prior Ranking Charges in any Charge Certificate issued.
On receipt of the Discharge as a separate application that will be given effect to when settling the transfer of title, the settler must ensure that the applications are "attached" on the LRS.

If the transfer of title is under Power of Sale procedures then consideration also has to be given to whether a formal Discharge is required. Such instances should be referred to the Team Leader.

The recently issued requisition and rejection policy will be updated to take account of this change.

Owner - Registration
Author - David Lange
Publication Date - 29/05/01

Finance Act 2001 – Stam Duty exemption for disadvantaged areas

1. Introduction Section 92(1) of the Finance Act 2001 makes provision for an exemption from stamp duty on certain transactions in designated disadvantaged areas. The Chancellor has announced that this will take effect for deeds executed on or after 30 November 2001. Initially 75 areas in Scotland have been designated, mostly within the major cities. The determination of whether a property lies in a designated area will be made by the Stamp Office according to postcode.

2. Scope of exemption
The exemption applies to conveyances of subjects wholly or partly within designated areas at considerations exceeding £60,000 but not exceeding £150,000. The exemption also applies to lease premiums within the same limits but not to any duty payable in respect of the rent in such a lease.
Where subjects are only partly within a designated area the stamp duty will be calculated by apportioning the consideration between the part within the designated area and the remainder.

The exemption does not apply to any instruments subject to the £5 fixed duty.

3. Certification and adjudication of deeds
A deed must be certified to the Stamp Office as falling within the new exemption. Whilst the certificate does not need to be within the body of the deed, the Inland Revenue are recommending the use of a certificate within the deed in the following terms: -
'I/We hereby certify that this instrument is exempt from stamp duty by virtue of the provisions of section 92 of the Finance Act 2001'
Whether or not the deed contains such a certificate, it must be lodged with the Stamp Office for adjudication. If the Stamp Office are satisfied, the deed will be stamped with a denoting stamp which indicates that it has been subject to adjudication.

A deed to which the new exemption applies will still require a certificate of value confirming that it does not form part of a larger transaction or of a series of transaction in respect of which the amount or value, or the aggregate amount or value of the consideration exceeds £250,000.

4. Registration implications
Every deed bearing to benefit from the new exemption must bear a denoting stamp before it may be accepted for registration or recording. Where a deed is so stamped the Keeper will assume without further enquiry that it is correctly stamped. Where it is claimed that a deed benefits from the exemption but no denoting stamp appears on the deed, the normal procedures for incorrectly stamped deeds will apply.

Owner - Legal Services
Author - Ian Davies
Publication Date - 28/11/01

Variations on Recorded heritable Securities
Registration Practice Memo

Section 5.29 of the recently published Registration of Title Practice Book deals with outstanding heritable securities at the time of first registration. The paragraph headed Registration of creditor's interest clarifies the Keeper's position on existing recorded heritable securities when the subjects are brought into the Land Register by the transfer of a half share on divorce and the voluntary registration of the other half share. It confirms that there is no compulsion to register the heritable security, but spells out the benefit to the creditor of having it registered. Where, however, there is a formal variation of the heritable security, which is normal practice in this type of registration, it confirms that the Keeper will only accept a variation if the heritable security is registered. This was not dealt with in any detail in the original Practice Book and how we have dealt with it in the past has resulted in a range of differing practices. In some cases we have registered the variation without registering the heritable security. This is no longer acceptable and section 5.29 of the new Practice Book will now apply.

In respect of any new applications received in Intake from today's date, if a solicitor submits an application for registration of this type and he/she applies to register a variation on a Form 2 without applying to register the heritable security, the variation should be rejected. This may present us with some problems with solicitors who may challenge the Keeper's apparent change of policy. However, this is something the Agency will deal with through communicating with solicitors and ongoing work on our own Requisition Policy, currently being taken forward through Bias for Action. Any complaints received in the interim should be referred to your team leader and, if need be, your Business Manager. Where you are already dealing with this type of registration, it is acceptable to offer the solicitor a chance to register the Standard Security and the Variation for a fee without rejecting the application.

Owner - Regsitration
Author - David Cant
Publication Date - 19/02/01

Leasehold Casualties (Scotland) Act 2001
Memo to all Legal staff

1. Introduction
A leasehold casualty is a provision in a lease which imposes a requirement for payment of a lump sum additional to the rent to the landlord on the occurrence of specified events or at specified times. Section 16 of the Land Tenure Reform (Scotland) Act 1974 rendered casualty provisions in leases executed on or after 1 September 1974 unlawful however landlords remained entitled to enforce casualties in leases executed before that date.
The Leasehold Casualties (Scotland) Act 2001 (hereafter 'the Act') provides for extinction of many, but not all, casualties which survived the 1974 reform. The Act also renders certain leasehold irritancy clauses void.

2. Which casualties are rendered extinct?
The Act declares that any casualty provision in a 'relevant lease' is void. A 'relevant lease' is defined as a lease granted before 1 September 1974 and for a period of not less than one hundred and seventy five years. Where a lease contains a provision requiring the landlord to renew, the renewed period is to be added to the original duration when determining whether or not the lease period exceeds one hundred and seventy five years.

3. Which casualties remain subsisting and enforceable?
Casualties in leases having durations of less than one hundred and seventy five years which were executed prior to 1 September 1974 remain subsisting and enforceable and must, on registration of the tenants interest, be entered in the burdens section of the title sheet.

4. Irritancy clauses in pre-1914 leases
Section 5 of the Act renders void irritancy clauses in leases meeting the following criteria:

- Lease granted before 10 August 1914
- Period of let not less than 175 years
- Rent or tack duty does not exceed £150 per year.

5. Date of extinction The date of extinction of those casualties and irritancy clauses rendered void by the Act is 10 May 2000.

6. Registration implications
6.1 First registration and transfer of part applications
If the date of entry of the assignee in the assignation or partial assignation which induces registration is on or after 10 May 2000 any void casualty provisions or irritancy clause contained in the lease or parent title should be omitted from burdens section of the new title sheet.

6.2 Dealings with whole
Where an assignee has taken entry after 10 May 2000 the Keeper will edit any void casualty or irritancy provisions out of the burdens section if requested to do so at the

time of a dealing with the whole. If no request for removal is made, the Keeper's policy is not to devote any time to checking for extinct casualty or irritancy provisions at this stage. Any extinct terms which remain on the register will be 'mopped up' during the re-examination of every burdens section which will follow the enactment of the Title Conditions Bill.

6.3 Request for removal of casualty and/or irritancy without dealing
Any tenant of a registered interest who wishes a casualty and/or irritancy provision removed other than at the time of a dealing with the subjects may apply for rectification. Such applications should be made on Form 9 and the appropriate fee will be payable.

6.4 Copy in certificate
In any instances where the lease is bound into the Land Certificate 'copy in certificate' and casualty and/or irritancy provisions would otherwise be omitted or removed, as appropriate, either or both of the following notes may be added to the entry for the lease in the D section:

Note: the casualty provisions in the foregoing lease were rendered void from 10 May 2000 by section 1(1) of the Leasehold Casualties (Scotland) Act 2001.
Note: the irritancy clause in the foregoing lease was rendered void from 10 May 2000 by section 5(2) of the Leasehold Casualties (Scotland) Act 2001.

Owner - Legal Services
Author - Ken Young
Publication Date - 02/05/01

Limited Liabilities Partnerships 2000
Memo to all Legal and Sasine staff

1. Introduction
1.1 The Limited Liability Partnerships Act 2000 (hereinafter referred to as 'the Act') comes into force on 6 April 2001. It introduces a new type of legal entity known as the limited liability partnership (hereinafter referred to as 'LLP'). The LLP is, as its name suggests, a combination of both a partnership and a company. Its main purpose is to 'enable two or more persons associated for carrying on a lawful business with a view to profit' to limit their liability whilst trading in partnership mode. This limited liability is possible because an LLP is a legal person separate from its members.

1.2 To achieve the status of LLP it is necessary to register with the Registrar of Companies. The Registrar of Companies will, in due course, issue a Certificate of Incorporation stating inter-alia the LLP's trading name and the date of incorporation. In return for being allowed to trade with limited liability LLPs will have to disclose more information about themselves than is the case with traditional partnerships. They will do this by filing annual reports, accounts and details of their composition and constitution etc. with the Registrar of Companies.

2. Legal persona
2.1 Once incorporated the LLP becomes a body corporate possessing a legal personality separate from that of its members. In addition an LLP has unlimited legal capacity. This means that an LLP can do anything that a natural person can do. It has the ability to hold property in its own name and enter into contracts in its own name. Thus where the LLP is, for example, the disponee in a conveyance the deed will simply narrate the name of the LLP, i.e. 'do hereby dispone to and in favour of Smith and Jones LLP'. Similarly the subsequent entry in the proprietorship section of the title sheet will simply read 'Smith and Jones LLP', followed by its address. This position differs markedly from that of the traditional partnership. Traditional partnerships cannot hold property in their own name, rather title is taken on their behalf by the partners as trustees thereof. It can be seen therefore that the LLP's existence as a separate legal entity makes it more closely akin to a company than to a partnership. For the avoidance of doubt however, standard securities by LLPs do require to be registered in the Register of Charges.

2.2 Part I of the Schedule to the Act provides that an LLP must end its name with the words "limited liability partnership" or the abbreviation "llp" or "LLP." (There is, in addition, a special provision for LLPs registered in Wales to use the Welsh equivalent of LLP viz., - "partneriaeth atebolrwydd cyfyngedig" or its abbreviation "pac" or "PAC").

3. Execution of deeds
3.1. As LLPs comprise a body corporate the terms of paragraph 10.5 of Sasine Memo No. 46/Legal Memo L11/95 will apply as regards the execution of documents on their behalf.

4. Completion of application forms 1, 2 & 3
4.1 Question 8 in part B of the application form 1 and questions 4 and 6 in part B of application forms 2 and 3, respectively, will apply to LLPs. Legal settlers should therefore check that these questions have been adequately answered.

5. Stamp duty – transitional relief
5.1 It is anticipated by the Government that a significant number of existing partnerships, particularly professional partnerships of doctors, lawyers architects, surveyors and the like, will wish to convert to LLP status. In many cases this will involve the transfer of property from the existing partnership to the LLP. Section 12 of the Act provides for relief from stamp duty for such property transfers occurring within one year of the date of incorporation of the LLP, providing certain conditions are met. Essentially these are that the property transferring from the former form of partnership to that of the LLP should be the same, or similar, and that there should be at least one partner of the former partnership who transfers as a member (partner) to the LLP.

5.2 By virtue of section 12(6) any deed on which stamp duty exemption is sought will require to be submitted to the Inland Revenue Stamp Office for adjudication. Provided the Stamp Office are satisfied it falls within the exempt category the deed will be stamped with a particular stamp denoting that it is not chargeable with any duty. For transfers occurring more than one year after the date of incorporation of the LLP the normal provisions for calculating stamp duty will apply. It will not always be apparent whether or not the transitional relief provisions apply. For that reason a deed will be acceptable to the Keeper if it has been either denoted or otherwise stamped/adjudicated by the Stamp Office or contains a Finance Act certificate stating that the value of the property being conveyed falls under the stamp duty threshold.

5.3 It is stressed that the transitional provisions apply solely to stamp duty. Registration and recording dues will be charged as per the current Fee Order.

Owner - Legal Services
Author - Ken Young
Publication Date - 05/04/01

Matrimonial Homes Evidence
Registration Practice Memo

The recently issued Requisition and Rejection Policy sets out very clearly that Matrimonial Homes evidence should not be requisitioned under any circumstances. There appears to be some confusion among some staff that we have changed our policy. This is not the case. What is set out is a re-statement of what is in the Application Forms 1, 2 and 3 and also Section 5.23 of The Registration of Title Practice Book.

Notwithstanding the fact that the Application Forms and the Practice Book make it clear that the Keeper will not requisition further evidence, he is still receiving complaints from solicitors where an MH2 Note has been added to the proprietorship section of the title sheet. On further investigation, we usually discover that the solicitors are not so much complaining about the fact that the Keeper has added the MH2 Note, but that on previous occasions he has in fact requisitioned evidence when it has not been submitted. In other words, we are being inconsistent about the application of the policy and staff appear to be exercising discretion where there is to be no discretion.

To avoid these complaints coming our way we **must** apply the rules consistently. For the avoidance of doubt the rules as set out in the Requisition and Rejection Policy are as follows:
(a) Where MH evidence is required and has been submitted, then Note 1 should be added.
(b) Where MH evidence is required but has not been submitted or the evidence that has been submitted is not satisfactory, then Note 2 should be added.
In addition the following rules should also apply:
((c) Where the MH question on the form is unanswered and evidence is required and has been submitted and is satisfactory, then Note 1 should be added.
(d) Where the MH question on the form is unanswered and evidence is required and has been submitted but is not satisfactory, then Note 2 should be added.
(e) Where the MH question on the form is unanswered and evidence is required but has not been submitted, then Note 2 should be added.

If there are any other scenarios not covered by the above then consult with your team leader, but the rule of thumb is do not revert to solicitors for anything to do with Matrimonial Homes. Even when you are requisitioning other information from the solicitor as part of the normal settling procedures, you should **not** give the solicitor the opportunity to submit further evidence to do with Matrimonial Homes as this will only serve to confuse.
An MH2 Note is not an exclusion of indemnity and can be removed at any time on the submission of a Form 5, a fee of £22.00 and the satisfactory evidence.

Owner - Registration
Author - David Cant
Publication Date - 28/06/01

Power of Sale Transactions
Impact of Mortgage Rights (Scotland) Act 2001

1. Introduction

The Mortgage Rights (Scotland) Act 2001 (hereinafter referred to as "the 2001 Act") comes into force on 3 December 2001. The objective of the Act is to reduce the number of repossessions being carried out in Scotland thereby reducing the levels of homelessness attributable to such repossessions. The Act seeks to achieve this through enabling a debtor who is in default of his obligations under a standard security to apply to the court to have the creditor's rights of sale and possession suspended. In considering such an application the court may now take into account the applicant's future ability to fulfill the financial obligations under the standard security and also the ability of the applicant and any other person residing at the security subjects to obtain reasonable alternative accommodation. The right of action contained in the Act, as detailed in paragraph 2.3, only applies where the security subjects comprise residential property.

2.Operation of the Act

1. The 2001 Act only applies where the standard security is over 'an interest in land used to any extent for residential purposes' (section 1(1)). Thus commercial properties are outwith the ambit of the Act. That said, the wording of section 1(1) is sufficiently wide to bring within its scope those commercial properties that have within them accommodation for the owner such as, for instance, some public houses, hotels and guesthouses.
2. Where a debtor defaults on his mortgage obligations, the Conveyancing and Feudal Reform (Scotland) Act 1970 provides the heritable creditor with three options for enforcement under the standard security; namely
    1. a calling-up notice under section 19,
    2. a default notice under section 21 or,
    3. a court action under section 24.
3. The 2001 Act provides that where any of the aforementioned options is pursued by the heritable creditor in relation to residential property the debtor(s) may apply to the court under section 2 for a suspension order. The Act also makes provision for parties other than the debtor to seek a suspension order, namely the debtor's spouse or co-habitee or the actual proprietor(s) of the security subjects if different from the debtor. Where the court grants a suspension order the rights of the creditor to proceed to sell the security subjects are suspended for such period, and subject to such conditions, as are detailed in the suspension order. In such an event the heritable creditor is not permitted to proceed with the sale until the suspension order is either revoked or the period of suspension, as set out in the order, comes to an end.

3. Section 2 orders: Registration in the ROI

1. In order that any party transacting with a heritable creditor can be satisfied that the heritable creditor is not conveying subjects in breach of a section 2 suspension order, section 3 of the 2001 Act provides for the recording of all section 2 orders in the Register of Inhibitions and Adjudications ('ROI').

2. Section 3(1) of the 2001 Act states that where the Court makes an order under section 2, the clerk of the court must send to the Keeper, for recording in the ROI, a certified copy of the section 2 order accompanied by a notice containing prescribed particulars of the order. As well as granting suspension orders the court may, under section 2, also grant orders varying, revoking or continuing an earlier section 2 order. All such ancillary orders will likewise be registered in the ROI. It follows that by carrying out a search in the ROI against the granter of the standard security under which the heritable creditors power of sale stems anyone so transacting with a heritable creditor can conclusively establish whether or not the transaction breaches a section 2 order.
3. The entry in the ROI will contain the following details;
    1. the person who raised the action and the heritable creditor against whom the action was raised;
    2. the security subjects;
    3. the granter and grantee in the security, and;
    4. the recording/registration date of the standard security.
    5. the type of section 2 order and,
    6. where the order is of a suspensory nature (as opposed to a revocation) it will specify the period for which the suspension is to apply.

It should be noted that the party who obtained the suspension order and the heritable creditor against whom the order was obtained will not necessarily be the same parties as the granter and grantee in the original security. As paragraph 2.3 explains, the 2001 Act enables a number of parties to raise an action. Similarly the original heritable creditor may, for instance, have assigned its interest to another lender.

4. **Implications for legal/registration staff**

1. When processing an application for registration, submitted to the Keeper on or after 3 December 2001, in which a heritable creditor is conveying residential property by virtue of their power to sell contained in a prior registered/recorded standard security, legal settlers **must** now conduct a search in the ROI**against the granter of the aforementioned standard security**. The purpose of this search is to ensure that the transaction does not breach a section 2 order, for if it does the heritable creditor does not have the right to sell.
2. If the result of that search discloses that the conveyance by the heritable creditor was granted in breach of a suspension order indemnity will be excluded. The application should be referred to a Senior Caseworker who will advise the legal settler on contacting the submitting agent and excluding indemnity. The indemnity exclusion note should be entered in the proprietorship section of the title sheet as should details of the section 2 order. The entries should run in terms similar to the following;

'Order under section 2 of the Mortgage Rights (Scotland) Act 2001 by the Sheriff of…at… dated….., in respect of an action by AB against CD, suspending for a period of…..from…. the exercise of rights which the said CD has or may acquire by virtue of the Conveyancing and Feudal Reform (Scotland) Act 1970 or the Heritable Securities (Scotland) Act 1894, in respect of the subjects in this title as referred to in standard security by x in favour of y recorded/registered….'

'Indemnity is excluded in terms of section 12(2) of the Land Registration (Scotland) Act

1979 in respect of any loss arising from the failure of (insert name of heritable creditor who is granting the disposition) to comply with the terms of the above Order.'

3. In determining whether a conveyance has been granted in the face of a suspension order legal settlers should be guided by the date of entry or date of execution of the conveyance whichever is earlier. If either such date falls within the period a suspension order is in force the transaction will be in breach.
4. period of search should be from the date of registration back to the 3rd of December 2001.
5. As explained in paragraph 2.2 the 2001 Act only applies to those standard securities over 'an interest in land used to any extent for residential purposes.' In exercising their judgement as to what constitutes residential purposes legal settlers should err on the side of caution and conduct an ROI search whenever there is the slightest possibility that property, or any part of it, could be used for residential purposes. This will preclude the possibility of overlooking a section 2 order.
6. In cases of doubt the application should be referred to Senior Legal Group

Owner - Legal Services
Author - Ian Davis
Publication Date - 29/11/01

Preambles for Burdens Section Entries

Registers Direct
One of the features of the Agency's Registers Direct System allows users to scroll through the preambles to entries in the Burdens Section of title sheets without the need to read the full text of each entry. Clearly this is a useful facility, but, unfortunately, it relies on us being able to separate the preamble from the text. To that end, it has been agreed that from now on all preambles will finish with a colon, as the Registers Direct System will now recognise the first colon as the end of the preamble and the beginning of the text.

LRS
The current version of the LRS has a pick list facility for legal settlers to use when creating a preamble. The pick list will be updated to show a colon at the end of each preamble as a standard. As a rule, the colon should never be removed. There may well be occasions, however, where certain Burdens Section entries are too short to justify a separate preamble and on those occasions it will not always be necessary to use a colon. What will happen in Registers Direct is that where there is no colon the users will see the preamble and text together.

Owner - Registration
Author - David Cant
Publication Date - 24/04/01

Title Versions, Registering Title and Checking the Application Work Desk on the LRS Background

Ongoing work being carried out by Business Excellence on data integrity continues to throw up problems with the quality of some of our data. One particular area of concern is incomplete or missing sections of the title sheet record. We are continuing to investigate why this has happened, but clearly there is a need for the staff working with the LRS to fully understand title versions and how the title version sitting behind each application should be dealt with. There is also clear evidence to suggest that staff working on the LRS are not always dealing with applications in chronological order.

Title Version – what is it ?

A title version is exactly what it suggests. It is effectively a "draft" version of the title sheet sitting behind any application. In reality, all applications will have a title version of some sort available for the settler to work on when they take an application on. This is because when staff with Intake permissions create any application, other than an FR or TP, they are invited to select a title version to copy into the application from the Create Case screen. If there are no prior pending applications, the only title version available should be a registered (RG) version and Intake or Customer Services staff will select that version to copy into the new application. If there are prior applications going through the system and one of those is the FR or the TP application, which has not been completed and registered, Intake staff will normally select the most up to date draft version available to copy into the new application. If there are prior applications going through the system and there is also a RG version, Intake or Customer Services staff should select the RG version to copy into the new application. The title version sitting behind each application is, therefore, not always the same version. Each title version is in fact a copy of what was available at the time of creation of the application and only as the application is processed and amendments are made on the title work desk does that version change. The point to be stressed is that amendments made to a title version as a result of working on a particular application are not carried forward to all other title versions on other pending applications. This means that we have to tighten up considerably on the way we deal with title sheets when there is more than one application in the Agency and ensure that they are dealt with in chronological order and, where possible, together.

Creating Title Versions

Aside from FR and TP applications, staff with Intake permissions are responsible for copying a title version into a new application. The types of application which require a version of the title sheet to be selected and what is brought forward at create stage are as follows:

DW Dealing with Whole - only A & D Sections are brought forward on DW create.
FA First Registration to be added to an existing title sheet - only A & D Sections are brought forward on FA create.
TA Transfer of Part to be added to an existing title sheet - only A & D Sections are brought forward on TA create.
NR Noting on the Register - all Sections are brought forward on NR create.
TC Application to update Land/Charge Certificate to correspond with title sheet - all

Sections are brought forward on TC create.
RR Rectification of the Register - all Sections are brought forward on RR create.
OC Office Copy - all Sections are brought forward on OC create.
CX Correction Case - all Sections are brought forward on CX create.
IC Internal Correction - all Sections are brought forward on IC create.
LC Land Certificate on Deposit - all Sections are brought forward on LC create.
SC Substitute Certificates - all Sections are brought forward on SC create.
TU Title Sheet Update - all Sections are brought forward on TU create.

Registering Titles and Checking the Application Work Desk
The particular title version sitting behind any application, although updated by users as it passes through the various processes, only becomes the RG version when the application is completed in Despatch at the end of the process. As highlighted previously, registering that version does nothing to other title versions sitting behind other applications. This is the way the LRS is designed and the way title versions are registered should not cause any problems as long as you deal with applications in chronological order. **You must, therefore, always ensure that before you start working on an application that the title version you are working on is completely up to date and incorporates all changes made in prior applications**. This means that you must check the application work desk as a matter of course prior to commencing work on your application to ensure that there are no prior applications and, if there are any, find out what they are and where they are in the process. The application work desk displays a record of all pending (open) applications under the Attachd/Rel (Opn) Apps tab.

Where a prior pending application has gone beyond legal settle, the stop at Despatch procedures **must** be used to recover the Land Certificate and once recovered, you should re-import all sections of the latest registered version of the title sheet before commencing work on your application. If this procedure is not followed, your application will be processed using the title version imported by the staff who created the application and**will not** take into consideration work done on the prior application since your application was created. **Failure to re-import will mean that when your application is completed, the work done on the earlier applications will be overwritten and lost**.

When processing more than one application at a time (e.g. FR and DW) it is **imperative**that they are not only physically attached, but also correctly attached on the system. If they are correctly attached on the system you are then working on the master title work desk and the title version of the DW is deleted. **It is the responsibility of the officer processing the applications to make sure that they have been correctly attached on the LRS**.

Many of the data integrity issues have been identified as being caused by the way certain applications have been processed on the system. Take for example an FR and a DW being processed together. The settler may have input the data correctly for both applications, via the FR title work desk, but by not attaching the DW to the FR, the work has been lost when each application is completed and then registered in chronological order. This is because when the unattached subsequent DW application

is registered its incomplete title version overwrites the full FR title version. The Land Certificate version, however, is likely to be accurate because the settler will have printed that version at an earlier stage in the process. We are investigating ways of ensuring that the system will provide a warning that applications are not attached and it is likely that we will introduce a system enhancement to ensure that applications cannot be processed out of turn. However, until such time as we can introduce a foolproof system, the
following basic rules**must** be followed when processing any application on the LRS:

1. If there are prior or subsequent applications in the Agency affecting your title sheet which you do not have, you should investigate what they are and where they are.

2. If in doubt consult with your team leader or lead user who will advise.
Miscellaneous Applications
Staff creating miscellaneous applications, i.e. those other than FRs, FAs, TPs, TAs and DWs, must be aware of what they are doing with these miscellaneous applications, particularly if there are other applications being processed at the same time. Clearer instructions on the use of these miscellaneous applications will follow.

What does all this mean for me?
Staff creating applications,
When creating a subsequent application, you should ensure that you select the RG version if there is one. If there is no RG version, but there is more than one prior pending application, you should select the most up to date version from the list. A system enhancement to automate the process is under consideration.

Settlers
It is the responsibility of the officer processing the applications to make sure that they have been correctly attached on the LRS.
The application workdesk **must** be thoroughly checked for all pending applications and legal settlers **must only proceed with settling their application if it is safe to do so,.**
If there is a pending application in the Agency, and it is at repro (archive) or despatch, you**cannot** continue processing your application. You **must** put a stop on the other case and arrange for your case to be put aside pending completion of the application in front. Staff dealing with miscellaneous applications when there are prior pending applications in the Agency must be extra careful.

The rule of thumb is that in order to ensure that all amendments to the title sheet as a result of prior pending applications are taken account of, you must re-import all sections of the latest registered version of the title sheet before commencing work on your application.

Despatch
If you are despatching physically attached applications, you must always check that they are attached on the system before completing the applications. If you discover that applications are not attached on the system, under no circumstances should you

move the applications to despatch on the LRS and complete them. You must refer the transaction to your Team Leader. A clarification of procedures in Despatch, based on correct practice, will follow.

Physical Counts and Application Record Clean-ups
Problems with applications not being cleared from the system often come to light as a result of physical counts and work being done on the application record. Under no circumstances should staff attempt to have these applications removed from the system by completing the applications. All such problem applications should be referred to your team leader.

The Future
It is planned to set up a specialist team within Registration Services to re-examine current procedures in light of issues identified through work done by Business Excellence. Aside from tightening up on current procedures, the team will also provide guidance to Business Excellence on how to resolve problems already identified.

Owner - Registration
Author - David Cant
Publication Date - 19/02/01

2000

Abolition of Feudal Tenure (Scotland) Act 2000 ("the Abolition Act")
Memo to all Legal and Sasine staff
(Note: this memo has been updated to incorporate the amendments noted in Legal Memo L6/00/Sasine Memo 84)

1. Introduction

1.1 This Act of the Scottish Parliament received Royal Assent on 9 June 2000. Whilst the majority of the Act's provisions will not come into force until a date to be appointed by Statutory Instrument, three significant aspects of the Act have immediate effect.

2. Descriptions in Standard Securities

(A) Change in law

2.1 Section 77(3) of the Abolition Act amends the law in relation to the description in a standard security of the security subjects. A standard security must comply with forms (A and B) of Schedule 2 to the Conveyancing and Feudal Reform (Scotland) Act 1970 ('the 1970 Act'). Section 77(3) amends Note 1 to the Schedule, which narrates the requirements for the description of the security subjects.

2.2 Prior to the Abolition Act, Note 1 to Schedule 2 of the 1970 Act provided that: 'The security subjects shall be described by means of a particular description or by reference to a description thereof as in Schedule D to the Conveyancing (Scotland) Act 1924 or as in Schedule G to the Titles to Land Consolidation (Scotland) Act 1868.' The courts gave consideration to that Note in the cases of Bennett v Beneficial Bank 1995 SCLR 284 and Beneficial Bank v McConnachie 1996 SLT 413, the registration implications of which are discussed in Legal Memos L14/95 (Sasine 49) and L10/97 (Sasine 68). The strict requirements for the form of descriptions in securities caused considerable problems in practice.

2.3 The Abolition Act amends the wording of Note 1, which now reads in the following terms:-

'The security subjects shall be described sufficiently to identify them; but this note is without prejudice to any additional requirement imposed as respects any register.'

This brings the standard of description in standard securities into line with the standard of description required in other deeds such as a disposition. Moreover, section 77(3) amends Note 1 with retrospective effect. The consequences of this are discussed in paragraphs 2.10 to 2.12.

(B) Resultant change in registration procedure

2.4 The provisions of section 77(3) mean that the registration requirements regarding the description of the security subjects, as outlined in the aforementioned memos, have altered. These memos should now be considered as delete.

2.5 A standard security will now be acceptable for registration if the description of the security subjects is sufficient to identify them. A standard security will no longer be deemed void because of the absence of a particular description or a description by reference to an earlier deed that contained a particular description. This is a considerable relaxation of the pre Abolition Act position. No hard and fast rules can be offered for what will and will not be acceptable to the Keeper but the following

acceptable methods of description are offered as a general guide;
Particular description – this is essentially a bounding title where the subjects are identified by reference to actual physical features on the ground. A deed plan may or may not be included.
Description by reference – the subjects are identified by reference to a previous recorded deed which contains either a particular or general description.
Description by exception – this is where the subjects are described by reference to the whole area under exception of subjects conveyed in earlier deeds.
General description – in essence this comprises a simple postal address.
2.6 It is emphasised that whilst the Keeper will now accept security deeds which contain solely a general description (i.e. a postal address) there may be occasions when such a description will not be sufficient. The postal address given must always be adequate to identify the property being secured and this will be dependent on the particular circumstances of the deed.
2.7 An example of where a postal address would be inadequate is where the subjects are described as, for instance, 'a flat at 53 Marchmont Road…'. Clearly this is not sufficient to identify the particular flat in question. If, on the other hand, the subjects were described as 'the northmost flat on the first floor above the ground floor entering by the common passage at 53 Marchmont Road…' this would be acceptable. In cases of doubt, guidance on whether the description of the security subjects is adequate should be sought from Senior Legal Group (contact the SLG Support team on ext. 3649).
(C) Implications for the Sasine Register
2.8 If the security subjects are not described in such a way to identify themselves the deed should not be accepted for recording. The Keeper's authority for doing so derives from the case of Macdonald v Keeper of the Registers, 1914 SC 854. That case concerned a description of a tenement flat which did no more than give the postal address of the tenement building and made no attempt to locate the individual flat.
(D) Implications for the Land Register
2.9 For dealings of whole the Title Number of the subjects – either with or without further verbal description – is an adequate description of the subjects in terms of section 15(1) of the Land Registration (Scotland) Act 1979. In relation to first registrations and transfers of part legal settlers should ensure the description of the security subjects conforms with one or more of the methods of description outlined in paragraph 2.5.
(E) Retrospective Effect of Alteration to Note 1
2.10 Section 77(3) of the Abolition Act provides that the revised Note 1 to Schedule 2 to the 1970 Act (as detailed in paragraph 2.3) has retrospective effect. In other words, Note 1 to Schedule 2 of the 1970 Act is to be deemed as having always been in the terms narrated in paragraph 2.3. The consequence of this is that descriptions in standard securities recorded or registered prior to the passing of the Abolition Act and which fell foul of the rules which emerged from the Beneficial Bank cases will be deemed to be valid so long as the description of the security subjects meets the new criterion as outlined in paragraph 2.5. For the avoidance of doubt standard securities executed prior to the Abolition Act but not presented for recorded or registration until after 9 June 2000 will similarly be acceptable for recording or registration provided the description of the subjects meets the criterion outlined in paragraph 2.5.

2.11 Standard securities previously registered with an exclusion of indemnity, in respect of the description not meeting the standard required following the Beneficial Bank cases, may now have the exclusion removed provided the description meets the new standard.
2.12 It may be that solicitors will return Land and Charge Certificates which contain exclusion of indemnity notes as regards the previously inept descriptions in standard securities for removal of the exclusion note. Settlers should examine the terms of the standard security to ensure that the description is now acceptable and if so remove the exclusion note. In cases of doubt the matter should be referred to Senior Legal Group. Note: An application form 2 and the appropriate fee should accompany any such request by a solicitor except where the request is made at the time the requesting solicitor submits an application for registration in respect of some other matter regarding the affected Title Sheet.

3. Prohibition on leases for periods of more than 175 years
Section 67 of the Act introduces a statutory limit on the duration of certain leases of land. The text of the section, which is largely self-explanatory, is set out in the appendix hereto.

Effect of section 65
1. A lease executed before the section comes into force is entirely unaffected by the new statutory limit on duration.
2. Certain leases and sub-leases not executed before the section comes into force are nonetheless unaffected by the statutory limit (see subsection 4).
3. The statutory limit affects a lease which is executed on or after the section comes into force, which has a period exceeding 175 years and which is not saved by subsection
4. The period of any renewal reckons towards the 175-year period, provided the lease contains provision requiring the landlord or the tenant to renew it.
5. An affected lease is not invalid. It simply terminates under the statute at the end of the 175-year period, if it is still operative at that time. For the avoidance of doubt, the 175-year period runs from the date of commencement provided for in the lease.
6. The operation of tacit relocation and the extension of the duration of any lease by statute are saved by subsection

Action to be taken in respect of affected leases
A. Sasines - Accept lease without further enquiry, if otherwise acceptable.
B. Land Register - Accept lease, but note exclusion of indemnity in the Property Section of the Title Sheet(s) for all and any affected interests (landlord's as well as tenant's). The following form of note is suggested:
"Indemnity is excluded in terms of section 12(2) of the Land Registration (Scotland) Act 1979 in respect of any loss arising from or associated with the effect or operation of section 67 of the Abolition of Feudal Tenure etc. (Scotland) Act 2000".

4. Discharge of Superiors' Rights of Irritancy
4.1 Section 53 of the Act discharges all superiors' rights of irritancy on the day on which the section comes into force (i.e. 9 June 2000) regardless of the date of the feu

writ. It follows that the irritant clause need no longer be included in the edited version of a feu writ appearing in the Burdens Section of the Title Sheet. A typical irritant clause reads:
'Declaring that if the feuars shall contravene or fail to implement any of the burdens, conditions, declarations and others herein written this feu right and all that may have followed hereon shall become null and void....'
4.2 It is emphasised that it is only irritancy clauses in feudal deeds (including those granted blench) that are discharged. In particular, a landlord's right of irritancy is unaffected. Irritancy clauses in Leases must therefore continue to be shown in the Title Sheet for the tenant's interest.
4.3 Section 53 discharges all superiors rights of irritancy even where court proceedings have commenced but the cause has not been disposed of. The section does not, however, affect a cause in which final decree has already been granted. The finality, or otherwise, of a decree or interlocutor cannot usually be determined from the document alone. All such documents should therefore be referred to Senior Legal Group for consideration before being finally accepted on either of the property registers.

APPENDIX
65 Prohibition on leases for periods of more than 175 years
(1) Notwithstanding any provision to the contrary in any lease, no lease of land executed on or after the coming into force of this section (in this section referred to as the "commencement date") may continue for a period of more than 175 years; and any such lease which is still subsisting at the end of that period shall, by virtue of this subsection, be terminated forthwith.
(2) If a lease of land so executed includes provision (however expressed) requiring the landlord or the tenant to renew the lease then the duration of any such renewed lease shall be added to the duration of the original lease for the purposes of reckoning the period mentioned in subsection (1) above.
(3) Nothing in subsection (1) above shall prevent—
(a) any lease being continued by tacit relocation; or
(b) the duration of any lease being extended by, under or by virtue of any enactment.
(4) Subsections (1) and (2) above do not apply—
(a) to a lease executed on or after the commencement date in implement of an obligation entered into before that date;
(b) to a lease executed after the commencement date in implement of an obligation contained in a lease such as is mentioned in paragraph (a) above; or
(c) where—
(i) a lease for a period of more than 175 years has been executed before the commencement date; or
(ii) a lease such as is mentioned in paragraph (a) or (b) above is executed on or after that date,
to a sub-lease executed on or after that date of the whole, or part, of the land subject to the lease in question.
(5) For the purposes of this section "lease" includes sub-lease.
Owner - Legal Services
Author - Ian Davis
Publication Date - 09/06/00

Authorising Practices on the DMS
Update

Certain work practices that are used at the moment to resolve problems and appear to have no impact on the live system are now having a knock on effect to Registers Direct (RD). Therefore it is imperative that current practices are changed immediately to those defined below:

1. **All** cases authorised on the DMS system will now also go to RD. Therefore any case that is authorised must have been plans mapped and settled. There are instances when staff have been authorising cases as a fix to other problems this must now **cease**. Set out below are the most common occurrences where cases are authorised before being plans settled along with procedures that **must** now be followed

When Parent Title versions have been created but a problem arises with the Transfer of Part being completed, the Parent Title must not be authorised to solve the problem of being able to map and authorise subsequent TP's. If this happens users should refer to their Plans Team Leaders/Lead User who have the functionality to release trapped TP's. (Any Plans Team Leader/Lead User who does not have the Function "release trapped TP's "on their menu option should contact IT services to have it added)

Users who get the message "xxxxxxx has been opened by user xxxx please authorised before doing your case" should not simply authorise the trapped application but must also ensure that the application has been mapped and is plans settled.

Please note that IT services are unable to authorise trapped applications, but if need be they can identify its application number for the user to progress via location function on the LRS.

There are instances when users are creating various indices i.e. SPL's and then for whatever reason no longer require the entry (i.e. change in mapping style). Some users in order that they can clear the index from their select list are authorising it. If you create an index in error IT Services should be contacted informed of the index ID and User ID, so they can delete the entry entirely from the system.

2. Please ensure that you "SET SEED" before authorising the case. Quite often the seed point is no where near or falls out with the mapped extent of the Title.

It is also important to the integrity of the live data and RD data that practices are followed in the appropriate manner at all times.

Any queries re the above please contact Liz Moran on ext. 3708

Owner - Plans
Author - Stephen Simpson
Publication Date - 04/04/00

Budget 2000 – Changes to Stamp Duty
Memo to all Legal and Sasine staff

1. Introduction In his budget speech on 21 March the Chancellor announced changes to stamp duty payable on transfers of property for more than £250,000. The new rates apply to documents executed on or after 28 March 2000 other than those executed in pursuance of a contract which was concluded on or before 21 March 2000.

2. New Rates of Duty
This paragraph replaces paragraph 2 of Legal Memo L2/99 (Sasine Memo 77).
The new rates — which apply to lease premiums as well as to purchases — are:

- Nil rate for transactions not exceeding £60,000 (unchanged).
- 1% if the price is more than £60,000 but not exceeding £250,000, rounded up to the next higher multiple of £5 (unchanged — see Legal Memo L9/99 (Sasine Memo 80) for details of the rounding up requirement).
- 3% if the price is more than £250,000 but not exceeding £500,000, rounded up to the next higher multiple of £5.
- 4% if the price exceeds £500,000, rounded up to the next higher multiple of £5.

Owner - Legal Services
Author - Ian Davis
Publication Date - 23/03/00

Corrections to Legal Memo L4/00 (Sasine 83)
Abolition of Feudal Tenure (Scotland) Act 2000

1. Introduction

The authentic version of an Act of the Scottish Parliament is that published by the Queen's Printer in Scotland. The printed version of the above Act was not available from The Stationery Office as at the date of Royal Assent and the previous Memo which had to be issued on that day was therefore based on a version of the Act downloaded from the Scottish Parliament Website. Although there is no difference in substance between the two versions, the section numbering is different.

2. Corrections to Memo L4/00 (Sasine 83)

1. Part 2 – Descriptions in standard securities:-
All references to section 75(3) of the Abolition Act should be amended to read section 77(3).
2. Part 3 – Prohibition on leases for periods of more than 175 years:-
a. References to section 65 should be amended to read section 67.
b. The reference to subsection 3A should be amended to read subsection 4.
c. On the copy of this section appended to the previous Memo subsections 3A and 4 should be re-numbered as 4 and 5 respectively.
3. Part 4 – Discharge of Superiors' Rights of Irritancy:-
All references to section 51 should be amended to read section 53

Owner - Legal Services
Author - Ian Davis
Publication Date - 20/07/00

Crofting
Crofting Tenure

1. Introduction
1.1 Crofting tenure occurs only in the Counties of Argyll, Inverness, Ross and Cromarty, Sutherland, Caithness and Orkney and Shetland. The current legislation regulating crofting is to be found in the Crofters (Scotland) Act 1993 ("the 1993 Act"). In essence, crofting involves the tenancy of agricultural land, usually with a pertinent dwellinghouse, on a rolling year to year lease. The consequences for Land Registration are set out below.

2. The right of a crofter is an overriding Interest
2.1 As a crofting tenancy is based on a one year lease it is not capable of constituting a registrable interest in land. As such a title sheet can never be created for a crofting tenancy. Instead, section 28(1) of the Land Registration (Scotland) Act 1979 specifies that the crofter's tenancy is an overriding interest and so may be noted on the landlord's title sheet.

When can a crofting tenancy be noted as an overriding interest on the landlord's title sheet?2.2 Attention is drawn to section L.10.5 of the Registration Manual and section 6(4) of the 1979 Act. In short, a crofting tenancy must be noted if it is disclosed in a document accompanying an application for registration of the landlord's title. It may be noted in other circumstances, namely when a specific application is made to note it or if it is disclosed in any other application or if it otherwise comes to the Keeper's attention, but will only be so noted if satisfactory evidence of its constitution is submitted. Such evidence should comprise either a copy of the lease or, where there is no written lease, a statement by the landlord affirming the existence of the croft.

Style for noting a crofting tenancy as an overriding interest on the landlord's title sheet.
2.3 Any crofting tenancies that are noted as an overriding interest should appear in a schedule of crofts within the burdens section of the title sheet. The actual entry in the schedule will be determined by the information provided by the applicant. Very often no written lease will exist or where a lease does exist it may be in very rudimentary terms and may not accurately reflect the occupied extent of the croft. Consequently, no attempt should be made to locate or plot tenanted crofts on the landlord's title plan. The following example is a style of entry and schedule that should be used:
Burden Entry Number 4: Those parts of the subjects in this title to which the entries in the schedule below relate are subject to crofting tenure within the meaning of the Crofters (Scotland) Act 1993:

Schedule of Crofts

Entry Number	Description of croft	Tenant
1.	0.65 hectares forming croft number 12 on the Estate of Kilmuir	Donald McDonald
2.	Croft 3 Eileananabuich, in the Township of Eileananabuich	Marion McDonald

3. Crofter's right to buy
3.1 Under the 1993 Act crofters are given statutory rights to buy both their croft agricultural lands and also the dwellings pertaining thereto. Unless the subjects that are purchased are formally decrofted, they will remain subject to the controls contained in the 1993 Act. The practical implications for legal settlers are as follows:

(A) Noting on title sheet that the subjects are a croft.
3.2 In most cases it will be possible to determine whether or not the subjects comprise croft land or a croft house or both from either the deed inducing registration or, where the application is in respect of a re-sale of the former tenanted croft, the foundation deed. The subjects will invariably be described as the 'croft of' or the 'area of croft land' or some variation thereof and it will be indicated that the purchase is under the 1993 Act or earlier crofting legislation. Similarly, it may be disclosed in the application form or in an accompanying letter that the subjects are a croft within the meaning of the 1993 Act. Where it is clear that the subjects do comprise a croft within the meaning of the 1993 Act the title sheet should indicate that the registered interest is subject to various crofting regulations. Accordingly, legal settlers should enter a note in the following terms in the property section of the crofter's title sheet:
'Note: The subjects in this title comprise a croft as defined in the Crofters (Scotland) Act 1993.'

(B) Problems in determining whether the subjects are a croft.
3.3 Unfortunately the situation can arise whereby subjects are referred to as a croft (or croft land or croft house) in the title deeds but no mention is made of the 1993 Act or earlier crofting legislation in either the deeds or elsewhere in the application. In those circumstances it will not be apparent whether the subjects are a croft in the strict legal sense, and so subject to the 1993 Act, or simply an area of land or a dwellinghouse whose owners, either past or present, have simply chosen to call a croft. Where the latter applies the subjects will not be subject to any of the crofting regulations and consequently it would create an inaccuracy in the title sheet if the aforementioned note were to be added. It is therefore important to establish whether or not any subjects that are described in the title deeds as a 'croft' are in fact a croft in the strict legal sense. If this cannot be ascertained from either the title deeds or the application (i.e. if there is no reference to the 1993 Act or earlier crofting legislation)

clarification should be sought from the applicant's agent before deciding whether to omit or include the aforementioned note.

(C) Decrofting.
3.4 The only circumstance whereby the aforementioned note need not be shown or can subsequently be removed is where the subjects have been decrofted. Decrofting is an administrative process carried out by the Crofters Commission that frees ground from the restrictions imposed by the 1993 Act and is evidenced by the grant of a decrofting direction by the Commission. When faced with a decrofting direction care should be taken to ensure that the whole of the subjects in the title have been decrofted as it is common practice to decroft part only of a croft. In such cases the note at para 3.2 should be amended as appropriate.

4. Right to buy: automatic disburdenment of standard security by the former landlord over croft land.
4.1 Under section 19(4) of the 1993 Act any subjects purchased under the right to buy provisions are automatically disburdened of any prior standard security granted by the former landlord without the need for a formal discharge or deed of disburdenment. Before omitting such a standard security from the purchasing crofter's title sheet, settlers' will require a written statement from the seller's solicitor confirming that the transaction was within sections 12 to 18 of the 1993 Act.

5. Right to buy: standard securities in favour of Scottish Ministers and Highlands and Islands Enterprise
Effect on ranking.
5.1 Section 19(3) of the 1993 Act alters the normal rules on ranking of securities. The section provides that where a tenant crofter has received lending to fund improvements to the croft from either the Scottish Ministers or Highlands and Islands Enterprise, (HIE) and then subsequently buys his croft, either of those bodies may obtain a standard security from him. Regardless of the date of registration of such a standard security, these securities rank prior to any other security. If both bodies take security, the Scottish Ministers rank prior to Highlands and Islands Enterprise.

(B) Consequences for the Keeper.
5.2 The Keeper is not in a position to know whether such a section 19(3) security is likely to be forthcoming for in virtually all cases they will not be submitted for registration until some considerable time after the application for registration in respect of the purchase of the croft. However, this only becomes an issue if another standard security is submitted for registration. In that event, and in the absence of any evidence to the contrary, the Keeper must guard against the possibility of a security to Scottish Ministers or HIE being presented at a later date.

(C) Procedure to be followed by legal settlers:
Insert the following footnote to the entry for the 'other' standard security:
'Note – The above standard security is affected by ranking provisions contained in section 19(3) of the Crofters (Scotland) Act 1993.'
Similarly, if HIE register a section 19(3) standard security the above footnote should be entered after the entry for it in the Charges Section as it will rank postponed to a

later section 19(3) security in favour of the Scottish Ministers.
The above note may be omitted if evidence is submitted from both Scottish Ministers and HIE that no section 19(3) standard security will be forthcoming.
If a section 19(3) standard security is submitted prior to any other security no such note will be required in the event that a subsequent security is registered. The section 19(3) security will have prior ranking by virtue of its earlier date of registration.
It should be noted that Scottish Ministers are authorised by section 45 of the 1993 Act to grant loans, supported by a standard security, to owner-occupier crofters for a period of up to 7 years after the date of purchase. These securities are bound by the normal rules of ranking. It should be apparent from the text of the security whether it is being granted in terms of section 19 or section 45. If it is not, clarification should be sought from the ingiving agent.

(D) Discharge of standard securities by Scottish Ministers.
5.3 Provision is made in schedule 5 of the 1993 Act for standard securities granted by Scottish Ministers to be discharged by means of a certificate as opposed to a formal discharge.

6. Right to buy: 'discount' security in favour of landlord
(A) Circumstances in which a 'discount' standard security may be granted.
6.1 Crofters are permitted to buy their agricultural land at a reduced price and any subsequent disposal by the crofter within a five year period may give rise to a duty to repay the difference between the reduced price paid and the then market value to the landlord. That duty arises only where the Land Court has ordered the landlord to sell the croft land and in doing so has also ordered the crofter to grant a standard security in favour of the landlord to secure this payment. It is noted that no similar provision exists as regards purchase of the croft house. Although the concept is similar to the discount standard security granted in council house purchases, two important differences should be noted: -

- The security strikes at disposals within a five year period.
- There is no statutory alteration to the ranking of these securities. In contrast to the position with council houses where the discount security always ranks postponed to a security for the purchase or improvement of the subjects, a discount security in favour of a former landlord will simply rank according to its date of registration.

(B) Procedure for entering 'discount' security in title sheet.
6.2 If it is declared in gremio of a standard security that it is granted in respect of the terms of section 14(3) (or 13(4)), that declaration should be reflected in the entry of the standard security in the charges section as follows:
'Standard Security to secure sums which may become payable under section 14(3) of the Crofters (Scotland) Act 1993 by said A to B..'
6.3 If it is not disclosed in gremio of the standard security but revealed elsewhere in the application (e.g. on the application form or the backing of the deed) a note in the following form will be added to the entry in the charges section:
'Note: The standard security in entry x was granted in respect of sums which may become payable under section 14(3) of the Crofters (Scotland) Act 1993.'
6.4 If a standard security granted in favour of the former landlord is not stated, either in the deed or elsewhere, to be in respect of sums which may become payable etc, no

enquiry should be made of the applicant. The standard security should be treated as a straightforward loan security. In particular, the provisions of paragraph 6.5 will not apply.

(C) Removal of 'discount' security.
6.5 If the five year period has clearly elapsed without any disposal of the property the Keeper will not insist upon a formal discharge being registered and the security may be removed from the title sheet at the time of the next dealing or on separate application being made.

7. Right to buy: pre-emption rights
(A) Sale by landlord to tenant in pursuance of Land Court order.
7.1 Section 17(3) of the 1993 Act disapplies any rights of pre-emption in relation to sales of crofts in pursuance of a Land Court order. There is, unfortunately, no judicial authority on the point that determines whether this has the effect of disapplying the pre-emption right for all time or simply for the particular transfer to the crofter. In the absence of any judicial authority the Keeper's approach is to assume the latter. Accordingly, any pre-emption rights should be disclosed in the burdens section of the title sheet. The next transfer should then be counted as the first where that is important for determining whether a pre-emption right can continue to be exercised (see paragraph L.10.1.5 of the Registration Manual).

Sale by landlord to tenant in pursuance of voluntary agreement.
7.2 Where the sale is by the agreement of landlord and tenant the normal rules regarding pre-emption apply (see section L.10 of the Registration Manual).

8. Right to buy: common grazings
8.1 Any application in which the crofter acquires rights in or a purported title to common grazings should be referred to Senior Legal Group.

9. Transfer of Crofting Estates (Scotland) Act 1997
9.1 Section 1 of the above Act enables Scottish Ministers to transfer their crofting estates to approved bodies. Scottish Ministers may also transfer any interests in mineral, sporting or other rights relating to crofting estates. By virtue of Section 5, any right of pre-emption affecting the property being disposed of by the Secretary of State is permanently extinguished. Thus, in contrast to the position outlined in paragraph 7.1 above, pre-emption rights should not be disclosed in the burdens section where it is clear the transfer of crofting interests is being made under the 1997 Act.

10. Further guidance on any aspect of crofting can be obtained by contacting the Senior Legal Group.

Owner - Registration
Author - Ian Davis
Publication Date - 31/03/00

Deeds granted by receivers: prior standard securities
Memo to all Legal staff

Legal settlers are reminded that in the event of a limited company going into receivership standard securities granted by the company do not automatically fly off following a conveyance of the company's property by the receiver. Standard securities granted by the company must be disclosed in the title sheet pertaining to any purchaser from the receiver unless one of the following exceptions applies;
1. A discharge for each outstanding standard security is submitted.

2. The creditor in the outstanding standard security consents in the conveyance by the receiver to the effect of either discharging the security or disburdening the subjects of the security.

3. The sale is being conducted under section 61(1) of the Insolvency Act 1986. That section provides that where a receiver sells or disposes, or wishes to sell or dispose, of any property or interest in property of the company which is subject to the floating charge by which the receiver was appointed and inter alia that property is subject to any security or interest of a creditor the ranking of which is prior to or pari passu with or postponed to the floating charge and the receiver cannot get the consent of the creditor to a proposed transaction, the receiver can apply to the court for authority to sell free of the security. Where a sale is carried out in accordance with the authority of the court the recording or registration of the conveyance by the receiver has the effect of inter alia disencumbering the property of the security. It is stressed that a copy of the court's authorisation must be examined before the decision is taken to omit a standard security from a title sheet.
In cases of doubt the matter should be referred to Senior Legal Group.

Owner - Legal Services
Author - Ian Davis
Publication Date - 22/11/00

Evacuation of survivorship destinations
Memo to Legal staff

It is common when a couple buy a house in joint names for the title to be taken to *'A and B, equally between them and to the survivor of them'*. Such a destination gives each party a half *pro indiviso* share in the property. If one dies before the other without evacuating the special destination then that persons half *pro indiviso* share falls to the other automatically. The Keeper's requirements when processing an application where one party is disponing on the strength of a survivorship destination are set out in Section J.2.8.1 of the Registration Manual. As stated therein, as well as examining the Death Certificate of the now deceased party the legal settler will require to be satisfied that the survivorship destination was not evacuated.
For the avoidance of doubt, evidence that the survivorship destination has not been evacuated should take one of the following forms:-

1. an affidavit from either the seller or the executor of the deceased swearing that the destination has not been evacuated; or
2. a letter from the applicant's solicitor confirming the same; or
3. a declaration in the deed inducing registration that the destination has not been evacuated.

Provided one of the above forms of evidence is submitted it will be reasonable to assume that the destination has not been evacuated.

Owner - Legal Services
Author - Ian Davis
Publication Date - 09/06/00

Memo to staff in Sasine intake and warrant check
Update

An Internal Audit looking at income recording in the Sasine Register was recently carried out by the firm of Scott Moncrieff. One of the main areas of concern highlighted in this report is the number of applications being processed that have incorrect UID numbers. This has a negative impact at both the drafting and despatch stages causing extra work and has the potential to hold up the recording process to the detriment of performance targets being met. Staff at Intake and Warrant Check are reminded of the importance of the UID number being correct.
To ensure that the UID numbers are being checked the following instructions should be followed.

- Intake staff must initial the CPB2 form to say that they have edited it in preparation for manual input.
- Warrant Check staff must initial the CPB2 form to say that they have edited it on CSR and have checked that the details are correct.
These measures pre-empt the introduction of the Quality Audit forms that are presently being tested in the counties of West Lothian and Angus. These instructions will be reviewed when the forms are introduced for all counties to ensure that no unnecessary duplication of work occurs.

The report also looked at dealing with Refunds etc. and further to this the following procedure must be adopted.

When it is identified that there is a requirement for a Refund cheque, the amount of the refund should be noted at the side of the entry on the batch report. This must then be highlighted using a highlighter pen so that Finance can easily recognise it. This procedure must also be used when dealing with all other exceptional items such as:

- Cancelled cash
- Transferred cash
- Returned cheques

Owner - Registration
Author - Stephen Simpson
Publication Date - 03/01/00

Scotland Act 1998
Transfer of Property – Forestry Commission Land

1.1 Paragraph 3.7 of Legal Memo L6/99 states that a certificate issued in terms of section 116(11) of the Scotland Act 1998 should accompany an application for registration where property, formerly vest in a Minister of the Crown, is subsequently conveyed by Scottish Ministers. This is because the Act itself and the various Property Transfer Orders granted thereunder do not, subject to the proviso detailed below, specify the properties transferred to Scottish Ministers and those retained by Ministers of the Crown.

1.2 The proviso relates to article 4(1) of the Transfer of Property etc. (Scottish Ministers) Order 1999. In essence it provides for the transfer to Scottish Ministers of all rights and interests belonging to a Minister of the Crown in any land, except those properties listed in paragraph 1.3 below, which immediately before 1 July 1999 had been acquired for or used in connection with the exercise of the functions of the Forestry Commissioners for Scotland.

1.3 Article 4(2) lists those properties used by the Forestry Commission, which do not transfer to Scottish Ministers. They are:

- Forestry Commission Head Office, 231 Corstorphine Road, Edinburgh
- Forest Research Surveys Office, Perth Aerodrome, Scone, Perthshire
- Forest Research Northern Research Station, Bush Estate, Roslin, Midlothian
- Forest Research Office, Newton Nursery, Elgin, Morayshire
- Forest Research Office, Mabie, Troqueer, Dumfries
- Forest Research Office, Ae Village, Dumfries.

1.4 Provided the Keeper is satisfied the property being conveyed or otherwise dealt with by Scottish Ministers falls into the category detailed in paragraph 1.2 (and does not include one of the excepted properties detailed in paragraph 1.3) a certificate in terms of section 116(11) of the Scotland Act 1998 need not be requisitioned. Experience suggests that it may not be apparent from the face of the prior titles that property was held on behalf of the Forestry Commissioners for Scotland as generally such land was taken in the name of the Secretary of State for Scotland. Consequently legal settlers will have to look to the links in title relevant to the current application to determine whether the land being conveyed was held on behalf of the Forestry Commissioners for Scotland.

1.5 Accordingly, where the submitting agent notes on the Form 4 or certifies on the application form that the links in title comprise both the Scotland Act 1998 and article 4(1) of the aforementioned Order, or where the deed inducing registration contains a clause of deduction of title making reference to those links in title, this will be accepted as evidence that the property falls within the category detailed in paragraph 1.2. In such circumstances a section 116(11) certificate will not be required. Settlers should note that the links in title have been examined by Senior Legal Group and therefore need not be requisitioned.

Owner - Legal Services
Author - Ian Davis
Publication Date - 17/07/00

1999

Change of name: TSB Bank Scotland PLC – Lloyds TSB Scotland PLC
Memo to all Legal and Sasines Staff

1. Introduction
1.1 With effect from 28 June 1999 TSB Bank Scotland PLC has changed its name to Lloyds TSB Scotland PLC. The Keeper's requirements in this respect are as follows:

2. Sasine Register
Deeds executed before 28 June 1999
2.1 Deeds granted in favour of TSB Bank Scotland PLC and executed before 28 June 1999 but presented for recording in the Sasine Register after that date will be acceptable if the warrant of registration includes a reference to the new name. For example:
Register on behalf of the within named TSB Bank Scotland PLC now known as Lloyds TSB Scotland PLC in the Register of the County of....
or
Register on behalf of Lloyds TSB Scotland PLC formerly known as TSB Bank Scotland PLC in the Register of the County of.....

Deeds executed on or after 28 June 1999
2.2 Deeds executed on or after 28 June 1999 must either be granted by or be in favour of Lloyds TSB Scotland PLC. Where such a deed is granted by or is in favour of TSB Bank Scotland PLC it should not be accepted for recording.

3. Land Register
Deeds executed before 28 June 1999
3.1 Any deed in favour of TSB Bank Scotland PLC executed before 28 June 1999 but presented as part of an application for registration on or after that date will be acceptable if the following points are met:
(a) The Application Form specifies Lloyds TSB Scotland PLC as the Applicant.
(b) The Application Form specifies on page 1 that application for registration is sought in respect of the deed in favour of TSB Bank Scotland PLC and the Certificate of Incorporation on Change of Name.
(c) The Certificate of Incorporation on Change of Name is listed on the Form 4 submitted with the application.
3.2. Settlers should note that the Certificate of Incorporation on Change of Name has been examined and added to the Common Links Index. No requisitioning or further examination of this item is therefore necessary.

Deeds executed on or after 28 June 1999
3.3 As stated in para. 2.2, deeds executed on or after 28 June 1999 must either be granted by or be in favour of Lloyds TSB Scotland PLC. Where such a deed is granted by or is in favour of TSB Bank Scotland PLC it should not be accepted as part of an application for registration.

4. Discharge of existing Standard Securities
4.1 Discharges of existing Standard Securities which are in favour of TSB Bank Scotland PLC should be granted by Lloyds TSB Scotland PLC (formerly TSB Bank

Scotland PLC). No deduction of title is necessary. Nor, in the context of the Land Register, is it necessary to submit the Certificate of Incorporation on Change of Name.

Owner - Legal Services
Author - Ian Davis
Publication Date - 16/07/99

Changes to Stamp Duty
Memo to all Legal and Sasines staff

1. Introduction
The Budget on 9 March 1999 proposed increases in the rates of stamp duty on transfers of property for more than £250,000. The existing rates for transfers of property for up to and including £250,000 are unchanged.
Where the transfer is for more than £250,000 but not over £500,000 duty is payable at the increased rate of 2.5 per cent.
Where the transfer is for more than £500,000 or is otherwise uncertified the rate is increased to 3.5 per cent.
The proposals apply to transfers on or after 16 March 1999 except for transfers made in pursuance of a contract made on or before 9 March 1999.

2. Rates of Duty
The new rates or scale are:

- nil rate for transactions not exceeding £60,000 (unchanged)
- £1 per £100 (1 per cent) or part of £100 (as now) if the price is more than £60,000 but not more than £250,000 (no change)
- £2.50 per £100 (2.5 per cent) or part of £100 if the price is more than £250,000 but not more than £500,000
- £3.50 per £100 (3.5 per cent) or part of £100 if the price is more than £500,000

The new rates will apply to the premium on the grant of a new lease in the same way as to purchases. The separate scale of rates of duty on rent remains unchanged.

3. Certificates of Value
There is no change to the present levels for Certificates of Value.
A transfer or lease document will require to bear a certificate of value to the effect that the transaction is not part of a larger transaction or series of transactions for a total price of more than £60,000 for the nil rate; £250,000 for the 1 per cent rate; or £500,000 for the 2.5 per cent rate. A Finance Act certificate is not required where duty is chargeable at the 3.5 per cent rate.

4. Commencement Date
The new rates apply only to transfer documents executed on or after 16 March 1999; but if the document is executed in pursuance of missives completed on or before 9 March 1999 the present rates of duty apply. The Keeper will accept without further enquiry a deed executed on or after 16 March and is stamped at the old rate on the understanding that the Inland Revenue must have been satisfied as to the date of conclusion of the contract.

5. Agreements for Lease
An agreement for lease is liable to stamp duty as though it were an actual lease. However, if a lease is granted subsequently that is in conformity with the agreement (or which relates to substantially the same property and term of years as the agreement) the duty on the lease is abated by the amount of duty already paid on the agreement.

If an agreement for lease is made on or before 9 March 1999, but the lease granted as a result of the agreement is not granted until 16 March 1999 or later, the old rate of duty will apply to the agreement. The lease itself will also be liable if the agreement constitutes a binding contract to grant the lease. Any duty already paid on the agreement will be credited against the duty payable on the lease if the conditions in section 75 of the Stamp Act 1891 are met (agreements for not more than 35 years to be charged as leases).

Owner - Legal Services
Author - Ian Davis
Publication Date - 16/03/99

Copy Deeds from the Scottish Record Office (SRO)
Memo to all Legal and Sasines staff

An examination of recent requests from staff working in the Land Register for copies of deeds from the SRO would suggest that agreed guidelines on requisitioning deeds from solicitors are not always being followed. Staff are reminded that the first port of call for any deed required to complete an application for registration is the solicitor who submits the application and not the SRO. The SRO is a separate organisation and the Agency, like other customers of the SRO, pays the prescribed fee for every copy requested.
In simple terms, we should only be using the SRO for copies in the following circumstances:

- **where we have mislaid the deed;**
- **where the case is older than two years old and we have not made a requisition to the solicitor;**
- **where we are investigating a potential claim on the Keeper's indemnity;**
- **where we are investigating a competition in title; and**
- **where we are resolving a problem with a registered title which could lead to a potential claim on the Keeper's indemnity**

N.B.

1. All requests, including those from staff working in the Sasine Register, should now be made on the Form L32.
2. CX and Rectification applications should, as a general rule, contain the documents required for the Keeper to complete his investigation. If further documents are required, the advice of a senior officer should be sought as to the appropriate route to follow.
3. Requests for copies of duplicate plans will be processed.

Please also note that the Agency holds copies of Sasine microfiche for most counties from 1989 onwards. These copies are held within the four main production units at SMH, MBH and SVS and should be used to obtain copy deeds.

All outstanding requests for copy deeds will be processed asap, but with immediate effect all future requests for copy deeds (L32s) will now be passed to Rhona Elrick in NAP (Room 304, MBH) who will monitor these requests to ensure that the guidelines are being followed. To assist her, any future requests for a copy deed must contain additional information on why the copy is required. Requests which do not fall within the above guidelines are likely to be returned.

Owner - Registration
Author - David Cant
Publication Date - 10/03/99

Further Changes to Stamp Duty
Memo to all Legal and Sasine staff

1. Introduction
1.1 Those changes to stamp duties made in the 1999 budget which took effect from 16 March 1999 were detailed in Legal Memo 2/99 (Sasine Memo 77). This memo covers further changes introduced by the Finance Act 1999 and which take effect on 1 October 1999. These changes introduce new penalties and interest charges for deeds stamped late, provide that duties be rounded up to the nearest £5, and increase the fixed stamp to £5.

2. Rounding Up of *Ad Valorem* Stamp Duties
2.1 For instruments executed on or after 1 October 1999 the duty payable will be rounded up to the nearest multiple of £5 (section 112(1)). For example, a disposition with a consideration of £112,100 which presently attracts a duty of £1121 shall, when executed on or after 1/10/99, attract a duty of £1125.

3. £5 Fixed Stamp Duty
3.1 Section 112(1) provides that the amount of every fixed stamp duty shall be £5. Thus, for example, those instruments which currently require a 50 pence fixed duty shall, when executed on or after 1 October 1999, require a £5 fixed duty instead. The types of deed involved are listed at section Y.4 of the Registration Manual and U.5 of the Sasine Manual.

4. Penalties for Late Stamping
4.1 New penalties for late stamping are applied to deeds executed on or after 1 October 1999 (section 109(1)). If executed within the UK the deed must be stamped within 30 days after the date of execution. If executed outwith the UK the 30 day period begins upon the day of first receipt of the deed in the UK.
4.2 If the deed is presented for stamping within one year after the end of the 30 day period the maximum penalty is £300 or the amount of the unpaid duty, whichever is less.
4.3 If the deed is presented for stamping later than one year after the end of the 30 day period the maximum penalty is £300 or the amount of the unpaid duty, whichever is greater.
4.4 As regards paragraphs 4.1 to 4.3, it should be noted that the penalty is not payable if there is reasonable excuse for the delay in presenting the instrument for stamping. **The Keeper will assume without further enquiry that any deed which has been stamped or noted by the**
Stamp Office bears the correct penalty.

5. Interest Payable on Unpaid Stamp Duty
5.1 Where instruments executed on or after 1 October 1999 are stamped late, in addition to any penalty charged interest will be due on the unpaid original stamp duty (section 109(1)). The rate of interest is to be prescribed by the Treasury. Once calculated the interest is to be rounded down to the nearest £5 and will only be payable if the rounded down amount is £25 or more. Interest will be payable whether or not there is good reason for the delay in stamping the deed. **Again, where the**

deed has been seen by the Stamp Office the Keeper will assume, without further enquiry, that the correct interest charge has been paid.

6. Penalty Upon the Keeper
6.1 Section 114 and schedule 17 amend section 17 of the Stamp Act 1891 to read as follows:-
'If any person whose office it is to enrol, register, or enter in or upon any roll, books, or records any instrument chargeable with duty, enrols, registers, or enters any such instrument not being duly stamped, he shall incur a penalty not exceeding £300.'
This updates sections Y.1 of the Registration Manual and U.1 of the Sasine Manual.

Owner - Legal Services
Author - Ian Davis
Publication Date - 30/09/99

LRS Practices and Procedures
Despatch Instructions

A recent report by our Internal Auditors highlighted inconsistencies in the way some cases were being dealt with at the despatch stage of the process and, in particular, the signing of the form which gives the despatch instructions (L117 or LRS 2.0). Despatch staff are reminded that on all occasions the despatcher should sign the form.

These despatch instructions are normally done on the form, LRS 2.0, which is generated by the LR system, or on the form L117, depending on the legal settler's preference, and it has been agreed by the Production Business Managers that the L117 will be phased out. However, this will not happen until an enhancement to make it easier to use the LRS for microfiche and despatch instructions is put in place. This is scheduled for the end of June and the L117 will be withdrawn at that time.

ROI SEARCHES

The same report also uncovered instances where there was no evidence that the ROI search was "clear". Settlers are reminded that the recommended procedure for reflecting the result of any ROI search is to microfilm the first page of all search results - this will show the parties searched against and the period searched - and to mark on it "clear" (when clear) or otherwise.

In circumstances where the search is not clear, settlers can also add to the Title WorkDesk Notes & Instructions details of what action was taken and why, but this should be in addition to microfilming the ROI search result. Putting notes such as "ROI clear" in the Application WorkDesk and/or the Title WorkDesk serves no useful purpose and this practice should cease.

Owner - David Cant
Author - Registration
Publication Date - 31/03/99

Mining Code
Solicitor to the Secretary of State for Scotland – National Roads Directorate
Memo to all Legal Staff

1. Earlier this year the Solicitor to the Secretary of State for Scotland wrote to the Keeper seeking the inclusion of a reference to what is known as 'the Mining Code' in the A (Property) Section of Land Certificates relating to land acquired on behalf of the National Roads Directorate. This Directorate is responsible for inter alia the development, construction and maintenance of the trunk road network in Scotland.
2. The Code itself is contained in the Lands Clauses Acts (including the Lands Clauses Consolidation (Scotland) Act 1845) and sections 6 and 70 and sections 71 to 78 of the Railway Clauses Consolidation (Scotland) Act 1845. That legislation regulates the working of minerals under land acquired using statutory powers and makes provision for compensating mineral proprietors for minerals left unworked. The scheme has been adopted into many of the statutes (the 'enabling' (or 'special') Acts) providing for the compulsory acquisition of land by public authorities.
3. Where the writs submitted with an application for registration contain no reference to such an enabling Act incorporating the provisions comprising the Code, any rights the landowner may have in the minerals are included in the sale. It is, however, more usual to find that reference is made to appropriate enabling legislation. For example, the special Act for present purposes is the Roads (Scotland) Act 1984 (in particular, section 110(5)). A reference to the special Act has the effect of applying the Code to the conveyancing transaction. The statutory result is that the acquiring authority does not take the minerals and at the same time avoids compensating the owner for their loss.
4. The Secretary of State generally acquires land for roads purposes in either of two ways. The first is by a General Vesting Declaration or Statutory Conveyance following on from a Compulsory Purchase Order referring to the 1984 Act (thus incorporating the provisions of the Code). Alternatively a Statutory Conveyance relating to an acquisition by agreement, and which applies the Code in terms of the 1984 Act, may be drawn up.
5. At present, Land Certificates issued to the Secretary of State for Scotland do not reveal when the Mining Code has been invoked. It has therefore been agreed that the Keeper will, if specifically requested to do so at the time of an application giving effect to an acquisition by the Secretary of State for Scotland using his statutory powers under the 1984 Act, append to the Property Section of appropriate Land Certificates, a note to the effect that the minerals are not included in the title.
6. This instruction applies only to those cases in which the application for registration is accompanied by the necessary covering letter from the Solicitor to the Secretary of State. Samples of the style of letter, which include the note desired in each case, are attached for reference. It should be noted that the onus of ensuring that the proper letter accompanies appropriate applications will rest with the applicant.
7. It is not proposed that this procedure will apply retrospectively; and there is otherwise no change to existing Agency instructions for dealing with cases involving minerals.

Owner - Legal Services
Author - Ian Davis
Publication Date - 21/12/99

Natural Water Boundaries
Memo to all Legal and Plans staff

1. Introduction

Where an area of land is bounded by a natural water feature such as a river, stream, burn, loch, sea or foreshore, difficulties can arise when that area of land is the subject of an application for registration. The nature of a natural water boundary is such that not only can it prove hard to identify accurately but it may not remain static over time. This has implications for the Keeper's indemnity. The structure of the Land Registration (Scotland) Act 1979 Act is such that unless section 12(3)(d) is applicable (where there is an inaccuracy in the boundaries which could not have been rectified by reference to the Ordnance Map) or there is an express exclusion of indemnity to the contrary, the Keeper guarantees the boundaries of registered subjects.

2. Practical difficulties

Plotting natural water boundaries on the Title Plan poses a number of practical problems for the Keeper. To take the example of rivers, it is not uncommon for the boundary to be stated as being the medium filum, yet the medium filum itself is an abstract notion because the width of a river is not constant. Similarly all natural water boundaries are prone to change with the seasons and be affected by other factors such as weather conditions and alluvio and avulsion. (Alluvio refers to the gradual, almost imperceptible, but over time, permanent accretion to the lands due, for example, to the movement of sand by the action of the waters or by the advance or retreat of the waters over the years. By contrast avulsion is the sudden, violent detachment of a section of land and its deposit in another location.) The practical consequence of the foregoing is that the actual course of a natural water boundary may have changed dramatically from the time of the original foundation deed and may again change subsequent to the registration of the subjects.

The Keeper is further hampered by Ordnance Survey's policy of not updating water features as part of their cyclical revision programme. Consequently, the actual course of rivers and burns and position of foreshore etc. may differ from that shown on the most up to date ordnance maps. The scale of ordnance maps in rural areas can pose additional plotting problems. At best they will be 1:2500, but in particularly sparsely populated areas they can be as great as 1:10000.

3. Registration problems

Two problems emerge. The first concerns identification of the boundary and the replication thereof on the Title Plan. The second problem is how to accommodate any subsequent moves in the boundary caused by alluvio or avulsion. Both problems were discussed at the May 1999 meeting of the Joint Consultative Committee of the Registers of Scotland and the Law Society of Scotland where it was agreed it would be appropriate for the Keeper to retain the flexibility to be pragmatic and view each application on its own particular merits. The committee further agreed on a number of possible mapping methods for use by the Keeper in plotting natural water boundaries. These are noted below:

4. Mapping options

1. If it is clear from the deeds and the Ordnance Map where the natural water boundary lies and the exact line of that boundary and that boundary in turn can be plotted with absolute accuracy on the Title Plan, then the boundary should be red edged on the Title Plan in the same way as any other boundary would be. Given the above comments it is envisaged that this option will only apply in a limited number of instances.
2. Delineate the natural water boundary by means of a red edge on the Title Plan and add a qualifying note to the Property Section. The qualifying note will be to the effect that the natural water boundary shown on the Title Plan is only indicative of the actual position of the boundary feature, i.e.:

'Note: The northern boundary comprises the medium filum of the River X'.

3. The natural water boundary will not be red edged at all. Instead it will be arrowed and letter referenced on the Title Plan and a note added to the Property Section indicating where the boundary lies. For example:
   'Note: The boundary between the points indicated on the Title Plan is as follows:- a-b - the medium filum of the River X'.
4. Delineate the red edge on the land abutting the natural water boundary and add a note to the Property Section indicating that a natural water feature or part thereof is included within the title. For example:
   'Note: The foreshore ex adverso the northern boundary between the points arrowed and letter referenced A and B on the Title Plan is included within the title.
5. In situations where none of the foregoing methods is appropriate the Keeper will exclude his indemnity as regards the position of the natural water boundary.

5. Guidelines

No hard and fast rules can be given as to which option will be appropriate in all situations. Plans staff should adopt whichever method appears practical in any given set of circumstances though consideration should, in the first instance, be given to options 1 and 2. That said, as option 1 presents the most risk to the Keeper's indemnity it should be adopted in only the most clear cut of cases. Reference should be made to a Senior Plans Officer before adopting options 3, 4 or 5. The following factors should be taken into consideration in deciding which option is appropriate:

a. **Length and shape of the natural water boundary —** The longer and more irregularly shaped the boundary the more difficult and time consuming it will be to plot accurately on the Title Plan. Options 1 and 2 may therefore not be practical in such instances.

b. **The title deeds —** The way the subjects are described in the title deeds and depicted on any plans relative thereto will clearly influence which option is appropriate. Similarly, the older the foundation title the more risk there will be that the natural water feature will have altered over time. In some deeds the subjects will be described by reference to the land but then include the water feature in the parts and pertinents clause, i.e. 'together with the foreshore etc.'. If that feature has not been shown on a deed plan no attempt should be made to subsequently show it on the Title Plan, rather the procedure detailed in option 4 should be followed.

c. **Identification and plotting on the Ordnance Map —** In some instances the Keeper may not be able to actually identify and thus map, with reference to the Ordnance Map, the precise location of the natural water boundary. In areas of mountain and moorland where the scale of the Ordnance Map is 1:10000 small deviations in the

actual course of a burn, or even a narrow river, may not appear as such on the Ordnance Map. In such circumstances the red edging on the Title Plan may not clearly reflect the intention of the deeds.

d. **Alterations in the course of the natural water feature —** This will not always be apparent from the information available to the Keeper, but where the settler is aware of past movement in the natural water feature caution should be exercised. If the cause of the movement is avulsion the basic legal premise is that the original legal boundary is deemed not to have moved. Where alluvio occurs the legal boundary is taken to move in accordance therewith. Thus, for example, if subjects are bounded on the north by the medium filum of a river and that river alters course through time because of alluvio the boundary of the subjects will also move. If alluvio causes the river to move northwards the extent of the subjects will consequently be increased. The problem for the Keeper is that he is not in a position to know whether movements in a natural water feature are due to alluvio or avulsion or some other cause such as reclamation. If such movements result in a reduction in the extent of the subjects being registered and the submitting agent is content to accept this no problems will arise for the Keeper. In any other situation the Keeper will require to be satisfied that no risk to his indemnity exists before considering any option other than 5. The matter therefore becomes one of evidence. Satisfactory evidence may include an agreement from all affected proprietors as to the current boundary or a court decree affirming the cause of the movement and determining the current boundary position.

e. **Nature of the natural water feature —** In particular, whether the natural water feature is one which is prone to change. Some rivers, particularly those which are tidal, and indeed certain stretches of particular rivers, are noted for wide fluctuations in their natural course. The River Tay is a prime example. A cautious approach should be taken when processing applications relating to such rivers. By contrast, Lochs being in general non-tidal are less prone to fluctuations.

6. Alluvio subsequent to registration

The nature of Registration of Title and the certainty that underpins the system is such that it does not sit easily with natural boundary changes. The result can be that the original plotting of the subjects may, following the physical process of alluvio, no longer correspond with the actual position on the ground thereby potentially creating an inaccuracy in the Register. Any question relating to alluvio subsequent to the original first registration will be treated as a matter of rectification. Factors such as possession, whether there is agreement from all interested parties and whether the Keeper can be satisfied alluvio has actually occurred will all be relevant. All applications for rectification on the basis that alluvio has occurred should be referred to the Senior Legal Group in the first instance.

Owner - Legal Services
Author - Ian Davis
Publication Date - 16/11/99

Pro Indiviso Shares in Salmon Fishings
Update
Memo to all Legal and Sasine staff

1. With the extension of the Land Register into rural areas issues involving salmon rivers have arisen. The right to salmon fishings, being a separate tenement in land, falls within the definition of interest in land in section 28(1) of the Land Registration (Scotland) Act 1979. A transfer for value of the right to salmon fishings in an operational area will, therefore, require to be registered in the Land Register. The Keeper has so far received a small number of applications for the first registration of pro indiviso shares in salmon fishings.

2. A conveyance of a pro indiviso share in salmon fishings is, in itself, unobjectionable, a conveyance of a pro indiviso share being wholly competent. However, in some of the applications received by the Keeper such conveyances, either on their own or in conjunction with a Deed of Conditions, contain clauses that restrict the right to fish for salmon to a particular beat during a designated week(s). These conveyances further provide that the disponee is barred from making any use of that part of the fishings at any other time of the year and of the remainder of the fishings at any time at all. In short, the aim is to create something akin to timeshare ownership.

3. After consulting with the Joint Consultative Committee of the Law Society and the Registers of Scotland, the Keeper's view is that such qualifications on occupation and exercise of the right of salmon fishings are inconsistent with the unrestricted nature of a real right of common ownership. Consequently any application for registration which is founded on such a conveyance should be rejected.

4. Because of the complex and varied nature of the clauses contained in such conveyances and the problems of interpretation this can bring, any deed presented for recording or application for registration falling, or potentially falling, into the category described in paragraph 2 should be referred in the first instance to either a Senior Caseworker in Registration Services or to Senior Legal Group for consideration as to its acceptability.

5. It is noted that Dispositions in the terms outlined in paragraph 2 have routinely been accepted for recording in the Register of Sasines. This practice should cease forthwith. Such deeds should no longer be accepted for recording.

Owner - Legal Services
Author - Ian Davis
Publication Date - 07/12/99

Scotland Act 1998: Transfers of Property
Memo to all Legal and Sasines staff

1. Introduction
1.1 With effect from 1st July those functions previously exercisable by Ministers of the Crown (including but not confined to the Secretary of State for Scotland) which come within the ambit of the Scottish Parliament's powers and responsibilities will, by virtue of section 53 of the Scotland Act 1998 (hereinafter referred to as 'the Act'), be transferred to and thereafter be carried out by the Scottish Ministers. Those functions which are not transferred will be retained by UK Ministers of the Crown. In this respect it should be noted that the office of Secretary of State for Scotland will continue. Not every function relating to Scotland will fall within the legislative competence of the Scottish Parliament. There are a large number of reserved matters, such as defence and foreign policy, the responsibility for which will remain with the UK Parliament.

2. Mechanism for transferring property
2.1 To facilitate the transfer of functions section 60(1) of the Act in conjunction with the Transfer of Property etc. (Scottish Ministers) Order 1999 [S.I. No. 1104/1999] provides that property used in relation to or otherwise connected to a transferred function will transfer to and vest in Scottish Ministers. The Order itself does not specify the properties transferred. Rather, the question of whether any property has or has not been transferred to Scottish Ministers is resolved by virtue of section 116(11) of the Act which provides for issue of a Certificate by the Secretary of State stating whether or not property has so transferred. Such a Certificate is to be taken as conclusive proof of whether a property has transferred or not.

3. Implications for the Sasine and Land Registers
3.1 Deeds executed on or after 1 July 1999 relating to a function which has transferred to Scottish Ministers will, by virtue of Section 59(1) of the Act, either be granted by or be in favour of 'Scottish Ministers'. For the avoidance of doubt the term 'Scottish Ministers' is what will appear in deeds. Subsection (4) of that section further provides that a deed shall be validly executed by the Scottish Ministers if it is executed by any member of the Scottish Executive. The Scottish Executive comprises the First Minister, those Ministers subsequently appointed by the First Minister, the Lord Advocate and the Solicitor General for Scotland.
3.2 It will not be competent for deeds executed before 1 July 1999 to be either in favour of or be granted by Scottish Ministers. Up until that date all deeds should continue to be granted by or be in favour of a Minister of the Crown - subject to what is stated in paragraphs 4.1 and 4.2.

(A) Deeds in favour of a Minister of the Crown executed before 1 July 1999 but not presented for recording or registration until after 1 July 1999.
3.3 Any deed granted in favour of a Minister of the Crown executed before 1 July 1999 but submitted for recording or registration on or after that date will be taken on face value. As there is no risk to the Keeper's indemnity, no investigations need be undertaken to ascertain whether the subjects should have passed to the Scottish Ministers or be retained by the Minister of the Crown or government department.

The responsibility for doing so will rest with the submitting agent. In the event that the subjects relate to a function which has transferred to Scottish Ministers it has been agreed with the Scottish Parliament Executive Secretariat that the following provisions will apply:

Land Register

3.4 To enable the Scottish Ministers to be entered as Registered Proprietor in the Proprietorship Section of the Title Sheet the following points should be met:

1. The Application Form should specify the Scottish Ministers as the Applicant.
2. The Act and the Transfer of Property etc. (Scottish Ministers) Order should be included in the box on the Application Form headed 'Name of deed in respect of which registration is required.'
3. The Application Form should specify on page 1 that application for registration is sought in respect of the deed in favour of the Minister of the Crown, the Act and the Transfer of Property etc. (Scottish Ministers) Order 1999.
4. The Act and the Transfer of Property etc. (Scottish Ministers) Order 1999 should be listed on the inventory Form 4 submitted with the application. Copies of the documents themselves are held by Senior Legal Group and should not therefore be requisitioned from the submitting Agent.

Sasine Register

3.5 Where the intention is that the subjects should be taken in the name of the Scottish Ministers the deed should be either (a) re-engrossed in favour of the Scottish Ministers or (b) docqueted with reference to a Notice of Title on behalf of the Scottish Ministers and the two deeds recorded together, with the Warrrant on the Notice of Title incorporating reference to the earlier deed (see section 10(4) of the Conveyancing (Scotland) Act 1924).

(B) Deeds in favour of Ministers of the Crown or Scottish Ministers executed on or after 1 July 1999.

3.6 The above provisions will not apply. The deed will simply narrate the appropriate disponee and as indicated above the Keeper will not enquire further.

(C) Deeds executed on or after 1 July 1999 granted by Scottish Ministers

Land Register

3.7 Where property, which was formerly vest in a Minister of the Crown, is conveyed or otherwise transacted by Scottish Ministers a Certificate issued in terms of section 116(11) of the Act stating that the property has transferred to Scottish Ministers should accompany the application for registration (see para 2.1). In its absence it should be requisitioned from the submitting agent.

3.8 Where property has so transferred to the Scottish Ministers the Act and the Transfer of Property etc. (Scottish Ministers) Order 1999 will form the necessary links in title and should therefore be referred to on the Inventory Form 4. It will not be necessary for the agent to submit the Act and Order.

3.9 Where Scottish Ministers acquire subjects from a party other than a Minister of the Crown, it will not be necessary, nor indeed appropriate, to examine a section 116(11) Certificate when those subjects are next transacted with.

Sasine Register

3.10 Where the deed is granted by Scottish Ministers the Act and the

aforementioned Order will form the relevant links in title for the purposes of deducing title. A section 116(11) Certificate will not be necessary. The deed will be taken at face value.

(D) Deeds executed on or after 20 May 1999 granted by Ministers of the Crown.

Land Register

3.11 Where property is being conveyed or otherwise dealt with by a Minister of the Crown for the first time on or after 20 May 1999 a Certificate issued in terms of section 116(1) of the Act stating that the property has not transferred to the Lord Advocate (possible from 20 May 1999), to the Scottish Parliamentary Corporate Body (possible from 1 June 1999) or to Scottish Ministers (possible from 1 July 1999) should accompany the application for registration. It is essential that a Certificate be obtained as it is the only conclusive proof as to whether a particular property has transferred to one of the aforementioned three bodies or has been retained by the appropriate Minister of the Crown. As with the transfer to the Scottish Ministers no list of the properties transferred to the Lord Advocate or the Scottish Parliamentary Corporate Body is given in the subordinate legislation. Without a Certificate there is the risk that the party granting the deed, a Minister of the Crown, is no longer vest in the subjects, which in turn could place the Keeper's indemnity at risk. In its absence it should be requisitioned from the submitting agent. The reason for the earlier dates (i.e. 20 May and 1 June) relates to the earlier transfer of properties and functions to both the Lord Advocate (see para 4.1 below) and the Scottish Parliamentary Corporate Body (see para 4.2 below).

3.12 Where a Minister of the Crown acquires subjects after 1 July 1999 it will not be necessary, nor indeed appropriate, to examine a section 116(11) Certificate when those subjects are next transacted with, except in the unlikely event the sale happens to be by the Lord Advocate, the Scottish Parliamentary Corporate Body or Scottish Ministers.

Sasine Register

3.13 The deed will be taken at face value. A section 116(11) Certificate will not be necessary.

4. Miscellaneous Transactions

(A) Transfers to the Lord Advocate

4.1 Similar provisions exist as regards those functions transferred to the Lord Advocate. By virtue of section 62 of the Act as supplemented by the Transfer of Property etc. (Lord Advocate) Order 1999 [S.I. No. 1105/1999] property related to those functions transferred to the Lord Advocate will, with effect from 20 May 1999, transfer to and vest in the Lord Advocate. The procedures outlined at paragraphs 3.4 to 3.13 above apply equally to the Lord Advocate and should, subject to the undernoted proviso, be followed. The Act and the aforementioned Statutory Instrument comprise the appropriate links in title. The procedure for issue of a section 116(11) Certificate also applies to the transfer of functions to the Lord Advocate and should, subject to the undernoted proviso, be sought in all transactions on or after 20 May 1999 whereby either a Minister of the Crown or the Lord Advocate is granting the deed. The proviso relates to the fact that the post of Lord Advocate is not a new office and accordingly he will already be infeft in certain

subjects prior to 20 May 1999. Any such subjects will remain unaffected by the Act and accordingly the procedures outlined above will not apply to them.

(B) Transfers to the Scottish Parliamentary Body
4.2 Section 21 of the Act makes provision for the establishment of a body corporate known as 'The Scottish Parliamentary Corporate Body' (hereinafter referred to as 'the Body'.) whose function is to provide the Scottish Parliament with the property, staff and services required for the Parliament's purposes. Again similar provisions to the above exist regarding property which is related to those functions transferred to that body. The appropriate Statutory Instrument in this instance is the Transfer of Property etc. (Scottish Parliamentary Corporate Body) Order 1999 [S.I. No. 1106/1999} and the effective date is the 1st June 1999. It is therefore not competent for deeds executed prior to that date to be either in favour of or granted by the Body. The procedures noted in paras 3.3 to 3.13 above apply equally to the Body. The facility also exists for the issue of a section 116(11) Certificate and this should be sought in all transactions on or after 1 June 1999 whereby the Scottish Parliamentary Corporate Body is granting the deed.
5. Any queries on the above or any other aspect of the Act should in the first instance be directed to John King of the Senior Legal Group (extension 3109) or to the undersigned.

Owner - Legal Services
Author - Ian Davis
Publication Date - 24/06/99

Servitude Rights – Constitution
Memo to all Legal staff

1. ROT Legal Memo L16/97 set out the Keeper's practice in relation to the acceptability of Affidavit evidence submitted in support of the existence of positive servitude rights. The purpose of this memo is to provide an update on developments as regards servitude rights in the Land Register.

2. Section 6(1)(e) of the Land Registration (Scotland) Act 1979 provides that the Keeper is required to enter in the Title Sheet 'any enforceable real right pertaining to the interest'. Although this appears to require the Keeper to enter a servitude right irrespective of the method of its constitution, he will do this only if satisfied that the right has been properly constituted. Clearly, if the Keeper is not satisfied that the right has been validly constituted, he must also have concerns about its enforceability. In this regard the Keeper will want to see evidence in support of the same.

3. The Keeper's policy to date has been to enter a servitude right in the Title Sheet of the putative dominant tenement so long as

- the right has been constituted by formal grant by the proprietor of the servient tenement, or
- the right has been expressly reserved in a conveyance of the servient tenement, or
- a Court Decree declaring the existence of the right has been obtained, or, rarely
- the right is constituted by statute.

4. Since this policy was promulgated, it has become apparent that in some cases practitioners seek to have a servitude constituted either by possession or implied grant enter the register but cannot, despite their best efforts, establish the owner of the putative servient tenement. It has been decided that in such instances, the Keeper will accept for registration an application containing the grant of a servitude right a non domino. Registration of a servitude a non domino interest in the Land Register will be accompanied by an exclusion of indemnity note in the Title Sheet. The prescriptive period for a servitude being twenty years in terms of Section 2(1) of the Prescription and Limitation (Scotland) Act 1973 necessitates that indemnity will be excluded in respect of the servitude for that period.
It is stressed that where the true/true owner of a servient tenement is known and can be identified the Keeper will not accept an application for registration of a servitude right on an a non domino basis. Any Agent seeking to register an a non domino servitude should, in addition to there being a formal grant included in a Disposition or Deed of Servitude, confirm in writing to the Keeper that the owner of the servient tenement cannot be identified.

5. An article on this subject explaining the Keeper's policy is expected to appear in the April edition of the publication Scottish Law & Practice Quarterly and in a forthcoming edition of the issue of the Journal of the Law Society of Scotland.

Any consequential amendments to the ROT Legal Manual will be incorporated in due course.

Owner - Legal Services
Author - Ian Davis
Publication Date - 17/03/99

1998

Changes to Stamp Duty

The Budget on 17 March 1998 increased the rates of stamp duty on transfers of property for more than £250,000. The existing rates for transfer of property for up to and including £250,000 remain unchanged.

Where the transfer is for more than £250,000 but not over £500,000, it will be liable for duty at a rate of 2 per cent and for uncertified transfers the rate of duty will be 3 per cent.

Rates of Duty

The new scale or rates will be:—

- A nil rate for transactions not exceeding £60,000 (no change);
- per £100 (1 per cent) or part of £100 (as now), if the price is more than £60,000 but not more than £250,000 (no change);
- per £100 (2 per cent) or part of £100, if the price is more than £250,000, but not more than £500,000;
- per £100 (3 per cent) or part of £100 of the price is more than £500,000.

The new rates will apply to the premium on the grant of a new lease in the same way as to purchases. The separate scale of rates of duty on rent will remain unchanged.

Certificates of Value

There are no changes to the 3 existing levels for Certificates of Value.
A transfer or lease document will need to contain a certificate of value (in its current form) to the effect that the transaction is not part of a larger transaction, or series of transactions, for a total price of more than £60,000 for the nil rate, £250,000 for the 1 per cent rate or £500,000 for the 2 per cent rate. No Finance Act Certificate is required if the duty is charged at the 3 per cent rate.

Commencement Date

The new rates will apply only to transfer documents executed on or after 24 March. However, if the document is executed in pursuance of a contract made on or before 17 March 1998 the present rates will apply instead. The Keeper will accept without further enquiry a deed executed on or after 24 March which is stamped at rates of duty in existence prior to 24 March 1998, on the basis that the Inland Revenue must have satisfied itself as to the contract date.

Agreements for lease

An agreement for lease is liable to stamp duty as if it were an actual lease. But if a lease is subsequently granted which is in conformity with the agreement, or which relates to substantially the same property and term of years as the agreement, the duty on the lease is reduced by the duty already paid on the agreement.

Where an agreement for lease has been made on or before 17 March, but the lease granted as a result of the agreement is not granted until 24 March or later, the agreement will be liable at the rates of duty in existence prior to 24 March 1998 and the lease itself will also be liable at the same rate if the agreement constitutes a binding contract to grant the lease. Any duty paid on the agreement will be credited against the duty on the lease, if the necessary conditions in Section 75 of the Stamp Act 1891 are satisfied.

Owner - Legal Services
Author - Ian Davis
Publication Date - 25/03/98

Registration of Standard Securities by a Limited Company

On the registration of a charge in the Companies Register a copy of the security creating that charge is lodged with that Register.

Problems have arisen when it has been discovered subsequent to the lodging of the copy security deed in the Companies Register that the security deed requires to be amended. It is not an option for the security deed to be amended and the original date of registration in the Land Register to be retained as the deed would be at variance with what has been registered in the Companies Register. In such circumstances the application to register the security deed **must be withdrawn** and presented afresh with the amended security deed. Where the security deed accompanies a disposition and an abated fee is payable the Agent should be contacted and given the opportunity to withdraw the whole application.

Owner - Legal Services
Author - Ian Davis
Publication Date - 08/12/98

1997

ALLIANCE & LEICESTER BUILDING SOCIETY
ALLIANCE & LEICESTER plc — 5-97 (Legal Memo)

1. With effect from 21 April 1997 the business of Alliance & Leicester Building Society transfers to and vests in Alliance & Leicester plc by virtue of a Transfer Agreement dated 15 October 1996 with the Building Societies Commission's Confirmation dated 11 March 1997.

2. In this Memo the following definitions are used:-
"the vesting date" means 21 April 1997
"the business" includes property, rights and liabilities
"the Society" means Alliance & Leicester Building Society
"the Successor" is Alliance and Leicester plc
"the Agreement" is the Transfer Agreement
"the Confirmation" is the Building Societies Commission's Confirmation

3. In terms of clause 13 of the Agreement the Society consents and authorises the Successor to use the name 'Alliance & Leicester' from the vesting date. However, the Successor may not use the term 'Building Society' and accordingly will be styled as in paragraph 2 above.

THE KEEPER'S REQUIREMENTS
Land Register
4. Deeds executed before the vesting date
4.1 Any deed granted in favour of the Society and executed before the vesting date but submitted as part of an application on or after that date will be acceptable if the following points are met:-
(a) The Application Form specifies the Successor as the Applicant.
(b) The Agreement and the Confirmation are included in the box on the Application Form headed 'Name of deed in respect of which registration is required.'
(c) The Application Form specifies on page one that application for registration is sought in respect of the deed in favour of the Building Society **and** the Agreement **and** the Confirmation.
(d) The Agreement and the Confirmation are listed on the Form 4 submitted with the application. Copies of the documents themselves need not be submitted.
4.2 Discharges granted by the Society must bear to have been executed before the vesting date; but there is no objection to recording or registering them after that date since no infeftment is involved.

5. Deeds executed on or after the vesting date
5.1 Such deeds must be granted by or be in favour of the Successor. Where the Successor grants a Discharge of a registered or recorded Standard Security which was in the name of the Society, the Agreement and the Confirmation should be listed on the Form 4 and referred to in a deduction of title if appropriate.

6. Settlers should note that certified copies of the Agreement and the Confirmation have been examined and added to the Common Links Index. No requisitioning or further examination of these documents is therefore necessary.

Sasine Register

7. Deeds executed before the vesting date

7.1 Standard Securities granted in favour of the Society but not recorded before the vesting date should be either (a) re-engrossed in favour of the Successor or (b) docqueted with reference to a Notice of Title on behalf of the latter and the two deeds recorded together, with the Warrant on the Notice of Title incorporating reference to the Standard Security (see s.10(4) of the Conveyancing (Scotland) Act 1924).

7.2 Discharges granted by the Society must bear to have been executed before the vesting date; but there is no objection to recording them after that date since no infeftment is involved.

8. Deeds executed on or after the vesting date

8.1 Such deeds must be granted by or be in favour of the Successor. Where the Successor grants a Discharge of a Standard Security which was in the name of the Society the deed should deduce title from the Society and refer to the Agreement and Confirmation.

[II] THE NEW TOWN (IRVINE) DISSOLUTION ORDER 1997 - SI 1997 No.641
THE NEW TOWN (LIVINGSTON) DISSOLUTION ORDER 1997 - SI 1997 No.642
THE NEW TOWN (CUMBERNAULD) DISSOLUTION ORDER 1997 - SI 1997 No.643

1. It should be noted that since the issue of Legal Memo L4/97|Sasine Memo 62 the above Statutory Instruments have been made whereby the Secretary of State for Scotland appoints 31 March 1997 as the date for the dissolution of the respective nominated Development Corporations.

Owner - Legal Services
Author - Ian Davis
Publication Date - 17/04/97

BRISTOL & WEST BUILDING SOCIETY
BRISTOL & WEST plc

1. With effect from 28 July 1997 the business of Bristol and West Building Society transfers to and vests in Reading Mortgages plc, renamed Bristol & West plc by virtue of a Transfer Agreement dated 26 February 1997 with the Building Societies Commission's Confirmation dated 9 July 1997.

2. In this Memo the following definitions are used:-
"the vesting date" means 28 July 1997
"business" includes property and liabilities
"the Society" means Bristol and West Building Society
"the Successor" is Bristol & West plc
"the Agreement" is the Transfer Agreement
"the Confirmation" is the Building Societies Commission's Confirmation.

3. In terms of clause 18 of the Agreement the Society consents and authorises the Successor to use the name 'Bristol & West' from the vesting date. However, the Successor may not use the term 'Building Society' and accordingly will be styled as in paragraph 2 above.

THE KEEPER'S REQUIREMENTS
Land Register
4. Deeds executed before the vesting date
4.1 Any deed granted in favour of the Society and executed before the vesting date but submitted as part of an application on or after that date will be acceptable if the following points are met:-
(a) The Application Form specifies the Successor as the Applicant.
(b) The Agreement and the Confirmation are included in the box on the Application Form headed 'Name of deed in respect of which registration is required.'
(c) The Application Form specifies on page one that application for registration is sought in respect of the deed in favour of the Building Society and the Agreement and the Confirmation.
(d) The Agreement and the Confirmation are listed on the Form 4 submitted with the application. Copies of the documents themselves need not be submitted.
4.2 Discharges granted by the Society must bear to have been executed before the vesting date; but there is no objection to recording or registering them after that date since no infeftment is involved.

5. Deeds executed on or after the vesting date
5.1 Such deeds must be granted by or be in favour of the Successor. Where the Successor grants a Discharge of a registered or recorded Standard Security which was in the name of the Society, the Agreement and the Confirmation should be listed on the Form 4 and referred to in a deduction of title if appropriate.

6. Settlers should note that certified copies of the Agreement and the Confirmation have been examined and added to the Common Links Index. No requisitioning or further examination of these documents is therefore necessary.

Sasine Register

7. Deeds executed before the vesting date

7.1 Standard Securities granted in favour of the Society but not recorded before the vesting date should be either (a) re-engrossed in favour of the Successor or (b) docqueted with reference to a Notice of Title on behalf of the latter and the two deeds recorded together, with the Warrant on the Notice of Title incorporating reference to the Standard Security (see s.10(4) of the Conveyancing (Scotland) Act 1924).

7.2 Discharges granted by the Society must bear to have been executed before the vesting date; but there is no objection to recording them after that date since no infeftment is involved.

8. Deeds executed on or after the vesting date

8.1 Such deeds must be granted by or be in favour of the Successor. Where the Successor grants a Discharge of a Standard Security which was in the name of the Society the deed should deduce title from the Society and refer to the Agreement and Confirmation.

Owner - Legal Services
Author - Ian Davis
Publication Date - 28/07/97

CHANGES TO STAMP DUTY
Increase in the rate of stamp duty

1. Introduction
The Budget on 2 July 1997 increased the rate of stamp duty. The increase means that uncertificated transfers will be liable to a duty at the rate of 2 per cent. Certificated transfers will be at the rates of duty shown below.

2. Rates of duty
· A nil rate for transactions not exceeding £60,000 (no change)
· £1 per £100 or part of £100 (as now), if the price is more than £60,000 but not more than £250,000 ("the 1 per cent rate");
· £1.50 per £100 or part of £100, if the price is more than £250,000, but not more than £500,000 ("the 1.5 per cent rate");
The new rates will apply to the premium on the grant of a new lease in the same way as to purchases. The separate scale of rates of duty on rent will remain unchanged.

3. Certificates of Value
A transfer or lease document will need to contain a certificate of value (in its current form) to the effect that the transaction is not part of a larger transaction, or series of transactions, for a total price of more than £60,000 for the nil rate, £250,000 for the 1 per cent rate or £500,000 for the 1.5 per cent rate. No Finance Act Certificate is required if the duty is charged at the 2 per cent rate.

4. Commencement Date
The new rates will apply only to transfer documents executed on or after the 8 July. However if the document is executed in pursuance of a contract made on or before 2 July, the present 1 per cent rate will apply instead, and no certificate of value will be needed (unless exemption is claimed for a transfer etc for £60,000 or less). The Keeper will accept without further enquiry a deed executed on or after 8 July, which is stamped at 1 per cent and bears no certificate of value, on the basis that the Inland Revenue must have satisfied itself as to the contract date.

5. Agreements for lease
An agreement for lease is liable to stamp duty as if it were an actual lease. But if a lease is subsequently granted which is in conformity with the agreement, or which relates to substantially the same property and term of years as the agreement, the duty on the lease is reduced by the duty already paid on the agreement.
Where an agreement for lease has been made on or before 2 July, but the lease granted as a result of the agreement is not granted until 8 July or later, the agreement will be liable at the 1 per cent rate; and the lease itself will also be liable at the same rate if the agreement constitutes a binding contract to grant the lease. Any duty paid on the agreement will be credited against the duty on the lease, if the necessary conditions in Section 75 of the Stamp Act 1891 are satisfied.

Owner - Legal Services
Author - Ian Davis
Publication Date - 10/07/97

Descriptions in Standard Securities
Power of Sale

Legal Memos L14/95, L15/95, L9/96 and L10/97 set out the Keeper's policy and practice in accepting or rejecting Standard Securities for recording or registration on the basis of the decisions in the cases involving Beneficial Bank plc.
In dealing with an application to register a purchaser's title following on the exercise of a power of sale by a heritable creditor under a Standard Security recorded in the Sasine Register, settlers should carefully examine the description of the security subjects in the Standard Security in question. If the description does not comply with the Keeper's requirements as set out in the above memos, indemnity will be excluded in the purchaser's Title Sheet and the applicant's agents should be informed accordingly. The style of the exclusion of indemnity note, which will appear in the Proprietorship Section of the Title Sheet, should be based as nearly as may be on the following style:

Note: Indemnity is excluded in terms of section 12(2) of the Land Registration (Scotland) Act 1979 in respect of any loss arising as a result of the Standard Security, by AB in favour of CD, recorded GRS (....) ....., being declared or found to be invalid because the description of the security subjects contained therein does not comply with the requirements of Note 1 to Schedule 2 to the Conveyancing and Feudal Reform (Scotland) Act 1970, said Standard Security being the link in title of said CD who disponed the subjects in this Title as heritable creditors in possession to [said] EF *[the current proprietor(s) [or] former proprietor(s) within the prescriptive period]* by Disposition registered.....
The exclusion of indemnity may be removed after the operation of ten years prescription on the registered title, subject to the production of evidence of unchallenged possession. If the agents wish to take remedial action at this stage to avoid an exclusion of indemnity or have it removed before the expiry of ten years, it may be open to them to seek rectification of the Standard Security under Sections 8 and 9 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985.

In applications to register a purchaser's title following on the exercise of a power of sale under a Standard Security, for which the Keeper has already issued a fully indemnified Charge Certificate, the title will be registered without an exclusion of indemnity in respect of the description of the security subjects in the Standard Security for which the Charge Certificate was issued. This practice should be followed even where the description of the security subjects does not comply with the requirements set out in earlier memos.

Owner - Legal Services
Author - Ian Davis
Publication Date - 04/12/97

Halifax Plc
Update

With effect from 2 June 1997 the business of Halifax Building Society transfers to and vests in Halifax plc by virtue of a Transfer Agreement dated 20 December 1996 with the Building Societies Commission's Confirmation dated 23 May 1997.

1. In this Memo the following definitions are used:-
"the vesting date" means 2 June 1997
"business" includes property, rights and liabilities
"the Society" means Halifax Building Society
"the Successor" is Halifax plc
"the Agreement" is the Transfer Agreement
"the Confirmation" is the Building Societies Commission's Confirmation.

THE KEEPER'S REQUIREMENTS
Land Register

2. Deeds executed before the vesting date
2.1 Any deed granted in favour of the Society and executed before the vesting date but submitted as part of an application on or after that date will be acceptable if the following points are met:-
(a) The Application Form specifies the Successor as the Applicant.
(b) The Agreement and the Confirmation are included in the box on the Application Form headed 'Name of deed in respect of which registration is required.'
(c) The Application Form specifies on page one that application for registration is sought in respect of the deed in favour of the Building Society **and** the Agreement **and** the Confirmation.
(d) The Agreement **and** the Confirmation are listed on the Form 4 submitted with the application. Copies of the documents themselves need not be submitted.
2.2 Discharges granted by the Society must bear to have been executed before the vesting date; but there is no objection to recording or registering them after that date since no infeftment is involved.

3. Deeds executed on or after the vesting date
3.1 Such deeds must be granted by or be in favour of the Successor. Where the Successor grants a Discharge of a registered or recorded Standard Security which was in the name of the Society, the Agreement and the Confirmation should be listed on the Form 4 and referred to in a deduction of title if appropriate.

4. Settlers should note that certified copies of the Agreement and the Confirmation have been examined and added to the Common Links Index. No requisitioning or further examination of these documents is therefore necessary.

Sasine Register

5. Deeds executed before the vesting date
5.1 Standard Securities granted in favour of the Society but not recorded before the vesting date should be either (a) re-engrossed in favour of the Successor or (b) docqueted with reference to a Notice of Title on behalf of the latter and the two

deeds recorded together, with the Warrant on the Notice of Title incorporating reference to the Standard Security (see s.10(4) of the Conveyancing (Scotland) Act 1924).
5.2 Discharges granted by the Society must bear to have been executed before the vesting date; but there is no objection to recording them after that date since no infeftment is involved.

6.Deeds executed on or after the vesting date
6.1 Such deeds must be granted by or be in favour of the Successor. Where the Successor grants a Discharge of a Standard Security which was in the name of the Society the deed should deduce title from the Society and refer to the Agreement and Confirmation.

Owner - Legal Services
Author - Ian Davis
Publication Date - 02/06/97

Major Ownership Schemes
Standard Securities by company nominees

Since 1982, a few development companies have operated Major Ownership Schemes to facilitate house sales. The subject is covered in some depth in the Legal Manual, especially at Section T.
In Major Ownership Schemes it is common practice for the company's nominee and the purchaser to grant separate Standard Securities to the same creditor over their respective **pro indiviso** shares. Since the company's nominee acts for a limited company, his Standard Security is regarded as if it were granted by the company itself. Consequently, the Standard Security should be registered by the Registrar of Companies in the Register of Charges, within 21 days of the date of registration in the Land Register.
It seems that a number of applications for registration in the Register of Charges may have been mistakenly rejected by Companies House staff. This has led to some confusion. Asked to clarify the position, the Registrar of Companies has now confirmed that his policy remains unchanged towards Standard Securities granted by company nominees in connection with Major Ownership Schemes. Registration in the Register of Charges is still necessary.

The Keeper's policy in respect of such Standard Securities is likewise unchanged. In practice, that means that a Standard Security by a company nominee under a Major Ownership Scheme should be dealt with in the same way as a Standard Security by a limited company. When a Form 2 Application in respect of such a Standard Security is received, the deed should be checked. Provided the deed is acceptable for registration, a Form L19 letter confirming the date of registration should be sent to the agent. If, after 60 days, no Certificate of Registration of Charge issued by the Registrar of Companies has been produced, an exclusion of indemnity in terms of Paragraph S.2.4.1 of the Legal Manual will be imposed.

Owner - Legal Services
Author - Ian Davies
Publication Date - 05/03/97

New Towns Orders by Secretary of State for Scotland
Update

THE NEW TOWN (CUMBERNAULD) (TRANSFER OF PROPERTY, RIGHTS AND LIABILITIES) ORDER 1997 - SI 1997 No. 341
THE NEW TOWN (LIVINGSTON) (TRANSFER OF PROPERTY, RIGHTS AND LIABILITIES) ORDER 1997 - SI 1997 No. 342
THE NEW TOWN (IRVINE) (TRANSFER OF PROPERTY, RIGHTS AND LIABILITIES) ORDER 1997 - SI 1997 No. 343
The above Orders were made by the Secretary of State for Scotland under section 36D of the New Towns (Scotland) Act 1968 in connection with the winding up of the Development Corporations. The Orders came into force on 22 March 1997.

The effect of the Orders is to transfer any property, rights and liabilities from respectively the Cumbernauld, Livingston and Irvine Development Corporations to respectively the North Lanarkshire, West Lothian and North Ayrshire Councils.

By virtue of Article 2 of each Order, transfer and vesting took effect on the date on which the Order came into force, viz 22 March 1997.

Each Order forms a good link in title or midcouple between the relevant Development Corporation and Council for the purposes of deduction of title or an application for registration by the Council or a party tracing title through the Council.

A copy of each Order has been forwarded to the Common Links Officer and settlers need not requisition additional copies.

Owner - Deputy Keeper
Author - Alistair Rennie
Publication Date - 24/03/97

NORTHERN ROCK BUILDING SOCIETY
NORTHERN ROCK plc

1. With effect from 1 October 1997 the business of Northern Rock Building Society transfers to and vests in Northern Rock plc by virtue of a Transfer Agreement dated 17 February 1997 with the Building Societies Commission's Confirmation dated 18 July 1997.

2. In this Memo the following definitions are used:—
"the vesting date" means 1 October 1997
"business" includes property and liabilities
"the Society" means Northern Rock Building Society
"the Company" is Northern Rock plc
"the Agreement" is the Transfer Agreement
"the Confirmation" is the Building Societies Commission's Confirmation.

3. In terms of clause 17 of the Agreement the Society consents and authorises the Company to use the name 'Northern Rock' from the vesting date. However, the Company may not use the term 'Building Society' and accordingly will be styled as in paragraph 2 above.

THE KEEPER'S REQUIREMENTS
Land Register

4. Deeds executed before the vesting date
4.1 Any deed granted in favour of the Society and executed before the vesting date but submitted as part of an application on or after that date will be acceptable if the following points are met:-
(a) The Application Form specifies the Company as the Applicant.
(b) The Agreement and the Confirmation are included in the box on the Application Form headed 'Name of deed in respect of which registration is required.'
(c) The Application Form specifies on page one that application for registration is sought in respect of the deed in favour of the Building Society and the Agreement and the Confirmation.
(d) The Agreement and the Confirmation are listed on the Form 4 submitted with the application. Copies of the documents themselves need not be submitted.
4.2 Discharges granted by the Society must bear to have been executed before the vesting date; but there is no objection to recording or registering them after that date since no infeftment is involved.

5. Deeds executed on or after the vesting date
5.1 Such deeds must be granted by or be in favour of the Company. Where the Company grants a Discharge of a registered or recorded Standard Security which was in the name of the Society, the Agreement and the Confirmation should be listed on the Form 4 and referred to in a deduction of title if appropriate.

6. Settlers should note that certified copies of the Agreement and the Confirmation have been examined and added to the Common Links Index. No requisitioning or further examination of these documents is therefore necessary.
Sasine Register

7. Deeds executed before the vesting date
7.1 Standard Securities granted in favour of the Society but not recorded before the vesting date should be either (a) re-engrossed in favour of the Company or (b) docqueted with reference to a Notice of Title on behalf of the latter and the two deeds recorded together, with the Warrant on the Notice of Title incorporating reference to the Standard Security (see s.10(4) of the Conveyancing (Scotland) Act 1924).
7.2 Discharges granted by the Society must bear to have been executed before the vesting date; but there is no objection to recording them after that date since no infeftment is involved.

8. Deeds executed on or after the vesting date
8.1 Such deeds must be granted by or be in favour of the Company. Where the Company grants a Discharge of a Standard Security which was in the name of the Society the deed should deduce title from the Society and refer to the Agreement and Confirmation.

Owner - Legal Services
Author - Ian Davis
Publication Date - 01/10/97

PARTNERSHIP AND OTHER TRUST DESTINATIONS
Update

The attention of all legal settlers is drawn to ROT Legal Memo L12/97 issued by Alec Falconer on 20 September 1996. For ease of reference the text of that memo was as follows:
"1. Paragraph J.3.3.8 of the Legal Manual gives examples of B Section entries reflecting destinations for various types of trust arrangements including, at (f), partnerships. Several examples of the misapplication of pro forma style (f) were recently brought to the Agency's attention by an Agent who complained that his standard partnership destinations were invariably being misrepresented in Title Sheets. This Agenct's typical partnership destination reads:
"[I ..... have sold and do hereby dispone to] A, B and C [all designed], the partners of the said firm of X **as trustees for the firm and the partners thereof present and future and their successors in office as such trustees** and the survivor of them and executors of the last survivor as trustees and trustee aforesaid".

2. The use of style (f) in the B Section meant that the words "as trustees for the firm and the partners thereof present and future and their successors in office as such trustees" were omitted. The omission was thought to change the legal effect of the destination (by removing the ability of future uninfeft partners to procure themselves infeft as trustees, should the original trustees die) and the Agent required the Register to be rectified.

3. The Manual examples were intended to be followed only when the text of the deed justified them. However, destinations can raise complex legal issues. The proper and safe course of action to avoid inadvertently changing the meaning of a destination is to **follow the deed by omitting no material words** even where there appears to be repetition. That means that the wording of the deed should not be departed from merely in order to conform to a style in J.3.3.8. Normal editing practice such as omitting words like "residing at" is, of course, acceptable."
Despite that memo we are still receiving complaints about partnership destinations which have not been correctly reflected in the Title Sheet/Land Certificate. Such an error can lead to a lapsed Trust with serious consequences. Legal settlers should follow Mr Falconer's instructions and repeat the destination in its entirety omitting words such as "residing at".

Owner - Deputy Keeper
Author - Alistair Rennie
Publication Date - 13/10/97

PROPERTY DESCRIPTIONS IN STANDARD SECURITIES — Update

1. The case of Bennett v Beneficial Bank plc 1995 SCLR 284 (referred to in Sasine Memo No. 49/ROT Legal Memo L14/95 and ROT Legal Memos L15/95 and 9/96) made it clear that the property description in a standard security (other than a standard security over a registered title) had to be a particular description, a description by reference or a statutory description by general name. Bennett did not deal specifically with the traditional or common law description of a tenement flat, but as it could be argued that such a description was a particular description, the Keeper has continued to accept standard securities with such descriptions in the Sasine Register, and also in the Land Register at the time of first registration albeit under exclusion of indemnity.

2. The First Division of the Inner House of the Court of Session, headed by the Lord President, later pronounced upon the same issues in the special case of Beneficial Bank plc v McConnachie 1996 SLT 413. That case was raised in order to give the Court the opportunity to review the Bennett decision. The Court was invited to decide the validity of a standard security granted over a mid-terraced villa house with adjoining ground described as
"The property: The Heritable subjects known as 57 LONGDYKES ROAD, PRESTONPANS IN THE COUNTY OF EAST LOTHIAN".
The Court held that Bennett had been correctly decided and it made some further comments. Afterwards, it seemed that the case was to be appealed to the House of Lords (as stated in Para 3.1 of Legal Memo L9/96). However, it now appears that the appeal has been abandoned. The Court of Session decision in McConnachie therefore stands. The salient points are as follows:
(a) The phrase **"particular description"** is a term of art which may be incapable of precise definition, because the detail required to constitute a particular description will vary from case to case. With standard securities, the intention of Parliament was that the creditor should not need to rely on any source other than the terms of the description in the deeds to identify the extent of the subjects. Thus the description must identify and define the security subjects in sufficient detail to make it unnecessary for the creditor to refer to extraneous matters such as the state of possession and the operation of positive prescription or the title of the proprietor, in order to define the extent of the subjects. The description must not only identify the security subjects but also define their extent.
(b) There is no support for the view that a **normal postal address** will constitute a particular description. But, in line with the observation that what is required of a particular description will vary according to the circumstances, the Court has said that it may be going too far to assert that no **postal address** will ever constitute a particular description. Exceptionally, a postal address may contain all that is needed to identify the boundaries. The example given by the Court is the case of subjects which consist of a small island in the sea, the name of which is its postal address. That, it was felt, would suffice both to identify the subjects and implicitly define their extent.
(c) The Court indicated that pertinents outwith the extent delineated by a particular description [for example a garage or cellar] are not included: "the effect of a particular

description is that no corporeal right of property in land can be acquired beyond the boundaries.....".

3. Tenement flats received special mention, with a distinction being drawn between upper flats and ground floor flats. As regards **upper flats**, the traditional or common law description both identifies the flat within the tenement and, by necessary implication, delineates the flat. Property rights indivisible from the flat itself will presumably also be covered, e.g. rights of servitude. On the other hand, corporeal rights such as rights to the roof, drying green and solum do not appear to fall within a particular description so in theory they may be excluded.
As regards **ground floor flats,** a traditional description does not necessarily invalidate a standard security but the Court's remarks raise doubt as to whether such a description will always be competent in relation to a flat at ground level. If for example a ground flat has been extended, some amplification of the description will be required. If there is no amplification the Keeper is entitled to assume that the flat is within its original extent as constructed.

4. The **implications** of the Decision in Beneficial Bank plc v McConnachie for ROS are as follows:
A. **Sasine Register**
(a) Non-flatted properties. For the majority of properties the Keeper's policy is unchanged, i.e. a postal address will not be acceptable. For an insignificant number of properties such as small offshore islands, a postal address may be acceptable depending upon circumstances such as whether the island is owned as a single unit. These cases will be very much the exception to the rule, and any postal address which appears to benefit from this exception or in respect of which an Agent claims the benefit of the exception should be referred through line management to the Senior Legal Group for guidance.
(b) Flatted Properties. The Keeper's policy of accepting standard securities containing full verbal descriptions of flats, e.g. the northmost house on the second flat of the tenement entering by the common close 10 High Street, Weem continues in relation to both upper floor flats and ground flats. This is because the Court's decision leaves a degree of uncertainly as to the proper way of describing ground flats.
It is clear of course that if the description relating to a tenement flat gives no indication that the property is a ground or an upper flat and merely contains a postal address, the deed will be invalid. However, several informal ways of identifying flats whether at upper or ground level can now be seen to be incompetent and should lead to the rejection of any standard security in which they constitute the only description. If the deed also contains a valid particular description or a valid description by reference, that will save it from invalidity.
Subject to the foregoing caveat, examples of what is/is not acceptable are given below. Examples 1, 2 and 3 are acceptable because they refer to a compass direction (e.g., "northmost") that is fixed and unchanging. The usage is well-established in conveyancing practice. By contrast, Examples 4, 5, 6 and 7 are unacceptable because references to "right" and "left" and "F1", "F2", etc., are based on the subjective viewpoint of a person climbing the tenement stairs. The references are potentially

misleading, since a flat which is on the right side when seen from the street may be on the left side when seen from the stairs.

Description Comment

1. The northmost west facing second floor flat 1 Roseneath Terrace Acceptable

2. The northmost of two second floor flats 1 Roseneath Terrace Acceptable

3. The northmost second floor flat 1 Roseneath Terrace Acceptable

4. Top flat right 1 Roseneath Terrace Not Acceptable

5. TFR 1 Roseneath Terrace or 3 FR 1 Roseneath Terrace Not Acceptable

6. 3F2 1 Roseneath Terrace Not Acceptable

7. Flat 4/1 Roseneath Terrace Not Acceptable

Note: Strictly speaking, Examples 1, 2 and 3 should specify that the second floor is the second floor above the ground floor, as distinct from the second floor counting from the ground floor (i.e. counting the ground floor as the first floor). However, the former alternative is invariable Scots practice and there is minimal risk of ambiguity in practice.

B. Land Register

Staff must follow the practice stipulated for the Sasine Register, particularly in relation to the Examples given immediately above. **N.B. In view of the Court's endorsement of traditional or common law descriptions of tenement flats exclusion of indemnity in terms of ROT Legal Memo L15/95 is no longer necessary.**

[It will be recollected that problems with descriptions in standard securities arise mainly at the time of first registration, because once a title sheet is in existence the description of the property depends upon the title number as the sole essential ingredient. DW standard securities over part of registered subjects are also affected although they were not specifically mentioned in the previous memos.]

Applications for registration by purchasers from creditors under **power of sale** where the standard security is seen to lack any valid description of the property should continue to be referred to Pre-Registration Enquiries Section for consideration.

5. Description by reference to a deed containing a description by reference

Some second mortgage lenders have made a practice of describing the security subjects by reference to a convenient prior recorded deed (usually the debtor's title deed) regardless of whether it contains a particular description. But a description by reference is invalid if the deed referred to lacks a particular description and merely refers in turn to another recorded deed (usually the breakaway deed) which does contain a particular description. This only matters if the description rests entirely upon the reference. When it is evident from the wording of the Sasine minute of the writ referred to that that writ in turn merely contains a description by reference and not a particular description or plan, Sasine and Land Register staff should therefore consider whether any remaining or alternative description of the security subjects in the standard security (i.e. after disregarding the invalid description by reference) qualifies as a particular description and so saves the deed from invalidity.

For example a standard security may repeat a bounding description in addition to describing the security subjects by reference. Or the description may incorporate a traditional or common law description of a tenement flat including parts, pertinents and rights in common such that a correct description would not have amplified the extent of the security subjects. In either of these cases, recording/registration can proceed.

If any remaining description does not qualify as a particular description the standard security is invalid and cannot be accepted as it stands. Alternatively the remaining description is seen to be competent as regards the main subjects but it fails to include some corporeal right or pertinent outwith the express or implied (in the case of a flat) boundaries. The standard security can be accepted but in the Land Register the agent should be advised that if the deed is to be registered as it stands the entry in the C Section will make it clear that the security subjects do not include all pertinents.

6. Deeds of Restriction
Note 1 to Schedule 2 to the 1970 Act does not merely regulate descriptions in standard securities. It is also referred to in Forms C and D of Schedule 4 which provide, respectively, forms of deed of restriction and combined deed of restriction and partial discharge. It follows that Form C or Form D documents which do not identify the subjects by means of a particular description or a description by reference to a particular description are invalid. In principle they should not be accepted for recording or registration.

Owner - Legal Services
Author - Ian Davis
Publication Date - 09/06/97

Property descriptions in Standard Securities

In the last few weeks, Senior Legal Group has been alerted to instances of recently registered Standard Securities containing inadequate property descriptions
All staff, Land Register and Sasine, **must** follow the instructions given in Legal Memo L14/95 (Sasine Memo 49). For Land Register staff, Legal Memos L15/95 and L9/96 are also relevant.
When a Standard Security is unacceptable for registration/recording because of the inadequacy of the property description, the advice to be given to the agent is that the deed should be re-engrossed

Owner - Legal Services
Author - Ian Davis
Publication Date - 21/04/97

Public Sector Housing
Memo to all Legal staff
Rights of Pre-emption Highland Council v Patience and Others (1996 GWD 40-2294, The Times 9 Jan 1997)

1. The above case, recently appealed to the House of Lords, concerned the effect of a clause of pre-emption in the title of a housing authority whose tenant claimed the right to buy under the Housing (Scotland) Act 1987. The clause in the authority`s title, which was a feu charter, was in the following terms;-
"The feuars shall not sell or dispone the feu or any part thereof or any building thereon to any other person or persons whomsoever until the same shall first have been offered to the superiors at a price to be fixed by arbitration."

2. The House, allowing the appeal, found that (a) the clause of pre-emption did not apply to the process under the Act for the acquisition of his dwellinghouse by a secure tenant and (b) on a proper construction of the provisions of the Housing (Scotland) Act a secure tenant can exercise his right to purchase regardless of a right of pre-emption in the title of the landlord. The main elements of their Lordships` reasoning were, respectively, (a) that, while the words "sell" and "dispone" in the clause contemplated a voluntary transaction, the acquisition procedure under the Act was not really consensual and (b) that the history of the legislation showed that Parliament`s purpose was that every tenant in the public sector who fell within the scope of the statutory requirements should have an unobstructed right to purchase the house he occupied. Although other elements of the decision, not mentioned above, hinged on the continuing contractual nature of the feudal relationship, the Keeper takes the view that the decision holds good for Dispositions as well as feu deeds.
The Keeper`s assessment of the effect of the decision is that a public sector housing body, whose title is burdened by a right of pre-emption, may disregard the clause of pre-emption on the occasion of a sale to a tenant who has exercised his statutory right to buy. The effect is NOT that the right of pre-emption is spent or extinguished. The purchasing tenant, when he wishes to sell the subjects, will still be bound to offer them first to the party enjoying the right of pre-emption.

3. Paragraph L.10.1.8. of the ROT Legal Manual describes the circumstances in which a right of pre-emption may be omitted from the Burdens Section. Where the number of sales since the creation of the right is a factor in deciding whether to omit it, settlers should treat a sale under the right-to-buy legislation as if it had not taken place, i. e. it should not be counted, on the basis that it did not afford an opportunity to exercise the right.

4. SLG will be pleased to assist with any difficulties arising in connection with this memo, in particular any challenge to the Keeper`s retention of a clause of pre-emption in a purchasing tenant`s title. Enquiries should be made through usual channels and directed to Diane Young or Bill Rankin.

Owner - Deputy Keeper
Author - Alistair Rennie
Publication Date - 06/02/97

Sales by Receivers
Risk to Indemnity

The recent House of Lords decision in the case of Sharp v Thomson (1997 SCLR 328 and 1997 SLT 636) has prompted the Keeper to consider the risk to his indemnity in sales by receivers. One of the implications of the decision is that once a disposition of heritable property by a company has been delivered to a purchaser, a floating charge over the company's property and undertaking cannot attach to that heritable property.

It is possible that, if a company grants and delivers a disposition to a purchaser, the purchaser (for whatever reason) will not record it in Sasines or apply for registration in the Land Register as the case may be. It is also possible that, later on, after the company's floating charge crystallises, the receiver may not learn about the earlier disposition and go on to sell the property to someone else. The second purchaser is then at risk of having his or her title defeated by the first purchaser, who holds on the delivered but unrecorded/unregistered disposition. That risk may well pass to the Keeper if he then proceeds to register the second purchaser's title without exclusion of indemnity.

However, the Keeper considers that the risk to his indemnity is too remote to justify a blanket exclusion of indemnity in all sales by receivers. A purchaser acting in good faith will be expected to have made appropriate enquiries of the receiver. If the receiver's responses are less than satisfactory, the purchaser's agent should seek the advice of the Pre-Registration Enquiries Section, in which case a decision concerning indemnity may be made at that time.

In an application for registration on behalf of a purchaser from a receiver, the settler should take note of any copy correspondence between the agent and the Pre-Registration Enquiries Section. If no such copy correspondence is enclosed with the application, the settler must pay special attention to the answer to the question on the application form which asks whether there is any person in possession or occupation of the property adverse to the interest of the applicant. If (a) that question is answered in the negative, (b) there is no other documentation in the application to suggest a prior disposition of the property by the company and (c) the required documentation concerning the appointment and actings of the receiver is submitted (see Legal Manual — Section F.2.3.2), the settler may proceed to register the title without an exclusion of indemnity on this matter. If any part of the application is unsatisfactory in respect of the above requirements, the case should be referred to a senior caseworker.

The Keeper's view on this subject will shortly be communicated to the legal profession in an article in the Journal of the Law Society.

Owner - Legal Services
Author - Ian Davis
Publication Date - 24/11/97

Servitude Rights – Affidavit Evidence
Existing practice

1. Land Register Applications for first registration of an interest in land often seek to convince the Keeper that the interest to be registered enjoys a servitude right (usually, a servitude right of access) which is not evident in any prior title deed. The applicant's argument is usually that the servitude right has either been constituted by implied grant and fortified by prescription, or been constituted by prescriptive possession alone.

2. In such cases the applicant's purpose is to persuade the Keeper to include the servitude right, expressly, in the A Property Section of the Title Sheet of the interest. The Keeper has taken a pragmatic approach to such requests and has not excluded Indemnity on this point, provided that the applicant produces suitable affidavit evidence of possession for the 20-year prescriptive period. There are instructions to that effect in the Registration of Title Legal Manual, at Paragraphs H.4.3.6 - H.4.3.7 and L.10.5.12.

Change in practice

3. Recently, however, there have been instances where affidavit evidence in support of servitude rights, accepted in good faith by the Keeper, has later been contradicted by evidence from other parties, usually the proprietor of the putative servient tenement.**Consequently, the Keeper is no longer prepared to rely on affidavit evidence submitted by the proprietors of putative dominant tenements in support of servitude rights.** The only exception to this new practice is that, if the Keeper has already committed himself to the consideration of affidavit evidence in response to a recent pre-registration enquiry, he will of course honour that commitment.

4. The Keeper will now include servitude rights in registered titles, **only** if those servitude rights are evidenced by an express grant by the infeft proprietor of the servient tenement or by a court decree. The express grant by the proprietor of the servient tenement may take the form of a separate Deed of Servitude or may be incorporated within the deed inducing registration.

5. This change in practice applies only to affidavit evidence in respect of prescriptive possession of servitude rights. In other contexts, affidavit evidence will be considered as it has been in the past but will not necessarily be taken at face value. In any cases of doubt, the application should be referred to a senior caseworker and then, if appropriate, to the Senior Legal Group. An article explaining the Keeper's change in practice will shortly be published in the Journal of the Law Society of Scotland.

6. Settlers should note that this advice supersedes the instructions given in the Registration of Title Legal Manual (see para. 2 above), insofar as those instructions relate to the acceptability of affidavit evidence in the context of servitude rights. The Manual will eventually be amended accordingly.

Owner - Legal Services
Author - Ian Davis
Publication Date - 24/11/97

Speculative a Non Domino Dispositions
Memo to all staff

1. In the February 1997 issue of the Journal of the Law Society of Scotland (pages 72–74) there appeared a joint article entitled "The Sasine Register and Dispositions a non domino" by Alec Falconer, former Director of Legal Services and Professor Robert Rennie of the University of Glasgow. The article sets out the considerations that will be taken into account in deciding whether a disposition a non domino should be accepted for recording or registration. Copies of the Journal are held in each District/Division.

2. This memo is concerned with dispositions a non domino of a **speculative** nature, for example any submitted in the face of a competing recorded or registered title. This memo is not intended to supersede Sasine Memoranda No 1 and 1A, ROT Legal Memos L22 and L22A and Plans Memos 86 and 86A all of 1991 and the procedures contained therein should continue to be applied.

3. The acceptance or rejection of these speculative dispositions raises policy issues. The Keeper has received approaches from certain Solicitors alleging inconsistencies in the application of the policy on a non domino Deeds/Applications for Registration and criticising the Keeper's actions. It has to be borne in mind that any apparent inconsistency in the application of a policy may expose the Keeper to judicial review, no matter how sound the policy or how well founded any individual instance of its application may be.

4. In order to ensure continuing consistency the following actions should be taken:

- The request to record or register the a non domino disposition should be scrutinised under the current guidelines found in the aforementioned memos
- Any dispositions which would be refused under the current guidelines should continue to be rejected
- Dispositions a non domino of a legitimate nature (see the aforementioned article for examples) shall continue to be recorded or registered
- Any Dispositions a non domino where there is any doubt should be referred through line management to Senior Legal Group together with the relevant correspondence and a record of any telephone conversation with the Agent/Applicant prior to processing.

Owner - Legal Services
Author - Ian Davis
Publication Date - 30/04/97

Town and Country Planning (Scotland) Act 1997
Memo to all staff

Existing legislation on town and country planning is contained in a large number of Acts, e.g. The Town and Country Planning (Scotland) Act 1972, The Town and Country Planning (Minerals) Act 1981, The Town and Country Planning Act 1984 and The Planning and Compensation Act 1991.
The Town and Country Planning (Scotland) Act 1997 ("the 1997 Act"), a consolidation Act, comes into force on 27 May 1997. Generally speaking, the 1997 Act repeals the existing Acts and replaces them.

The areas of town and country planning of concern to the Keeper are those which give rise to deeds such as Tree Preservation Orders, Section 50 Agreements, orders relative to old mineral workings, agreements as to the use of Crown Land, General Vesting Declarations and Notices of Payment of Compensation under the Planning and Compensation Act 1991. For these, the substantive law reappears, unchanged, in the 1997 Act. However, any such deed executed on or after 27 May 1997 should refer to the relevant Section(s) of the 1997 Act.

Exceptionally, and because of the convoluted, variegated nature of town and country planning, the Senior Legal Group will issue amendments to the Legal and Sasine Manuals in the near future and a further memo will be issued when this has been done. In the meantime, any queries relating to the 1997 Act should be directed to John King or Ken Young of the Senior Legal Group (extensions 3109 and 3687, respectively).

Owner - Legal Services
Author - Ian Davis
Publication Date - 23/05/97

Woolwich plc
Update

1. With effect from 7 July 1997 the business of Woolwich Building Society transfers to and vests in Woolwich plc by virtue of a Transfer Agreement dated 30 December 1996 and the Transfer Amendment Agreement dated 28 May 1997 with the Building Societies Commission's Confirmation dated 16 May 1997.

2. In this Memo the following definitions are used:-
"the vesting date" means 7 July 1997
"business" includes property, rights and liabilities
"the Society" means Woolwich Building Society
"the Successor" is Woolwich plc
"the Agreement" is the Transfer Agreement
"the Amendment Agreement" is the Transfer Amendment Agreement
"the Confirmation" is the Building Societies Commission's Confirmation.

3. In terms of clause 15 of the Agreement and clause 16 of the Amendment Agreement the Society consents and authorises the Successor to use the name 'Woolwich' from the vesting date. However, the Successor may not use the term 'Building Society' and accordingly will be styled as in paragraph 2 above.

THE KEEPER'S REQUIREMENTS
Land Register
4. Deeds executed before the vesting date
4.1 Any deed granted in favour of the Society and executed before the vesting date but submitted as part of an application on or after that date will be acceptable if the following points are met:-
(a) The Application Form specifies the Successor as the Applicant.
(b) The Agreement, Amendment Agreement and the Confirmation are included in the box on the Application Form headed 'Name of deed in respect of which registration is required.'
(c) The Application Form specifies on page one that application for registration is sought in respect of the deed in favour of the Building Society and the Agreement, Amendment Agreement and the Confirmation.
(d) The Agreement, Amendment Agreement and the Confirmation are listed on the Form 4 submitted with the application. Copies of the documents themselves need not be submitted.
4.2 Discharges granted by the Society must bear to have been executed before the vesting date; but there is no objection to recording or registering them after that date since no infeftment is involved.

5. Deeds executed on or after the vesting date
5.1 Such deeds must be granted by or be in favour of the Successor. Where the Successor grants a Discharge of a registered or recorded Standard Security which was in the name of the Society, the Agreement, Amendment Agreement and the Confirmation should be listed on the Form 4 and referred to in a deduction of title if appropriate.

6. Settlers should note that certified copies of the Agreement, Amendment Agreement and the Confirmation have been examined and added to the Common Links Index. No requisitioning or further examination of these documents is therefore necessary.

Sasine Register

7. Deeds executed before the vesting date

7.1 Standard Securities granted in favour of the Society but not recorded before the vesting date should be either (a) re-engrossed in favour of the Successor or (b) docqueted with reference to a Notice of Title on behalf of the latter and the two deeds recorded together, with the Warrant on the Notice of Title incorporating reference to the Standard Security (see s.10(4) of the Conveyancing (Scotland) Act 1924).

7.2 Discharges granted by the Society must bear to have been executed before the vesting date; but there is no objection to recording them after that date since no infeftment is involved.

8. Deeds executed on or after the vesting date

8.1 Such deeds must be granted by or be in favour of the Successor. Where the Successor grants a Discharge of a Standard Security which was in the name of the Society the deed should deduce title from the Society and refer to the Agreement, Amendment Agreement and Confirmation.

Owner - Legal Services
Author - Ian Davis
Publication Date - 07/07/97

Pre-1997

1996

LEGAL MEMO L3/96

TITLES TO FORMER SCHOOLS AND SCHOOLHOUSES:

SCHOOL SITES ACT 1841

1. Settlers should be alert to a pitfall for the Agency in relation to the registration of titles taken to former schools and schoolhouses. S.2 of the 1841 Act provides that when land granted for the purpose of a school or schoolhouse ceases to be used for the purposes of the Act, *the land shall immediately revert to the estate out of which it was granted*. In a recent case, the Court upheld the right of an estate proprietor to recover a former schoolhouse purchases by an individual from a local authority.

2. This problem is distinct from the situation where a local authority disposing of a former school or schoolhouse can demonstrate no prior title. In those cases, the purchaser takes title supported by a defective title insurance policy to cover the risk of challenge during the prescriptive period of 10 years. In the Land Register, the title would be identified as *a non domino* and indemnity excluded. Unfortunately, the terms of such an exclusion are of no assistance to the problem under discussion. Regardless of whether there is or is not a good prescriptive progress of titles or a fully indemnified title, a title to a former school or schoolhouse may be subject to automatic reversion in favour of the estate owner under the 1841 Act. Properties conveyed from entailed estate under the Church and School Sites Act 1840 are in a similar position, although in their case the heir of entail in possession has to petition the Court. Other statutes, as yet unidentified, may contain similar provisions.

3. Where such statutory provisions apply, it is possible that they may be ineffective against a registered title. If so, the estate proprietor could claim upon the Keeper's indemnity in respect of the loss of the right. Alternatively, the estate proprietor might be entitled to require the registered subjects to be reconveyed, and this would lead to a claim by the evicted registered proprietor. It might be argued by the Keeper that the right of reversion constituted an overriding interest, but such a defence would not necessarily succeed.

4. Persons called "title raiders" by some legal commentators are known to purchase residual estates in order to pursue latent claims to former school properties, leasehold casualties and the like. Registration staff should guard against exposing the Keeper to damaging claims arising from the activities of such persons. Any application to register title to a former school or schoolhouse should be referred to a senior caseworker who will liaise with the Senior Legal Group.

ALEC M FALCONER
Director of Legal Services
28 February 1996

Section 2 of the School Sites Act 1841 provides that land granted in terms thereof for use as a school or schoolhouse shall, when it ceases to be used for that purpose, revert back to the estate or land from which it originally derived. Problems can arise when the school or schoolhouse is no longer used as such and the local authority, or indeed some other party similarly not in right of the reversionary interest, attempts to convey the property. In light of the decisions in Hamilton v Grampian Regional Council (1995 GWD 8-443 and 1996 GWD 5-227), the Keeper has adopted a cautious approach where there is any possibility that a right of reversion under Section 2 exists. Accordingly, where the subject matter of an application for registration comprises an area of less than one acre which has at some time in the past been conveyed for use as a school or schoolhouse the Keeper will, except where the circumstances outlined in the following paragraph apply, exclude his indemnity in respect of any challenge to the title which may arise from the right of reversion. Until the matter has been judicially resolved, the Keeper will not presume that prescription, be it positive or negative, can remedy the situation whereby title does not stem from the party in right of the reversionary interest.

There are two circumstances in which an exclusion of indemnity can be avoided. The first is where the Scottish Ministers or the Court has ordered the sale under Section 106 of the Education (Scotland) Act 1980. The second is where the party in right of the reversion has granted a formal renunciation or waiver of the right.

ROT LEGAL MEMO L12/96

PARTNERSHIP AND OTHER TRUST DESTINATIONS

1. Paragraph J.3.3.8 of the Legal Manual gives examples of B Section entries reflecting destinations for various types of trust arrangements including, at (f), partnerships. Several examples of the misapplication of pro forma style (f) were recently brought to the Agency's attention by an Agent who complained that his standard partnership destinations were invariably being misrepresented in title sheets. This Agent's typical partnership destination reads:

> *"[I ..... have sold and do hereby dispone to] to A, B and C [all designed], the partners of the said firm of X as trustees for the firm and the partners thereof present and future and their successors in office as such trustees and the survivor of them and executors of the last survivor as trustees and trustee foresaid".*

2. The use of style (f) in the B Section meant that the words *"as trustees for the firm and the partners thereof present and future and the successors in office as such trustees"* were omitted. The omission was thought to change the legal effect of the destination (by removing the ability of future uninfeft partners to procure themselves infeft as trustees, should the original trustees die) and the Agent required the Register to be rectified.

3. The Manual examples were intended to be followed only when the text of the deed justified them. However, destinations can raise complex legal issues. The proper and safe course of action to avoid inadvertently changing the meaning of a destination is to ***follow the deed by omitting no material words*** even where there appears to be repetition. That means that the wording of the deed should not be departed from merely in order to conform to a style in J.3.3.8. Normal editing practice such as omitting words like "residing at" is of course acceptable.

ALEC M FALCONER
Director of Legal Services
20 September 1996

1995

Sasine Memo No.42

ROT Legal Memo L3/95

REGISTRATION FEES

VAT ON PROPERTY TRANSACTIONS

Staff are advised of a change in the method of applying *ad valorem* fees to writs lodged in the Sasine and Land Registers on or after 1 April 1995. Where the consideration is stated to be £X price plus £Y VAT, the fee is to be assessed on £(X+Y), i.e. on price plus VAT, not on the price alone as hitherto. If the consideration is expressed as a sum of which a proportion (specified or unspecified) is VAT, the fee is to be assessed on the full sum.

Where the consideration is stated to be £X and there is no mention of VAT, the fee is to be assessed on £X without further enquiry, notwithstanding that the transaction may attract VAT as a commercial transaction.

This change of practice follows a decision by the Court of Session that the term "consideration" includes any VAT which a commercial transaction may attract, with the consequence that stamp duty is exigible on the total of price plus VAT. The change of practice brings ROS into line with existing practice in England and Wales.

(Sgd) ALEC M FALCONER

Director of Legal Services

24 February 1995

Sasine Memo No.43

ROT LEGAL MEMO L5/95

ROT PLANS MEMO No.104

METRICATION:
UNITS OF MEASUREMENTS DIRECTION 1989 (89/617/EEC)
AUTHORISED UNITS OF MEASUREMENT

1. The purpose of the above Directive is to harmonise disparate laws on units of measurements in the EC in order to eliminate barriers to trade and to ensure the greatest possible clarity. The general policy is to phase out units of measurement which are incompatible with the international (metric) system of measurements. Legal and official recognition is to be given to the metric system for "economic, public safety and administrative purposes" and recognition is to be withdrawn from the imperial system of measurements except where the Directive allows transitional arrangements or exemptions to apply. The Directive obliges the United Kingdom to remove official recognition of units of measurement not permitted by the Directive and to take appropriate steps to ensure that such units are not used. The metric measurements authorised for use by the Directive are supplemented in the UK by limited transitional arrangements and exemptions.

2. The Directive is already binding upon the UK but existing statutory instruments intended to give limited effective to the Directive in the UK will only become law on 1 October 1995. (There are four statutory instruments, only one of which, the Units of Measurements Regulations 1994, is of relevance to registration work in the Agency). The Department of Trade and Industry (DTI) has now advised that additional steps will be taken as a matter of urgency in order to ensure the maximum possible compliance with the Directive. These include -

- the bringing forward of generic legislation to convert all references to imperial units in primary and secondary legislation, whether public general or local. The conversion will also be applied to all existing public documents having legal effect within the circumstances referred to in Article 2 of the Directive. (Such documents undoubtedly include Land Certificates and Office Copies).

- the introduction of specific amendments to references in legislation to imperial measurements: this is seen as necessary to remove any infelicities and unexpected results arising from the generic legislation.

- identification and application of disincentives against the use of unauthorised measurements. Such disincentives could involve criminal penalties (as is already the case in Ireland and under Weights and Measures Acts) or civil sanctions. Under the latter, contracts using imperial measurements could be declared void, or alternatively unenforceable unless ratified by a Court. The range and degree of severity of possible disincentives remains to be decided.

3. Although 1 October 1995 is the commencement date for metrication so far as the general public are concerned, DTI advises that all documents issued by the State from 1 January 1995 on must comply with the Directive. Such documents include not only legislation but also Court Orders, guidance, circulars, consents (e.g. under planning legislation) and contracts. Continued use of non-authorised units of measurements in such documents as primary indicators of measurement would contravene the Directive and could lead to infraction proceedings against the UK. The documents could also be wholly or partially invalid. It is necessary therefore for the Agency, in common with other public bodies, to use metric measurements from 1 January 1995 in accordance with the Directive and the known legal framework notwithstanding that aspects of the Directive remain unenacted in domestic UK legislation or, insofar as enacted, only come into force on 1 October 1995.

4. The use of metric units for new measurements which is compulsory with effect from 1 January 1995 is subject to transitional provisions and exemptions in the Directive of which the following are or may be relevant to the registration work of the Agency.

a. There is a derogation from the Directive which permits the continued use of imperial measurements in which are termed existing products. This appears to legitimise the repetition of existing conveyancing descriptions which use imperial measurements.

b. The acre is authorised for use in land registration without limit of time.

c. Where metric units are employed as the primary indicators of measurement, imperial units may be used until 31 December 1999 as supplementary indicators. Supplementary indicators may be defined as non-metric units used in conjunction with, but less prominently than, metric units.

5. The Directive has immediate implications for the Land Register but will not have practical consequences for other registers until 1 October 1995. The initiatives currently being pursued by DTI carry implications for the Sasine Register in particular and a further memo will be issued when the position has been clarified. For the Land Register, the guidelines in the attached Annex are provisional but have immediate effect.

6. The contents of this Memo are not to be divulged to Agents or members of the public.

ALEC M FALCONER
Director of Legal Services
2 March 1995

Annex

IMPLEMENTATION OF UNITS OF MEASUREMENT DIRECTIVE

IN THE LAND REGISTER

PROVISIONAL INSTRUCTIONS ON THE USE OF AUTHORISED UNITS OF MEASUREMENT

1. INTRODUCTION

1.1 With effect from 1 January 1995 the Agency is required to comply with the Units of Measurement Directive by using metric units as the sole or primary indicators of measurement in all new measurements made or adopted by the Agency as indicators of extent on title plans or in connection with descriptions of subjects. Imperial units of measurements may be adopted only as supplementary indicators to such metric measurements.

1.2 The requirement to convertto metric applies to all work actually done after 1 January 1995 regardless of whether a title sheet is being brought down to a date before or after that date.

1.3 The requirement to convert to metric does not apply to Burdens Section entries which reflect non-metric measurements contained in recorded Sasine writs. However, any dimension contained in an explanatory footnote created after 1 January 1995 will require to be expressed in metric units.

1.4 As a matter of public policy it would be desirable to convert all existing non-metric measurements to metric but the benefits of doing so have to be weighed against the very considerable costs involved. Under the Directive it is permissible for products in existing use to continue on a non-metric basis and this means that existing non-metric measurements in title sheets need not be converted to metric unless there is a change of measurement or some additional measurement.

2. PRACTICAL APPLICATION OF DIRECTIVE

2.1 Title Plans

Units of measurement added by the Agency to (1) new title plans, (2) updates of existing title plans and (3) supplementary plans prepared in-house should be metric. Conversion to metric is desirable but not essential for non-metric Agency measurements appearing on existing title plans, and printed imperial measurements on older versions of Ordnance Maps.

Where a supplementary plan is stated to be a copy of a deed plan, non-metric dimensions and measurements in the deed plan do not require conversion except when referred to elsewhere. As the status of those measurements then becomes that of supplementary indicator, the metric equivalents should be given as the primary units of measurement.

2.2 Property Section

Only metric units are to be used where a dimension is being noted in the Property Section of a new title sheet, whether in the description or in a note. It is of course uncommon for dimensions to be given in property sections, but when a dealing or update of a title sheet in which dimensions are used in the property section occurs, it is not necessary to convert to metric unless some change to the dimensions is involved. Likewise, updated office copies need not contain metric conversions unless there has been a change.

2.3 Burdens Section

Preambles should reflect the area measurement in the form in which it appears in the deed upon which the entry is based, whether imperial (or other non-metric measurement) or metric.

Footnotes which give additional information should use metric measurements with, where appropriate, imperial measurements as supplementary indicators.

INHIBITIONS AND COMPANY LIQUIDATIONS

1. Para 6.3.3.2 of the Registration Manual (reflecting para 3.2 of Legal Memo L30/93), explains firstly that all inhibitions registered within 60 days before the commencement of winding up proceedings are ineffective against the liquidator of a company, and secondly that until the legal position is clarified by the Courts or Parliament the Keeper is obliged to assume that all prior inhibitions registered against a company before the 60 day period are effective as against its liquidator. That policy has now been revised.

2. It remains the case that all inhibitions registered within a 60 day period prior to the date of commencement of winding up can be disregarded by the liquidator as ineffective. The justification for this approach is to be found in Section 185 of the Insolvency Act 1986 which applies to the winding up of companies registered in Scotland inter alia Section 37(2) of the Bankruptcy (Scotland) Act 1985. Section 37(2) provides that no inhibition on the estate of the debtor which takes effect within the period of 60 days before the date of sequestration shall be effectual to create a preference for the inhibitor.

3. The effectiveness of an inhibition registered prior to the 60 day period is now seen to depend on whether the liquidation is:

(a) a winding up by the Court; or

(b) a voluntary liquidation.

4. **Winding Up by the Court**

Section 169(2) of the Insolvency Act 1986 provides that in a winding up by the Court in Scotland, the liquidator has (subject to the rules) the same powers as a trustee on a bankrupt estate. Section 31(2) of the Bankruptcy (Scotland) Act 1985 gives the trustee in bankruptcy dealing with heritable estate the freedom from challenge on the ground of any prior inhibition. These provisions allow the Keeper to disregard inhibitions prior to the 60 day period in registering the title of the purchaser from a liquidator in a winding up by the Court.

5. **Voluntary Winding Up**

A voluntary winding up may take one of two forms, i.e. members' voluntary winding up or creditors' voluntary winding up. The position regarding the effect of inhibitions registered prior to the 60 day period is the same for both forms of winding up. The Keeper requires to assume that any such inhibition is effective as against a sale by the liquidator, because there is an absence of authority to the contrary. It is of course open to the liquidator to apply to the

Court under Section 112 of the 1986 Act for an Order which could have the effect of negating the inhibition. Failing production of a Court Order or other evidence that the inhibition does not apply, it will require to be disclosed as an adverse entry with the usual exclusion of indemnity.

6. **Conversion from Voluntary Winding Up**

It is possible for a voluntary winding up to be converted to a winding up by the Court upon an application by a creditor or contributory, provided that the Court is satisfied that the rights of the contributories would be prejudiced by a voluntary winding up. An inhibition registered prior to the 60 day period and so effective whilst a company is in voluntary liquidation will therefore cease to be effective if the winding up becomes a winding up by the Court.

7. **Definitions**

In the Insolvency Act 1986 "contributory" means every person liable (or alleged to be liable) to contribute to the assets of a company in the event of its being wound up (S.79).

The date of commencement of winding up is either the date at which a resolution is passed for voluntary winding up or the date upon which a petition for winding up is presented to the Court (S.129).

ALEC M FALCONER
Director of Legal Services
14 March 1995

ROT LEGAL MEMO L7/95

COAL INDUSTRY ACT 1994

ADDITION OF COAL EXCLUSION NOTES TO CERTAIN TITLE SHEETS

1. The above Act provides for the establishment of the Coal Authority (the CA) and the restructuring of the coal industry. It received the Royal Assent on 5 July 1994. Those of its provisions which did not take immediate effect are being progressively brought into force on dates prescribed in statutory instruments.

2. The entire interest of the British Coal Corporation (BCC) in unworked coal and coalmines has now been transferred to the CA. Vesting of the CA took place on 31 October 1994, which is referred to in the Act as the restructuring date. That event has significant implications for ROS and the Land Register in particular, because the CA is required to divest itself of its coal interests and to that end will be selling and leasing them. Purchasers of coal interests, and tenants under long leases to be granted by the CA, will where appropriate complete title by recording or registration.

3. When severed from the title to the surface lands, minerals constitute a separate interest in land capable of being held on a distinct title. Individual minerals, e.g. freestone or ironstone, can also be severed from the surface lands or from other minerals and held separately. As coal is a mineral, it too constitutes a separate interest in land when severed from the surface land and from other minerals, so that a recorded or registered title to it can be taken. Equally, a title to all minerals (unspecified) is capable of carrying coal. Before the 1994 Act, titles to coal were not in fact registered because it had been nationalised in 1942 under the Coal Act 1938. Nationalisation meant that titles to land and/or minerals which explicitly carried coal, or could be construed as including coal, always had to be construed subject to the Coal Act and subsequent enactments. In practical terms, coal was removed from the conveyancing scene. Any landowner could reasonably make two assumptions:

(a) that any coal did not belong to him; and

(b) that any coal belonged to the National Coal Board or its successors.

4. In terms of the Land Registration (Scotland) Act 1979, coal in public ownership is an overriding interest. The 1994 Act provides that coal remains an overriding interest insofar as it vests in the CA in terms of that Act. But once coal has been alienated to a purchaser, or leased under a long lease, it will cease to be an overriding interest. This means that a purchaser or lessee will require to register or record title in order to obtain a real right. Even a re-acquisition of coal by the CA will induce registration since the coal ceased to be an overriding interest upon its original alienation by the CA.

5. This creates potential problems with existing registered titles to minerals, and titles which specifically include minerals along with the surface land but do not exclude

coal from those minerals. As time goes by, the traditional assumptions about the ownership of coal will become increasingly untenable and it will become progressively more difficult for an enquirer to learn whether coal is included in a property description because it has been acquired from the CA or because the terms of the title date from pre-nationalisation days. If the latter, the title insofar as it relates to coal is ineffective to the extent that the 1994 Act provides that no one shall be able to acquire an interest or right adverse to the title of BCC or the CA by virtue of prescription. A purchaser from either body is not, however, protected by that provision.

6. In order to ensure that the Land Register does not mislead anyone or create a potential competition in title, settlers will require to add coal interest exclusion notes to the A Sections of all title sheets which are:

(a) either created or updated with effect from **31 October 1994** or after; **and**

(b) which **either relate to minerals, or which specifically include minerals** in terms which allow the conclusion to be drawn that coal is or may be included; **and**

(c) where there has been no grant by the CA to justify that interpretation.

7. The exclusion note should be in the following terms or as near to them as is appropriate in individual circumstances:

"Note: Notwithstanding any other terms of this Title, no interest in coal or allied minerals is included in the subjects in this Title".

8. References to coal in older title deeds or to the vesting of coal or other minerals in public bodies which may have been omitted under previous settling practice should now be disclosed in title sheets. The last sentence of paragraph H.5.1.2 of the Registration Manual should be deleted pending a more radical amendment incorporating the terms of this Memo.

ALEC M FALCONER
Director of Legal Services
26 April 1995

SASINE MEMO NO.44

ROT LEGAL MEMO L9/95

DRUG TRAFFICKING ACT 1994

1. Paragraph AC.12.2.2 of the ROT Legal Manual and Staff Notice, dated 22 March 1988, instruct legal settlers and Sasine staff respectively to refer to an Assistant Keeper any deed granted by or in favour of an administrator appointed under the Criminal Justice (Scotland) Act 1987 or a receiver appointed under the Drug Trafficking Offences Act 1986.

2. The relevant provisions of the 1986 Act have been repealed and re-enacted by the Drug Trafficking Act 1994, which came into force on 3 February 1995, though transactions flowing from an appointment under the 1986 Act may still be encountered. Staff examining deeds in either property register should therefore refer upwards, through normal channels, a deed by or in favour of an administrator or receiver, as the case may be, appointed under any of the above-mentioned Acts.

ALEC M FALCONER
Director of Legal Services
11 May 1995

Sasine Memo No.46

ROT Legal Memo L11/95

REQUIREMENTS OF WRITING ACT 1995

1. Introduction

1.1 The above Act received the Royal Assent on 1 May 1995 and comes into force on 1 August 1995. The Act makes major changes in the law of execution of deeds and the legal requirements for writing. It applies to all documents *executed* on or after 1 August 1995. For ROS, the single most important change is that in a document executed on or after 1 August 1995 the signature of a granter who is a natural person will need only one witness instead of two.

1.2 The Act is not retrospective and it is important to appreciate that the sole determining factor in deciding whether the old law or the new law will apply is *the date of execution*. Other dates, e.g. date of delivery or date of recording/registration, are immaterial. If there is no date of execution and it cannot be ascertained whether a document was executed before or after the commencement of the Act, there is a presumption that it was executed after the commencement date.

1.3 The Act is broadly based on a Report of the Scottish Law Commission published in 1988. Although it makes far-reaching changes it builds on the old law. For that reason, as well as the fact that the old law will remain relevant to deeds executed prior to 1 August 1995, an understanding of the old law will continue to be essential knowledge for legal staff in ROS.

2. When Writing is Required

2.1 The Act identifies three situations in which writing is required. In order of importance to ROS, these are –

(a) for dealings in relation to *interests in land*;

(b) the making of wills, codicils and other testamentary writings; and

(c) the constitution of contracts or unilateral obligations for the creation, transfer, variation or extinction of*interests in land* and the constitution of certain unilateral obligations and trusts.

Categories (a) and (b) perpetuate the existing law. The law is however changed in relation to category (c) but the changes are not directly relevant to the registration work of ROS.

2.2 "**Interest in land**" means a real right in land, e.g. dominium utile, superiority, lease, standard security and servitude. Under the existing law, a lease for a year or less need not be in writing, and that continues to be the case. The existing law is also

perpetuated in that positive servitudes may continue to be constituted by prescription.

2.3 One change in the law which merits a passing mention is the abolition of the doctrine of homologation, under which a failure to comply with proper formalities can be cured by the actings of the parties. The common law of rei interventus (under which the right to resile from a contract is barred by actings of one of the parties) is restated and restricted in its ambit.

3. Distinction between Formal Validity and Probativity

3.1 *The Present Law*

Under the present law, if a right requires to be constituted in writing in order to be valid, that requirement is met only if the writing is *formal writing*, i.e. writing subscribed by the granter and attested by two witnesses in accordance with the solemnities of execution. Alternatively the writing is valid if it is holograph of the granter or adopted as holograph.

3.2 *The 1995 Act*

The Act imposes a much less onerous requirement than does the present law. A writing executed on or after 1 August 1995 will be formally valid **provided only that it is subscribed by the granter. No witness is needed. For convenience, such a writing may be termed a** subscribed writing**. This contrasts with the present law, under which a writing merely subscribed by the granter is not valid unless holograph or adopted as holograph.**

3.3 The 1995 Act however makes a very clear distinction between a writing which is formally valid and a writing which is both valid but self-evidencing, i.e. probative. (The word "probative" and the term "self-evidencing" as used in this memo are interchangeable.) For a deed to be both valid and self-evidencing, the Act imposes an additional requirement, i.e. (in the case of a natural person) the signature of a witness. Attestation by a witness in accordance with the Act raises a presumption that the deed was validly executed. This means that no further evidence, e.g. the appearance of the witness in person in court, is required because the writing is self-evidencing.

3.4 Note however that the presumption of probativity can be displaced. In terms of s.3 the presumption only holds good if certain requirements are met. These are:

(1) that the document bears to have been subscribed by a granter of it.

(2) that it bears to have been signed by a person as a witness of that granter's subscription.

(3) that the document or the testing clause or its equivalent bears to state the name and address of the witness.

(4) that nothing in the document or testing clause etc indicates (i) that it was not subscribed by the granter as it bears to have been so subscribed, or (ii) that it was not validly witnesses for any of the reasons summarised below:-

(a) a signature bearing to be the signature of the witness is not such a signature, whether by reason of forgery or otherwise;

(b) a witness happens to be a granter;

(c) the witness did not know the granter, or was under the age of 16 years, or was mentally incapable of acting as a witness;

(d) the witness did not witness the subscription

(e) the witness did not sign *after* the granter's subscription, or the granter's acknowledgment of his subscription and the signature of the witness were not one continuous process.

4. Registration/Recording Requirements

4.1 In the Register of Sasines, the Books of Council and Session and Sheriff Court Books, the general rule laid down by s.6 is that a document is only registrable if it is self-evidencing, i.e. (in the case of a document granted by an individual) by subscription of the granter and attestation by one witness. If the document is patently not self-evidencing in some way, the Keeper has no power to accept it. Whereas Agents and the Keeper have a certain leeway under the old law to record a deed which contains a non-fatal informality of execution, the terms of the 1995 Act will preclude the Keeper from accepting for recording any document which is improbative. Some defects are of course latent. They cannot be ascertained from the face of a writ hence they will not normally be a concern for ROS.

4.2 Certain informalities can be made good by application to the Court. Thus the lack of the signature of a witness can be cured and the document set up as self-evidencing by the Court. Upon application, the Court may cause the document to be endorsed with a certificate to the effect that it is satisfied that the document was subscribed by the granter, and the document would then be acceptable for recording. Omissions such as the absence of a date or place of signing, can be made good in the same way, although these are not formal requirements under the Act. A document so certified is in the same position as if the formalities of execution had been complied with at the proper time, i.e. it benefited from the same presumptions.

4.3 In the Register of Sasines, s.6 also permits (a) the recording of a document can be where the recording is required or expressly permitted under any enactment, and (b) the recording of an extract Court Decree.

4.4 In the Books of Council and Session, registration (as in Sasines) may occur if required or expressly permitted under any enactment. In addition, holograph wills can

continue to be registered, and section 6(3)(c) waives the normal self-evidencing requirement in relation to:

(i) a testamentary document;

(ii) a document directed to be registered by the Court of Session or the sheriff;

(iii) a document whose formal validity is governed by a law other than Scots law, if the Keeper is satisfied that it is formally valid according to the relevant foreign law;

(iv) a court decree under the 1995 Act making good an omission or informality in an already registered document.

4.5 The Act makes no equivalent provisions for the Land Register, although the Keeper is as eager as anyone else to benefit from presumptions of probativity. Fortunately the gap is filled by section 4(1) of the Land Registration (Scotland) Act 1979 under which the Keeper enjoys discretion to refuse deeds unless they are witnessed. As a matter of policy, the Keeper will use his discretion under s.4(1) of the 1979 Act to apply the same general standards of probativity in relation to documents which induce registration in the Land Register as section 6 of the 1995 Act applies to documents to be recorded in the Sasine Register. In other words, if a document would have required to be self-evidencing in order to be acceptable for recording in the Sasine Register, the Keeper will expect it to be self-evidencing before he registers the relevant application in the Land Register. In practice, the Keeper's wish to benefit from the presumption of probativity is likely to be shared by applicants for registration who in their own interests will have ensured that any grant in their favour is self-evidencing.

4.6 The requirement of probativity in the Land Register will apply not just to documents which directly induce registration, but also to unrecorded prior dispositions and to links in title, submitted along with the application, if these have been executed on or after 1 August 1995 and are of a type of writing capable of being recorded in the Sasine Register in a non-operational area.

5. Subscription and signatures

5.1 *Subscription by Granter*

Subscription of a document consists of the granter signing at the end of the last page of the main document, i.e. disregarding any annexation. (There are separate rules for annexations which are discussed later.) If the granter is a natural person, the signature must be conform to one of the following:-

(a) surname preceded by at least one forename or initial or abbreviation or familiar form of forename

(b) the full name by which the granter is identified in the document or in any testing clause or its equivalent.

5.2 These are the only forms of signature available in the case of attested writings. For other writings, some allowance is made for less formal types of signature or mark. When a signature complies with (a) or (b), there is no need for a testing clause to state that the granter is signing "his usual signature".

5.3 If a person signs in more than one capacity, e.g. as executor and as individual, a single signature is sufficient to bind that person in both capacities.

5.4 If the last page of a document contains insufficient space for all granters to subscribe, an additional page or sheet may be used for some of the signatures provided at least one granter signs at the end of the original last page of the document. This is a useful provision for cases involving multiple granters, where it is often impossible to cram all of the signatures onto the last page.

6. Attested Writings and Probativity

6.1 In practice, the types of deed currently attested by two witnesses will continue to be attested albeit by a single witness. Attestation gives rise to 3 presumptions

- that the deed is presumed to have been subscribed by the granter (hence it is formally valid)

- that the deed is presumed to have been subscribed by the granter on the date stated in the deed or testing clause

- that the deed is presumed to have been subscribed by the granter at the place stated in the deed or testing clause.

As under the present law, there is no presumption that the deed is legally effective. The presumptions are solely concerned with evidence of the validity of execution. As they are only presumptions, they can be overcome: for example, the presumption that a deed has been subscribed by the granter can be displaced by evidence of forgery, showing that the signature is not that of the granter but of someone else. The value of the presumptions is that parties relying upon a writing are exempted from having to prove that the presumptions hold true. Instead, the onus is the other way, because it is for a person challenging a deed to prove his claim.

6.2 If it is clear from the face of the writing that the requirements for a valid attestation spelled out in s.3 are not complied with [see para 3.4 supra], the writing is not probative. For recording in the Sasine Register or registration in the Books of Council and Session, the consequences are spelled out in para 4.1 supra.

6.3 The execution of an attested writing is achieved as follows:

(1) the granter subscribes. From that moment, the deed is formally valid.

(2) a single witness is required who must not be another granter, must be 16 or over, must be capax and must "know" the granter, i.e. has credible information as to his identity such as an introduction by a third party.

(3) either the witness sees the granter subscribe or the granter acknowledges his subscription to the witness. In either case, the witness signs immediately thereafter in what is termed "one continuous process".

(4) the signature of the witness must be conform to the same requirements as to the signature of a granter (see para 5.1).

(5) the witness must be designed by name as well as address, although occupation is not required. The designation must not be "erroneous in any material respect". The designation is separate from the signature. This means that it is not enough merely to add the address of the witness under the signature. The name must be repeated, because the Act requires both name and address. As under the present law, the designation may be in the deed itself or in the testing clause. It may be added at any time before the deed is founded on in court or.....?

6.4 Witness to Several Granters

If two or more granters sign a deed, only one signature of a single witness is required, provided always that both or all granters subscribe or acknowledge their subscriptions at the same time. Otherwise the witness requires to sign on each separate occasion of subscription or acknowledgment.

6.5 The principle again is that the witness must sign immediately after the event which he witnesses so that it is "one continuous process". The event is of course either the act of subscription by the granter or the act of acknowledgment of the subscription by the granter. This means that it would be quite legitimate for a granter, say, to subscribe in August but delay acknowledging his signature to a witness until December, at which point the witness would then require to sign immediately.

6.6 Forms of Testing Clauses

Section 10 of the 1995 Act empowers the Secretary of State to make regulations providing for a recommended form of testing clause. It is not clear whether the power will ever be exercised. In any case the traditional form of testing clause can continue to be used, as well as any variant which meets the basic requirements.

7. Schedules and Other Annexations

7.1 Provision is made in section 8 for authentication of schedules, plans and other annexations. The provisions apply equally to attested documents and documents which are merely subscribed by the granter. An important distinction is made between (1) "ordinary" annexations and (2) plans and other forms of description attached to documents relating to land.

7.2 Ordinary Annexations

The basic rule for schedules, inventories and other annexations applies whether or not a document relates to land. It is that an annexation to a document is to be regarded as incorporated in the document if it is

(a) referred to in the document; and

(b) identified on its face as being the annexation referred to in the document.

Specifically, the annexation does not have to be signed or subscribed.

7.3 The basic rule means that the deed itself must refer to and incorporate the schedule etc with words such as "the schedule annexed as relative hereto". *In addition*, the schedule itself must have some identifying mark on its face. In other words there is cross-referencing. A formal docquet such as "this is the schedule referred to in the Disposition by" would be preferable if not essential, but it has been suggested that it may be enough for a schedule to be marked clearly with the identifying name, e.g. the word "Schedule". The Keeper's provisional view is that something more than that is required, such as "this is the Schedule referred to in the foregoing Disposition", and agents should be encouraged at minimum to refer to the parent document by name.

7.4 The Schedule need not be physically attached to the deed and it need not be signed. If however the deed itself refers to a signed schedule, e.g. "the Schedule annexed and signed as relative hereto" the schedule should be signed. Failure to sign in that situation could mean that the schedule has not been properly identified within the terms of the Act.

7.5 *Plans and other descriptive schedules annexed to documents relating to land*

The rules referred to in para 7.1 also apply to plans and any annexure which describes land. *In addition*, the plan or descriptive annexure requires to be signed by the granter. Since it is signing and not subscription which is required, the granter or granters can sign anywhere on the plan or page. If there is more than one page it is the last page which has to be signed. If there are numerous granters and there is insufficient space to sign, the same rules apply to signing on an extra page as apply to writings in general. Finally, the signing need not be witnesses.

8. Alterations to attested writings

8.1 Alterations (sometimes called vitiations) are defined as including interlineations, marginal additions, deletions, substitutions, erasures or anything written on an erasure. The definition is wide enough to include anything added to a deed after it has been typed, except for additions in spaces deliberately left blank for that purpose. A fundamental distinction is drawn between alterations made before subscription and alterations made afterwards.

8.2 *Alterations made before subscription*

The Act provides that an alteration made before subscription shall form part of the document as so subscribed. Hence it is legally effective. In practice, it may not be clear whether an alteration was made before or after subscription, hence the Act also provides that if the alteration is declared in the testing clause in terms which state that the alteration was made before the document was subscribed, the presumption arises that such was the case.

8.3 *Alterations made after subscription*

Such alterations do not form part of the writing unless they are "rescued" by being signed afresh by the granter and (if the alteration is to be not just valid but also self-evidencing) a witness.

8.4 None of the above applies to writings subscribed but not witnessed. Since such writings are not self-evidencing but have to be proved, it follows that any alteration to such a writing would have to be proved at the same time. There are special provisions for wills.

9. Notarial Execution

9.1 The current law is contained in s.18 of the Conveyancing (Scotland) Act 1995. The form of docquet in Schedule 1 of that Act must be meticulously adhered to. S.9 and Sechedule 3 of the 1995 Act replace the 1924 Act provisions (although not retrospectively) with new rules. The main changes are

(1) notarial execution no longer requires witnessing although since a witness is required to make a writing self-evidencing, attestation will be necessary in the case of writings to be recorded or registered (see Part 4);

(2) a standard testing clause with an additional statement replaces the notary's holograph docquet;

(3) the reading aloud can be dispensed with;

(4) if the notary stands to gain from any provision in the deed that provision is void. Prior to the 1995 Act the whole deed is invalid.

9.2 Although the 1995 Act uses the somewhat meaningless "relevant person" instead of the more traditional "notary" it will be convenient to continue to use the latter term. For the purposes of notarial execution, a notary is not (or not merely) a notary public but one of the class of persons entitled to execute documents on behalf of persons who are blind or unable to write. These persons are now: practising solicitors, advocates, JPs and sheriff clerks. Parish ministers acting in their own parish can no longer act as notaries. Outwith Scotland, notary publics and other persons authorised under the law of the place of execution can validly notarise a writing.

9.3 *Testing clause*

As stated, a standard testing clause replaces the traditional notarial docquet. The clause will disclose that the notary (name and address given) is signing on behalf of the granter who has declared that he is blind [or unable to write]. In addition the clause must state either that the document has been read over to the granter by the notary or that the granter has declared that he does not wish the document to be read over to him.

10. Subscription by Companies and other juristic persons

10.1 Special rules are provided by s.7(7) and Schedule 2 for subscription by companies and other forms of legal personae recognised by the law as having the capacity to transact with interests in land in their own right

10.2 *Companies*

10.2.1 "Company" is defined as "a company formed and registered under the Companies Acts" (section 12(1) of the Act incorporating section 735(1) of the Companies Act 1985). This does not include Foreign Companies which are dealt with at Para 10.3 below.

10.2.2 New provisions for execution by companies are provided by para 3 of Schedule 2 of the Act. These provisions are introduced by an alternative version of parts of section 3 (general probativity section) specifically for Companies. In particular there are alternate versions of sub-sections 3(1) and 3(1A).

10.2.3 Probativity by attestation is provided for by S3(1) which provides that: a document shall be presumed to have been subscribed by the Company where

(a) it bears to have been subscribed on behalf of the company by a director, or by the secretary, of the company or by a person bearing to have been authorised to subscribe the document on its behalf;

(b) the document bears to have been signed by a person as a witness of that subscription and the name and address of the witness is in the document itself or in the testing clause; and

(c) (i) nothing in the document or in the testing clause or its equivalent indicates that it was not subscribed on behalf of the company as it so bears or (ii) that it was not validly witnessed for any reason specified in paras (a) to (e) of sub-section 4 of section 3. (See para 3.4 supra).

10.2.4 The alternative section 3(1A) provides that it remains competent for companies to execute documents (and have the benefit of the presumption of authenticity) by double signature. This sub-section provides that a document shall be presumed to have been subscribed by the Company if it bears to have been subscribed on behalf of the company by (a) two directors of the company or (b) a

director and secretary of the company or (c) two persons bearing to have been authorised to subscribe the document on its behalf.

10.2.5 ***Point to Note***

As regards the double signatory method of execution

(i) there can be no mixing of categories, so it must be either two directors; a director and secretary; or two authorised persons who sign. It is not permissible to have, for example, a director and an authorised person or any other permutation from the categories at (a), (b) and (c) above.

(ii) there is no requirement that the second signatory sign immediately after the first.

10.3 ***Foreign Companies***

From 1 August 1995, Foreign Companies will require to execute documents in accordance with the provisions contained in para 5 of Schedule 2 of the 1995 Act.

This provides that the document shall be presumed to have been subscribed by a member, secretary or authorised person and by the body where

(A) a document bears to have been subscribed on behalf of a body corporate by

(i) a member of the body's governing board, or if there is no governing board, a member of the body

(ii) the secretary of the body or

(iii) a person bearing to have been authorised to subscribe the document on its behalf; AND

(B) (i) the document bears to have been signed by a person as a witness of that subscription and the name and address of the witness is in the document itself or in the testing clause or its equivalent; or

(ii) if the subscription is not so witnessed to have been sealed with the common seal of the body and

(iii) there is nothing in the document or testing clause or equivalent indicating that (i) it was not so subscribed as it bears to have been so subscribed or (ii) that it was not validly witnessed for any reason specified in paragraphs (a) to (e) of sub-section 4 of section 3 (see para 3.4 supra) or that it was not sealed or that it was not validly sealed for the reason specified in sub-section (4)(h) of section 3 [text of which is as follows] –

(h) if the document does not bear to have been witnessed, but bears to have been sealed with the common seal of the body, that it was sealed by a person without

authority to do so or was not sealed on the date on which it was subscribed on behalf of the body.

10.4 *Local Authorities*

10.4.1 The 1995 Act repeals sections 194(1), 194(1A) and 194(1B) of the Local Government (Scotland) Act 1973 and makes its own provisions for company documents. These are to be found in section 3 and Schedule 1 read in conjunction with Schedule 2, paragraphs 1 and 4. Under the new rules a document is presumed to have been subscribed by the proper officer of a local authority and by the authority itself if:-

(a) the document bears to have been subscribed on behalf of the local authority by the proper officer of the authority;

(b) the document bears –

(i) to have been signed by a person as a witness of the proper officer's subscription and to state the name and address of the witness; or

(ii) (if the subscription is not so witnessed), to have been sealed with the common seal of the authority; and

(c) nothing in the document, or in the testing clause or its equivalent, indicates –

(i) that it was not subscribed on behalf of the authority as it bears to have been so subscribed; or

(ii) that it was not validly witnessed for any reason specified in paragraphs (a) to (e) of sub-section 4 of section 3 [for which see para 3.4 of this memo] or that it was not sealed as it bears to have been sealed or that it was not validly sealed for the reason specified in sub-section (4)(h) of Section 3 [the text of which is as follows] –

(h) if the document does not bear to have been witnessed, but bears to have been sealed with the common seal of the authority, that it was sealed by a person without authority to do so or was not sealed on the date on which it was subscribed on behalf of the authority.

10.4.2 The probativity of documents executed on or after 1 August 1995 in accordance with the Edinburgh District Council Order Confirmation Act 1991 is the subject of discussion between the Keeper and the District Council and a further instruction will be issued when the matter is clarified.

10.4.3 for the avoidance of doubt the provisions of section 193 of the Local Government (Scotland) Act 1973 (relating to authentication of notices, orders etc) remain in force.

10.5 *Other Bodies Corporate*

10.5.1 This is a useful residual category which has no equivalent under the present law. The position is essentially the same as for companies except where an enactment "expressly provides otherwise". That said, the Act also repeals a number of such express enactments. Further investigation is being undertaken to identify bodies corporate whose position was previously regulated by some enactment but are now covered by Schedule 2, and advice will be issued in due course.

10.5.2 Except where an enactment expressly provides otherwise, a document by the body is formally valid if it bears to have been signed on its behalf by

(a) a member of the body's governing body (usually a director or equivalent) or, if there is no governing body, a member of the body;

(b) the secretary (by whatever name he is called); or

(c) an authorised signatory.

10.5.3 For the document to be not merely valid but self-evidencing it must either be attested by a single witness or be sealed by a person having authority to do so.

10.5.4 Compliance with the above formalities do not raise any presumption that the signatory was who he is supposed to be or was authorised to sign, or that the seal was affixed by a person authorised to do so. A party transacting with the body therefore has to make due enquiry. In the Land Register, the Keeper will rely upon the certification on the application form unless, exceptionally, he is put on his guard by some aspect of the application or deed.

10.6 *Ministers of the Crown and Office-Holders*

10.6.1 As might be expected, formal validity is achieved by the subscription of the granter or an authorised signatory. It is presumed that such a signatory is in fact authorised, and that presumption is in contrast to the lack of such a presumption in the case of, e.g. companies.

10.6.2 Probativity is achieved by the attestation of a single witness.

11. Wills

The Act introduces a number of technical changes to the law of execution of testamentary writings. These changes are mainly of interest to CAJR staff and, to a lesser extent, to legal settlers in the Land Register. A separate note will be issued to affected staff.

12. Further Information

Training Section is planning introductory courses to the Act which will include question and answer sessions. Copies of the Act will shortly be made available in each

District/Section and an intimation will be made about a telephone "hot line" to deal with enquiries.

(Sgd) ALEC M FALCONER
Director of Legal Services
5 July 1995

SASINE MEMO NO.50

ROT LEGAL MEMO L16/95

REQUIREMENTS OF WRITING (SCOTLAND) ACT 1995

ANNEXATIONS

1. Further to Sasine Memo No.46/ROT Legal Memo L11/95, the attached guidance note to the legal profession has been submitted for publication in the Journal of the Law Society of Scotland. The note informs the legal profession of the Keeper's attitude to the requirements in S.8 of the Act for annexations to be identified on their face as the annexation referred to in the document. The background to the guidance note is explained below, together with supplementary points which have arisen since its release for publication.

2. As explained in paras 7.2 to 7.5 of the previous memo, the requirements for annexations are contained primarily in S.8(1) and (2) of the Act. S.8(2) only covers annexations describing or showing land to which the parent document relates. The document must relate to land *and* the annexation must describe or show the land or a part of it. S.8(1) covers all other documents and annexations. Insofar as it covers documents which do not relate to land S.8(1) will not be of interest to Sasine staff since by definition all deeds recorded in Sasines must relate to land. S.8(1) is however highly relevant to Sasine staff in that it also regulates the identification of all annexations which do not describe or show land in a document which relates to land. This means that ROS staff have to apply both subsections side by side. For example, if a lease contains numerous schedules, one of which describes the land, and a plan, the descriptive schedule and the plan are governed by S.8(2) but all other schedules are governed by S.8(1) because they do not describe or show the land.

3. For the avoidance of doubt, an annexation does not describe or show the land if its purpose is otherwise and e.g. a postal address is included in the text or disclosed in a docket.

4. In relation to all annexations other than those which identify land, S.8(1) merely says that an annexation to a document

"shall be regarded as incorporated in the document if it is

(a) referred to in the document; and

(b) identified on its face as being the annexation referred to in the document, without the annexation having to be signed or subscribed."

There are two respects in which these are lesser requirements than those in S.8(2), which covers documents relating to land and annexations describing or showing all or

any part of the land. Firstly, the annexation does not require to be signed at all. Secondly, it is thought that S.8(1) may allow alternative means of identifying the annexation. Even if that is the case, it could still be a theoretical point since the form which those means might take is not known.

5. In contrast, S.8(2) provides that where a document relates to land and an annexation to it describes or shows all or any part of the land to which the document relates, the annexation shall be regarded as incorporated in the document and **if and only if** it is both referred to in the document and

> "identified on its face as being the annexation referred to in the document".

(Additionally the annexation must be signed on its last page or, if a plan, drawing or photograph, on each page).

6. Whether an annexation is regulated by S.8(1) or 8(2), terms such as "Schedule" or "Schedule referred to in the foregoing Standard Security" are insufficient to identify the annexation as the annexation referred to in the document. Subject to the following paragraphs, any deed which relies **solely** on these terms to identify the annexation should be rejected when submitted for recording in the Sasine Register or returned for amendment when submitted in the Land Register.

7. There are various ways of ensuring that the annexation is adequately identified on its face but the obvious and safest way will be the traditional form of docket identifying the names of the parties to the deed, e.g. "This is the schedule referred to in the foregoing Standard Security by A in favour of B dated……". Dockets may however take various forms, and the single essential is that they identify the *particular* annexation as the annexation referred to in the *particular* deed. If a docket is inadequate in its terms there may nevertheless be sufficient identification on the face of the annexation if the information in the docket is supplemented by other facts on the face of the annexation such as an address.

8. In the absence of a docket, the Keeper will accept that an annexation has been sufficiently identified, if there is some other form of identification which is not contradicted in any way. Examples of acceptable identification are:

- annexation on same sheet of paper as the document (as with certain Standard Securities in favour of the Bank of Scotland)

- postal address or other description in the document replicated in a plan or a description in an annexation. Hence a plan may be identified on its face as a plan of the property described in the document because, for example, the street name and individual house number are shown. Here the plan must still be signed as per S.8(2)(c)(i) but the want of a docket is made good by the identification in the

plan. (This does not alter the fact that the plan requires to be signed).

9. The foregoing examples are not comprehensive. Doubtful cases should be referred to line management, who will liaise with Senior Legal Group as necessary.

10. **Hybrid Annexations**

S.8(2)(c)(i) of the Act provides that each page of a plan, drawing, photograph etc must be signed, while S.8(2)(c)(ii) provides that only the last page of a written annexation describing land need be signed. A lease recently submitted to the Register of Deeds illustrates how these provisions operate in practice.

The lease referred to a schedule annexed, and the schedule was identified on its face by a signed docket in suitable terms on its last page. On its first page the schedule declared itself to incorporate photographs of the condition of the property. The last page was preceded by ten pages of written conditions followed by eleven pages of photographic reproduction (two photographs per page).

The Keeper has taken the view that the signatures on the last page related merely to the written text in the schedule. Each separate page of photographs also requires to be singed, as is provided for in (2)(c)(i). Note that it is each page and not each photograph which has to be signed).

11. **Adhesive Labels**

A **signature** on an adhesive label has never been acceptable to the Keeper, and there is nothing in the Act to merit a change of policy. S.8(2) clearly indicates the need to sign the annexation itself, and it seems obvious that a signature on an adhesive label is not a signature of the annexation. It would for example be absurd to purport to have a witness sign by means of a sticky label and the use of such labels on annexations is seen to be just as undesirable.

Since 1 August attempts have been made to justify on various mainly pragmatic grounds the use of **dockets** on labels affixed to annexations. However it is clear that the Act's requirement that an annexation be identified *on its face* is not satisfied by words of identification on a label affixed to the face. The Keeper's view is that it is only reasonable to give the words in the statute their obvious meaning, which is that the identification must be on the *physical surface* of the annexation. A simple adhesive label cannot be regarded as a part of the annexation no matter how securely it may appear to be fixed. Clearly the possibility exists that it could be removed and replaced, or overlaid with another label. To fall within the provisions of S.8(1)(b) or 8(2)(b) any label would have to be considered so integral to the annexation that it had become part of the annexation itself. That would appear to require formal incorporation of the label in the annexation: so far there have been no reported instances.

It follows that writings and signatures on adhesive labels are to be disregarded as ineffectual. Bear in mind however that the use of an adhesive label for a docket will not automatically make a deed unacceptable for recording or registration, because (as explained in para 8) there may still be other identification on the face of the annexation which is sufficient to permit its acceptance.

12. There has been no backtracking on the Keeper's policy as it was advised to staff in the earlier memo. This memo simply reflects the clarification and development of aspects of policy and practice which is only to be expected in the light of operating experience. Further guidance will be issued as necessary.

ALEC M FALCONER
Director of Legal Services
4 October 1995

GUIDANCE NOTE

THE REQUIREMENTS OF WRITING

(SCOTLAND) ACT 1995:

INCORPORATION OF ANNEXATIONS IN DOCUMENTS

Since the above Act came into effect on 1 August, the Keeper of the Registers has become aware that conveyancers have adopted a variety of practical approaches to Section 8, which sets out the conditions in which an annexation is regarded as incorporated in a document. The condition causing difficult is the requirement to the effect that an annexation must be identified on its face as the annexation referred to in the document. The Keeper understands that requirement to mean that an annexation to a document should be identified on its face as the *particular* annexation referred to in *that particular* document. The requirement applies to annexations in general and more especially to annexations which describe or show land.

Usually, the traditional form of docket identifying the names of the parties to the deed, e.g. "This is the schedule referred to the in the foregoing Disposition by A in favour of B dated ..." will be the obvious and safest way of ensuring that the annexation is adequately identified on its face.

The Keeper has come to the conclusion that shorter forms of purported identification such as the heading "Schedule" or "Schedule referred to in the foregoing Standard Security" (whether or not preprinted) provide insufficient linkage between annexation and document. Such shorter forms may cause difficulty at the point of registration. They may even lead the Keeper to refuse to record or register the document in question, for example when a document depends upon an inadequately identified annexation for a description of the subjects or some other essential.

While the Keeper recognises that adequate identification on the face of the annexation need not always take the form of the traditional docket, he would wish conveyancers to be alert to the need to provide identification, in whatever form, linking the particular annexation to the particular document in a way which is adequate to satisfy the terms of Section 8.

Sasine Memo No.51

ROT Legal Memo L17/95

ROT Plans Memo No.106

METRICATION:

UNITS OF MEASUREMENTS DIRECTIVE 1989 (89/617/EEC)

AUTHORISED UNITS OF MEASUREMENT

1. As advised in the memo of 2 March, 1 October 1995 is the operative date on which the use of units of measurements authorised by the EC Directive ("authorised units of measurement") by the general public becomes compulsory. Certain issues have been clarified since March and the position and the implications for registration staff are explained below. The information in this memo may be communicated to customers.

2. **Definition of authorised unit of measurement**

For ROS purposes, authorised units of measurement consist of metric units, e.g. hectare, metre, centimetre and (for land registration purposes only) the acre. Imperial units can be used as supplementary indicators to metric units, i.e. a metric measurement can legitimately be supplemented by an imperial measurement provided the metric measurement is expressed first and the imperial measurement is not more prominent than the metric measurement. There are other special situations in which imperial units can continue in use. Although not relevant to ROS registration work these are shown in Appendix 1 by way of background information.

3. **Measurements affected by the Directive**

Measurements in contracts, public records, legislation etc in existence prior to 1 October are not affected by the Directive. Sasine staff in particular should note that conveyancing descriptions which exist prior to 1 October can continue to be used without amplification or conversion. The Directive only regulates new measurements. From 1 October new descriptions, whether remeasurements or measurements of new plots must be expressed in authorised units. The operative date here is the date of execution of the deed. Provided the date of execution, or one of the dates of execution, is prior to 1 October the Directive will not apply.

4. **The acre**

The acre can continue in use without limit of time in descriptions of land for conveyancing purposes. Parts of an acre must, however, be expressed in decimal parts of an acre. Hence imperial measurements such as the yard and foot cannot be used in conjunction with acres.

5. **ROS policy and practice on rejection of deeds**

The Keeper's general policy as published in the August issue of the Journal of the Law Society of Scotland is that from 1 October he will reject any deed containing a new conveyancing description unless expressed in authorised units of measurement. An ROS guidance leaflet on metrication, currently being mailed to every legal firm in Scotland and distributed to staff within the Agency, expresses the Keeper's policy more cautiously. The leaflet warns that the Keeper cannot guarantee to accept deeds which use unauthorised units in new descriptions, but it stops short of saying that such deeds can never be accepted.

6. The reason for this is that although unauthorised units will not be legal from 1 October 1995, a description may be valid at common law even without those measurements. For example, a description of a new property might contain a postal address and full bounding description in which the extents of the boundaries are expressed in imperial units. Insofar as the description uses unauthorised units of measurement it can be seen to be ineffectual, but the postal address alone constitutes a sufficient description at common law.

7. This means that ROS staff must look at the description as a whole to see if it can stand up without the unauthorised units of measurement. If it can, the presenting agent should be contacted and encouraged to consider re-engrossment with all extents being expressed in authorised units because of the risk of legal challenge on the ground of inconsistency with the Directive, but registration may proceed if the agent insists on recording the deed as it stands. In Sasines, the search sheet should be noted accordingly. ***This represents the only exception to the rule that from 1 October 1995 the Keeper will refuse to record or register deeds which rely upon unauthorised units of measurement. If the description is ineffectual without the unauthorised units of measurement, the deed must be rejected.*** In the Land Register, an application based on unauthorised units of measurement may retain its registration date and be stood over to give the agent time to remedy the deficiency.

8. **Effects of non-compliance with the Directive**

Weights and measures used in trade have long been regulated by the Weights and Measures Act 1985 and its subordinate legislation. Regulated goods include most groceries, and fines for non-compliance have been in force since the Middle Ages. Other transactions using measurements have been and remain unregulated, and it is with unregulated measurements that ROS is concerned. No express sanctions have been put in place to regulate the use of units of measurement in unregulated transactions. However, a non-regulated transaction involving the use of unauthorised units could be subject to legal challenge on the ground of non-compliance with the directive. Eventually the courts may require to decide the precise consequences of the use of unauthorised units in documents and contracts.

9. **Units of Measurement Regulations 1995**

Those regulations deem all pre 1 October references to imperial units in legislation, deeds, instruments and documents of many kinds to be their metric equivalents as shown in Appendix 2. Useful as this measure may be, it can have no effect on documents drawn on or after 1 October.

(Sgd) ALEC M FALCONER

Director of Legal Services

28 September 1995

APPENDIX 1

IMPERIAL UNITS OF MEASUREMENT FOR PRIMARTY USE AFTER 1 OCTOBER 1995

Some imperial units are being retained as the primary system of measurement for certain specific uses, either without time limit or no later than 31 December 1999. The units and their uses are as follows:-

A. Imperial units of measurement to be used without time limit

(i) **pint** for sales of draught beer or cider and for milk sold in returnable containers;

(ii) **mile, yard, foot and inch** for road traffic signs and for road traffic distance and speed measurement;

(iii) **foot** for aircraft heights;

(iv) **nautical mile and knot** for sea and air traffic;

(v) **troy ounce** for transactions in precious metals.

B. Imperial units of measurement which may be used no later than 31 December 1999

(i) **pound and ounce** for goods sold loose from bulk (e.g. fruit and vegetables not sold in pre-packs);

(ii) **pint and fluid ounce** for sales of beer, cider, water, lemonade and fruit juice in returnable containers;

(iii) **therm** for gas supply;

(iv) **fathom** for marine navigation.

APPENDIX 2

RELEVANT IMPERIAL UNITS, CORRESPONDING METRIC UNITS AND METRIC EQUIVALENTS

Relevant imperial unit	*Corresponding metric unit*	*Metric equivalent*
	Length	
inch	centimetre	2.54 centimetres
hand	metre	0.1016 metre
foot	metre	0.3048 metre
yard	metre	0.9144 metre
fathom	metre	1.8288 metres
chain	metre	20.1168 metres
furlong	kilometre	0.201168 kilometre
mile	kilometre	1.609344 kilometres
nautical mile (UK)	metre	1853 metres
	Area	
square inch	square centimetre	6.4516 square centimetres
square foot	square metre	0.09290304 square metre
square yard	square metre	0.83612736 square metre
rood	square metre	1011.7141056 square metres
acre	square metre	4046.8564224 square metres
square mile	square kilometre	2.589988110336 square kilometres

Sasine Memo No.52

ROT Legal Memo L18/95

RECORDING/REGISTRATION OF TREE PRESERVATION ORDERS UNDER SECTION 59

As an alternative to the standard procedure for a TPO under section 58, a planning authority can make use of an emergency procedure under section 59 of the Town and Country Planning (Scotland) Act 1972. Section 59 allows a TPO to take provisional effect at once; the TPO then has effect for six months or until it is confirmed, whichever happens first. The TPO cannot competently be recorded or registered until after it has been confirmed.

If a section 59 TPO is not confirmed within the six month period it ceases to have effect. It was previously thought that the TPO could not be revived after its lapse, i.e. outwith the six month period, by being confirmed at a later date. The Keeper has now been advised that a lapsed TPO is able to be confirmed later and so be renewed. Accordingly, any section 59 TPOs confirmed outwith the six month period should be accepted for recording in the Sasine Register or registration in the Land Register.

This supersedes para 2.2 of Legal Memo L10/91.

(Sgd) ALEC M FALCONER
Director of Legal Services
7 December 1995

1994

Sasine Memo No.32

ROT Legal Memo L8/94

EXECUTION OF DOCUMENTS BY FOREIGN COMPANIES

1. The execution of deeds by companies incorporated in Great Britain is regulated by Section 36B of the Companies Act 1985 as substituted by Section 72(1) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, plus the prior authentication statutes still in force. (ROT Legal Memo L29/90 and Section F.3.1 of the Sasine Manual refer).

2. In terms of the Companies Act as amended, a deed is validly executed by a company, and is probative as regards that execution, if it is signed by any of the following:

(a) 2 directors

(b) a director and the secretary

(c) 2 authorised signatories.

No witnesses are required, and the company seal (if it exists) does not require to affixed.

3. Apart from the provisions of the Companies Act, documents can also be executed under the normal rules of authentication. So, a deed granted by a company is also valid and probative if subscribed by an authorised signatory before 2 witnesses.

4. These rules have caused some difficulty for companies incorporated outwith Great Britain, many of which have only one person authorised to sign deeds on their behalf. For such companies, the signature of a second person as demanded by our law has no meaning. In recognition of that fact, a new regulation provides that the above rules of execution are waived for these companies but only to the extent that the requirement for 2 authorised signatories is reduced to a single authorised signatory.

5. The new rule is contained in the **Foreign Companies (Execution of Documents) Regulations 1994**, which takes effect on 16 May 1994. The rule will apply to any deed executed by a foreign company on or after that date. A foreign company for these purposes is any company incorporated outwith England, Scotland, Wales or Northern Ireland.

6. In the Land Register, evidence will be required to show that a single signatory on behalf of a foreign company has been duly authorised to sign on behalf of the company. Where the document of authorisation is in a foreign language, a certified translation will be appropriate.

(Sgd) ALEC M FALCONER

Director of Legal Services

18 May 1994

ROT Legal Memo L9/94

TRANSACTIONS BY BANKRUPTS

1. **Acquisitions prior to Discharge**

1.1 Property acquired by a bankrupt after the date of sequestration and prior to the date of discharge vests automatically in the trustee in sequestration. Such property is called **acquirenda**. As in the case of heritage which vested automatically in the trustee at the time of sequestration, conform to the act and warrant in his favour, the trustee has the option of completing title, using the act and warrant in his favour as a link in title. Usually, that option is not exercised.

1.2 If an application for registration of acquirenda is not made on behalf of the trustee, using the act and warrant as a link in title, but is in the bankrupt's own name, registration should not proceed until the submitting Agent has confirmed that the bankrupt has informed the trustee in sequestration of the acquisition. This is necessary because the bankrupt is under a statutory duty to inform the trustee of acquisitions, and may be guilty of a criminal offence in the event of failure to do so. (s.15(8)(9) of the Bankruptcy (Scotland) Act 1985).

1.3 Assuming that registration in the bankrupt's own name is able to proceed, the limitations which the fact of sequestration places upon the bankrupt's ability to transact with the property will require to be spelled out in the proprietorship section. This is to be achieved by a note along the following lines:

"In terms of section 32(6) of the Bankruptcy (Scotland) Act 1985, the interest of the said X in the subjects in this Title is vested in the trustee in sequestration on the estate of the said X. The title of the said X is subject to the following entry in the Register of Inhibitions: (details of CCI)".

1.4 Although the details of the entry in the ROI are given, it is not an adverse entry in this situation, and so indemnity is not excluded.

2. **Effect of Discharge of Debtor**

2.1 Discharge of the debtor is normally automatic at the expiry of the 3-year period running from the date of sequestration. Although the discharge is automatic, evidence of discharge is obtainable in the form of a **certificate of discharge** obtained by the bankrupt upon application to the Accountant in Bankruptcy. Such a certificate should always be requisitioned when it comes to a settler's notice that a party to a transaction inducing registration has at any time been sequestrated.

2.2 The debtor's discharge can be accelerated or delayed. If appropriate, the permanent trustee or a creditor may apply to the Sheriff for deferment of the debtor's discharge not later than 2 years and 9 months after the date of sequestration. The Sheriff has power to defer the discharge for a further period of up to 2 years and, if that power is exercised, the Clerk of Court will send a certified copy

of the relevant order to the Keeper, for registration in the Register of Inhibitions and Adjudications. Such an order should not be confused with the registration of a Memorandum of Renewal in the ROI at the instance of a permanent trustee in sequestration who has not been discharged (see para 5 of memo L6/93) and who wishes to continue the inhibitory effect of the CCI.

2.3 Discharge of the debtor does not terminate the sequestration. It is quite common for him to be discharged while the trustee in sequestration continues to administer the estate. The sequestration continues although the debtor has been discharged. In due course, the trustee can (but not necessarily does) obtain his own discharge and only then will the sequestration be at an end. The trustee's discharge also takes the form of a certificate of discharge by the Accountant in Bankruptcy. No entry will appear in the ROI to indicate that such a certificate has been granted and the sequestration is at an end.

3. **Debtor's Transactions After Discharge**

3.1 Acquisitions Post-Discharge

3.1.1 After his discharge, the debtor is free to acquire other property; such acquisitions will be of no interest to the trustee in sequestration and so registered title to such acquisitions can be completed in the normal way, without disclosure of previous sequestration entries in the ROI.

3.2 Previous Acquisitions

3.2.1 Heritage vested in the trustee in sequestration does not automatically revert to the debtor upon the latter's discharge. It remains vested in the trustee except insofar as he has divested himself of it.

3.2.2 If the trustee in sequestration releases property to the debtor after the latter has been discharged, that property is unencumbered by prior inhibitions. (The reference in para 2.4 of ROT Legal Memo L30/93 to heritage reverting to the debtor free of prior inhibitions should not be read as an indication that all heritage automatically reverts to the debtor upon his discharge).

3.2.3 If a discharged bankrupt sells or borrows upon the security of property acquired prior to his discharge while the sequestration continues, and there is an extant CCI or memorandum of renewal in the ROI, the resultant application for registration will require to be supported by the following evidence:

(a) evidence of the bankrupt's discharge (see para 1.2); and

(b) evidence (from the trustee) that the trustee has released or abandoned the relevant property to the bankrupt.

In the absence of such evidence the application should not be proceeded with. Although completion of registration under exclusion of indemnity was contemplated in para 8 of memo L6/93, that option is now considered to be inappropriate.

4. **Debtor's Transactions Prior to Discharge**

4.1 Prima facie, any dealing by an undischarged bankrupt, without the participation of the trustee in sequestration, is irregular. Any such dealings should be referred to a senior caseworker.

(Sgd) ALEC M FALCONER

Director of Legal Services

19 May 1994

1993

Sasine Memo No.19

ROT Legal Memo L3/93

Plans Memo No.94

INFORMATION FROM THE REGISTERS

REQUESTS FOR COURT EVIDENCE FROM THE AGENCY

1. **General**

When a member of ROS staff exhibits or provides information from the Registers to the Police, the DSS or any other enquirer, and it seems possible that he or she may be cited as a witness to appear in any court or tribunal proceedings, they must alert the enquirer as to the very limited role they could play in such proceedings. That role would be restricted to the giving of evidence as to the fact that material was exhibited plus (if appropriate) certifying that any extract, copy or other document had been issued by the Agency. It should however be pointed out to the enquirer that in terms of s.45 of the Conveyancing and Feudal Reform (Scotland) Act 1970 and s.6(5) of the Land Registration (Scotland) Act 1979 official extracts and office copies shall be accepted for all purposes as sufficient evidence of the original. It follows that they should not require additional certification or a witness to attest to them.

2. **Sasine Register**

2.1 Where, in the circumstances envisaged in paragraph 1, information is provided from the Sasine Register by means of the Search Sheet, an enquirer should be told that the Search Sheet is not statutory, and that the information which it contains is not guaranteed to be accurate. The Search Sheet is merely an in-house tool used primarily by ROS staff for registration purposes. It is exhibited to the public upon request but the Agency does not interpret it to the public. An enquirer can use the Search Sheet as a key to the Sasine Register, and so as an aid to establishing the near current state of heritable title.

2.2 It is open to the enquirer to order an extract of any writ identified from the Search Sheet, either from ROS or from the Scottish Record Office as may be appropriate. Quick copies of writs in process but not yet in Minute Book can be supplied and charged as per Part X2(1) and (5) of the 1991 Fee Order. Authentication is an optional extra for quick copies and should take the form of a docket of authentication on the first page by an officer of not less than HEO grade in the following terms:

"I certify that this [and the following.....pages] is/are a true copy of a [name of writ] presented for recording in the Register of Sasines on.....".

Signature Date

Depute Keeper of the Registers of Scotland

3. **Land Register**

3.1 Where paragraph 1 applies and the information is in the Land Register, any enquirer should be advised that an office copy of the Title Sheet or part thereof or document referred to therein may be ordered. If the application is in process, i.e. the relevant entry in the Title Sheet has not reached the "Status Confirmed" stage, the advice should be to order a quick copy of Part A of the Application Form and the relevant deed(s), and to ask for their authentication. The docket of authentication should be by an officer of not less than HEO grade in the following terms:

"I certify that this and the following.....preceding pages is/are a true copy of Part A of the relevant Form 1 and the [name of writ] presented for registration in the Land Register on.....(date)".

Signature Date

Depute Keeper of the Registers of Scotland

3.2 If registration is complete and the information sought is on microfiche, it is competent to issue an office copy of any deed referred to in a title sheet. When a quick copy is sought instead of an office copy, the style of docket of authentication should confirm as closely as possible to the following:

"I certify that this and the.....preceding pages are a true copy of the [name of writ] by.....to.....registered in the Land Register on.....".

Signature Date

Depute Keeper of the Registers of Scotland

4. **Service of Citation**

Any member of staff who receives a citation as a witness in connection with information on or supplied from the Registers should inform the Senior Legal Adviser (SLA) immediately. The SLA will conduct any necessary liaison with the legal authorities and arrange for a background briefing if appropriate.

(Sgd) ALEC M FALCONER

Senior Legal Adviser

10 February 1993

ROT Legal Memo No.4/93
Plans Memo No.95

FORESHORE/SEABED

1. A revised form L16 (copy attached) has been agreed with the Crown Estate Commissioners and is now available for use in place of the original version. Stocks of the earlier version should be destroyed.

2. Although section 14 of the Land Registration (Scotland) Act 1979 provides for the Keeper to make intimation to the Commissioners in respect only of applications involving foreshore, the new form provides for intimation to be made in respect also of seabed. That is in line with an undertaking given by the then Keeper to the Commissioners in 1979.

3. On one interpretation the seabed which is potentially capable of being registered in the Land Register appears to include all seabed within the 12-mile limit. There is, however, doubt over (a) the extent, if any, to which seabed forms part of individual counties; and (b) the extent to which seabed *per se* is an interest in land capable of being registered. These questions are being investigated with Solicitor's Office. In the meantime, seabed next to the foreshore and connected with land by e.g. a pier or bridge can be registered on the basis that it is part of an interest in land falling within a specific operational area. (If is of course possible that first registration of seabed will technically be on a voluntary basis and not as a compulsorily induced first registration).

4. Whatever the legal position of seabed adjacent to the foreshore and connected with the foreshore or land, there are pragmatic reasons why it should be capable of appearing in the Land Register. Those reasons are less persuasive in relation to seabed which is some distance offshore.

5. In view of the current uncertainties over seabed, any application which relates to seabed not adjacent to foreshore and connected with land or foreshore should be referred to the Senior Legal Group.

6. Where seabed and/or foreshore is to be included in the registered extent, it may be preferable to rely on a verbal description instead of delineating precisely the extent on the title plan. Description of e.g. foreshore as "*ex adverso* the land lying between the points marked A and B on the title plan" would allow for erosion or accretion of the subjects by natural forces whereas a precise delineation on the title plan could put the Keeper's indemnity at risk.

Further instructions on the registration of interests affecting foreshore and seabed will be issued in the due course.

(Sgd) ALEC M FALCONER
Senior Legal Adviser
15 March 1993

Crown Estate Commissioners

10 Charlotte Square

EDINBURGH

EH2 4DR

TITLE NUMBER:

The Keeper of the Land Register of Scotland HEREBY GIVES NOTICE in terms of section 14(1) of the Land Registration (Scotland) Act 1979 that he has been requested
by.....
.....(the Applicant) not to exclude rights to indemnity in respect of the Applicant's entitlement to foreshore/right in foreshore/seabed*/right in seabed* *(delete if not applicable) ex adverso* the land between the points.....and.....on the sketch annexed hereto which land is described
as.....

.....

in respect of which an interest has been registered or is about to be registered under the above Title Number.

for Keeper of the Registers of Scotland

*__Notes on Seabed__

1. For the purpose only of this Notice, section 14 of the above Act is deemed to apply to seabed as it apples to foreshore.

2. Where appropriate the term 'seabed' as used in the above Notice includes the *alveus* of a tidal river.

ROT Legal Memo L5/93

FURTHER AND HIGHER EDUCATION (SCOTLAND) ACT 1992

1. The above Act makes new provision about further and higher education in Scotland. The import of sections presently relevant to the work of the Agency, which relate only to further education, is as noted below. While most of those sections are already in force none is capable of having any effect until "the first transfer date", now established as 1April 1993, which date should be treated as the starting date for all sections noted.

Transfer of Management

2. Section 11 removes from the management of its education authority each college of further education as may be prescribed by order of the Secretary of State. The section also provides, in respect of each such college, for the abolition of the college council and the establishment of a body corporate to be known as "the Board of Management of" that college. Section 12 places the duty of management on the board of management.

3. By the Transfer of Colleges of Further Education (Scotland) Order 1992 the Secretary of State prescribed the colleges listed in the annex to this memo. Section 13 provides for future orders in respect of colleges of further education under the management of education authorities but not presently listed.

Transfer of Property etc

4. Section 16 provides that on the first transfer date there shall be transferred to and vest in the board of management of each college specified in an order made under section 11 "all land.....which (i) immediately before the first transfer date was owned by an education authority; and (ii) at any time during the relevant period was used, held or obtained by them for or in connection with the purposes of the college.....". The definition of "land" includes any estate or interest in or over land and "the relevant period" is the period from 22 March 1991 to 31 March 1993 inclusive.

5. Section 16 is supplemented by Schedule 3 to the Act which provides a mechanism not only for the certain identification of land, rights, obligations etc transferred, but also for dealing (by division or apportionment, where practicable) with cases where land was used for more than one purpose and/or by more than one college. The mechanism employed is that the education authority and the college council (or board of management, after the first transfer date) are required to "arrive at such written agreements and execute such other instruments as are necessary or expedient", failing which any matter may be referred to the Secretary of State who will appoint a commissioner for further education assets to determine it.

6. Though the Act itself forms a midcouple, a written agreement or determination is, in practical terms, a necessary adjunct to section 16. Where the Act is relied upon to establish title, settlers will therefore require to examine an agreement or

determination made under Schedule 3. A transfer under the Act will not induce First Registration but may be registered as a Dealing with Whole or Transfer of Part. Insofar as an agreement or determination under Schedule 3 may do more than define the extent of vesting, e.g. it may detail arrangements for a right of access where land is to be divided, it does not replace conveyancing and is not directly registrable. Thus, in the example given, the constitution of a servitude right by writing would still require an express grant either in a separate deed or within a conveyance.

Requirement of Consent of Secretary of State

7. Section 12 confers on a board of management wide powers, including power to acquire, hold and dispose of land, to borrow for specified purposes and to grant security in respect of such borrowing. It should be noted, however, that subsection (7) creates a requirement for the prior written consent of the Secretary of State in respect of *inter alia* the creation of any security or trust over or in respect of any college property. Section 18 contains a similar requirement in respect of a disposal of property to which the section applies (which includes property transferred under the Act). "Disposal" includes "sale, transfer, grant, variation, creation or extinction of any real right in, over or in respect of land". Consent is not required where disposal is as a result of compulsory acquisition.

8. Where the Secretary of State does not consent *in gremio*, then separate evidence of his consent must be examined in respect of any deed, except a Schedule Conveyance, granted by or with consent of the board of management of a prescribed college. In any exceptional case where section 18 is said not to apply to the property the applicant's agents should be asked for written confirmation of that fact.

Execution of documents

9. Paragraph 20 of Schedule 2 to the Act regulates execution and probativity of documents. The effect of this paragraph is that a document is probatively executed by a college board of management if –

(a) it bears to have been subscribed on their behalf by being signed by a member of the board or by their secretary (or any person performing the duties of secretary to the board) or by any person authorised to sign the document on their behalf

and

(b) such subscription bears to have been attested by at least one witness.

Closure, Merger, Further Transfer

10. The Secretary of State has power by order to close or merge certain colleges of further education or in certain circumstances to alter the status of a college (Sections 3 and 44). Under section 25 any such order may include provision for the property etc of the board of management to transfer to and vest in the Secretary of State, or such other board of management or such other person as may be specified

in the order. It is anticipated that only the order itself will need to be examined in the case of a transfer provided for in an order made under sections 3 or 44.

Stamp Duty

11. Under section 58 stamp duty shall not be chargeable in respect of any agreement made or any transfer effected under or by virtue of any of the provisions of the Act.

(Sgd) ALEC M FALCONER

Senior Legal Adviser

15 March 1993

ANNEX

SCHEDULE 1

COLLEGES OF FURTHER EDUCATION TRANSFERRED

Aberdeen College of Further Education

Angus College of Further Education

Anniesland College

Ayr College

Banff and Buchan College of Further Education

Bell College of Technology

Borders College

Cambuslang College

Cardonald College

Central College of Commerce

Clackmannan College of Further Education

Clydebank College

Coatbridge College

Cumbernauld College

Dundee College of Further Education

Dumfries and Galloway College of Technology

Elmwood College

Falkirk College of Technology

Fife College of Technology

Glasgow College of Building and Printing

Glasgow College of Food Technology

Glasgow College of Nautical Studies

Glenrothes College

Inverness College

James Watt College

Jewel and Esk Valley College

John Wheatley College

Kilmarnock College

Langside College

Lauder College

Lews Castle College

Moray College of Further Education

Motherwell College

North Glasgow College

Oatridge Agricultural College

Perth College of Further Education

Reid Kerr College

Stevenson College

Stow College

Telford College

The Barony College

Thurso College

West Lothian College

ROT LEGAL MEMO L6/93

BANKRUPTCY (SCOTLAND) ACT 1993

1. The primary aim of the above Act is to improve the administration of sequestrations by involving the Accountant in Bankruptcy more closely in sequestrations which are likely to involve public expenditure. The posts of Accountant of Court and Accountant in Bankruptcy, which were formerly combined, will now be separate and the Accountant of Court will not be involved in the administration of sequestrations. Parts of the Act came into force on 18 February 1993 (when the Act received the Royal Assent) and the remainder of the Act comes into force on 1 April 1993.

2. The Act contains a number of detailed provisions which amend the Bankruptcy (Scotland) Act 1985. Most have a little or no relevance to the work of ROS (e.g. new summary procedures to simplify the administration of cases where there are few assets) and are not commented upon here, but it may be helpful for staff to be aware of the following changes brought about by the Act.

3. **Date of Sequestration**

When the Court grants more than one warrant to cite, sequestration runs from the date of the granting of the earlier warrant.

4. **Powers of Interim Trustee in Sequestration**

These have been augmented. The interim trustee no longer needs to obtain the prior permission of the Court before he can carry on any business of the debtor or borrow money insofar as it is necessary for him to do so to safeguard the debtor's estate.

5. **Registration of Memorandum of Renewal in ROI**

Section 14(4) of the 1985 Act provided that if the permanent trustee had not been discharged then before the end of the period of three years beginning with the date of sequestration he should register a memorandum of renewal in the ROI. Such a registration has the effect of an inhibition for a further three years. In practice, trustees seem frequently to have neglected to register such memoranda. The 1993 Act replaces the requirement that the trustee "shall" register a memorandum of renewal to the effect that in future he "may" register one. The number of such memoranda is expected to decrease.

6. An Order has been made by the Secretary of State bringing the above amendments in paras 3, 4 and 5 into force on 1 April 1993. They will not affect sequestrations petitioned for before 1 April, or 1 October 1993 in the case of a petition by a trustee under a trust deed granted before 1 April 1993.

7. **Effect upon Secured Creditor of Discharge of Debtor**

Section 55 of the 1985 Act says that the discharge of the debtor (which happens automatically on the expiry of 3 years if a trustee or creditor has not applied for deferment) discharges him of all debts and obligations contracted by him, or for which he was liable, at the rate of sequestration (subject to certain limited exceptions), If, therefore, the debtor had granted a standard security prior to the date of sequestration, upon his discharge under Section 55 he ceased to be personally liable to repay the debt. This gave rise to doubts about the position of secured creditors. In an amendment to Section 55, the 1993 Act makes it clear that the discharge of the debtor in respect of any debt or obligation shall not affect any right of a secured creditor to enforce his security for payment of the debt or performance of the obligation. This means that although the debtor's personal liability may have ceased upon the discharge, nevertheless the creditor still has a security which he can enforce, e.g. by exercising a power of sale.

The amendment of Section 55 took effect when the 1993 Act received the Royal Assent on 18 February 1993, and is retrospective.

8. Settlers referring to para J.6.6.2.(d) of the Registration Manual should note an underlying point about a debtor's discharge which is unaffected by the 1993 Act. That is, that discharge of the debtor does not end the sequestration. The permanent trustee may continue in office and administer the estate transferred to him. Eventually, and after making a final division of the debtor's estate, the trustee obtains a separate certificate of discharge from the Accountant in Bankruptcy. It follows that when a heritable proprietor has been sequestrated, evidence of his own discharge will not in itself be sufficient to allow the Keeper to register any dealing by that proprietor without exclusion of indemnity.

9. In amplification of Section J.6.2 of the Registration Manual, notes of the sequestration process are appended to this Memo.

ANNEX

NOTES ON SEQUESTRATION

There are two distinct roads to sequestration. Sequestration is applied for either by (1) a petition by a creditor or a trustee under a trust deed or (2) a petition by the debtor.

Petition by Creditor or Trustee

In response to such a petition, the Court makes a Court Order called an Interlocutor, containing a warrant to cite the debtor to appear before it on a date not less than 6

nor more than 14 days after the date of citation. The Clerk of Court has the duty of sending a certified copy of the Interlocutor to the Keeper forthwith for recording in the Register of Inhibitions. The date of sequestration is the date of the award of the warrant to cite, not the date of recording in the ROI which is currently 2 to 3 days later although longer delays can occur.

Occasionally the Court grants more than one warrant to cite the same debtor (in order to correct some informality such as an erroneous designation). The 1993 Act resolves any doubt about which Court Order represents the date of sequestration by providing that sequestration runs from the date of the first warrant to cite.

Debtor's Petition

The Court is usually able to award sequestration forthwith. The Clerk of Court sends the certified copy Interlocutor awarding sequestration to the Keeper for recording in the ROI. The date of sequestration is the date upon which the Court granted the Orderawaiting sequestration. As a result of the 1993 Act, the debtors' petitions are likely to become more common in future.

Effect of Recording of Court Order in ROI

The recording of the relevant Court Order, i.e. the certified copy Interlocutor granting warrant to cite, or the certified copy Interlocutor awarding sequestration (as the case may be) has the effect of an inhibition for a period of 3 years dating from the date of sequestration. In other words, heritable property owned by the debtor/bankrupt become litigious and any voluntary intromissions by him are liable to be struck at by the trustee in sequestration. Since the date of sequestration is the date of the Court order and not the date of recording in the ROI, litigiosity is retrospective.

Act and Warrant

Although the debtor/bankrupt is infeft in the property, the trustee becomes personally vested in the property as the debtor/bankrupt's successor, by means of the Act and Warrant issued by the Court on confirmation of the trustee's appointment or election. The trustee does not usually complete title to the heritage although he can do so if necessary, using the Act and Warrant as a link in title.

Expiry of 3-Year Period

Discharge of the debtor happens automatically on the expiry of 3 years if a trustee or creditor has not applied for deferment. But discharge of the debtor does not end the sequestration. The permanent trustee may continue in office and administer the estate transferred to him. Under the 1985 Act the trustee (not the Sheriff Clerk) was under a duty to record a Memorandum of Renewal, effective for a further 3 years, before the expiry of the original 3-year period. The 1993 Act retains the facility but makes it optional. Eventually, and after making a final division of the debtor's estate, the trustee obtains a separate certificate of discharge from the Accountant in Bankruptcy.

Action by Settler

When a heritable proprietor has been sequestrated, the lapse of the initial 3-year period or other evidence of his own discharge will not, of itself, be sufficient to allow the Keeper to register any dealing by that proprietor without exclusion of indemnity in respect of loss arising from the enforcement of the trustee's right under the Act and Warrant. Evidence of the trustee's discharge is required.

Sasine Memo No.22

ROT LEGAL MEMO L11/93

PORTS ACT 1991

1. This memo is supplementary to Sasine Memo No.2/ROT Legal Memo L23/91, which outlined the main provisions of the above Act as it affects the Agency. Details of two Schemes made under Section 9 of the Act and confirmed by the Secretary of State are given below.

Transfer Schemes

2. Clyde Port Authority has made a Scheme, dated 29 October 1991, called The Clyde Port Authority Scheme 1991, which specifies Clydeport Limited as the authority's successor company. The Scheme was confirmed by The Clyde Port Authority Scheme Confirmation Order 1992 (S.I. 1992 No.304) and took effect on 1 March 1992.

3. Forth Ports Authority has made a Scheme, dated 7 January 1992, called The Forth Ports Authority Scheme 1992, which specifies Forth Ports Public Limited Company as the authority's successor company. The Scheme was confirmed by The Forth Ports Authority Scheme 1992 Confirmation Order 1992 (S.I. 1992 No.546) and took effect on 6 March 1992.

Effects of a Scheme

4. On the date on which a Scheme takes effect there is, by virtue of Section 2 of the Act, a transfer to its successor company of inter alia all heritable property of a Port Authority. It follows that deeds executed on or after the effective date of transfer, which affect property owned by a Port Authority immediately before that date, must run in the name of and be executed by its successor company. Any deduction of title should proceed on the Act itself, as a minimum requirement, though reference to the relevant Scheme and Order may be included. Settlers should note that the Schemes and Orders detailed above have been examined in Senior Legal Group and need not be requisitioned or further examined.

5. A deed in favour of a Port Authority, executed before the effective date of transfer, may be recorded in the Sasine Register on or after that date by being docquetted with reference to a Notice of Title of the successor company. In the Land Register, application should be made in the name of the successor company to register the Act and the relevant Scheme and Order as well as the deed itself.

6. Confirmation of a Port Authority Scheme does not have the effect of dissolving the authority which remains in existence until dissolved by Order at some future date. Acquisition of property by the authority after its Scheme has come into effect would

seem, however, to be beyond its powers. This is because the authority's statutory functions in relation to the running of the port are transferred along with its property when the Scheme takes effect.

Miscellaneous

7. Sasine staff please note that by error two memos both numbered 19 have been issued. The one entitled "Further and Higher Education (Scotland) Act 1992" should be re-numbered as No.20.

ALEC M FALCONER
Senior Legal Adviser
18 May 1993

Legal Memo L15/93

MEMO TO LEGAL SETTLERS

SPLIT VILLAS – RIGHTS AND BURDENS

1. In a submission to the First Registration Product Improvement Committee, it was asserted that there is uncertainty as to the procedures to be followed in dealing with rights and burdens in split villa applications. This memo is a clarification of the required practice.

2. Split villas fall generally into the category of subjects in respect of which the Legal Settler is required to cross-check counterpart right and burdens as between the titles of the various parts of the villa (see Legal Manual, Section H.4.3.5).

3. Applications dealing with split villa property fall into the following categories:-

(a) First Registration (FR) of a part of the villa where the other part(s) is/are already registered in the Land Register.

(b) FR of part of the villa where the other part(s) is/are still in the Sasine Register.

(c) FR of the area of ground with the villa thereon, under exception of the part(s) sold, where the exception(s) is/are already registered in the Land Register.

(d) FR of the area of ground with the villa thereon, under exception of the part(s) sold, where the exception(s) is/are still in the Sasine Register.

Where a villa has been split into more than 2 parts, it is possible that an application will fall into a combination of categories (a) and (b) or of categories (c) or (d).

4. (a) As regards the situation in 3(a), the Settler should check the title sheets of the other registered parts to confirm that the rights and burdens correspond with those in the current application. If they do, the rights and burdens in the current application should be reflected as usual in the draft title sheet. There is no requirement to import the corresponding rights and burdens for the other parts of the villa; they are implied by the terms of the rights and burdens in the current application. If the rights and burdens as between the various titles/applications do not correspond and the incompatibility is significant in the Settler's judgement, the matter should be referred back to the applicant's agent for remedial action.

(b) As regards the situation in 3(b), the Settler should compare the rights and burdens in the current application against those in the breakaway deed(s) for the other part(s) of the villa, ordering copies of such deed(s) as required from the Scottish Record Office; thereafter, the procedure should be as in Paragraph 4(a).

(c) As regards the situation in 3(c), it will often be the case that the description in the deed inducing registration (DIR) will not refer specifically to the remaining part being

sold, but to the area of ground, with the villa thereon, under exception of the part(s) already sold. The A (Property) Section will be framed along the lines of

"subjects edged red on the Title Plan, with Villa..... thereon – Note: The parts specified in the Schedule below are excepted from the subjects in this Title.....". No rights and burdens specific to the part being sold will normally appear in the DIR; the Settler will simply include, in the A and D Sections respectively, any rights and burdens that relate to the whole villa, plus a note in the D Section as follows:-

"The rights created by the writs specified in the Schedule of Exceptions in the Property Section are burdens on the subjects in this Title".

(d) As regards the situation in 3(d), the procedure in Paragraph 4(c) applies, with the Schedule of Exceptions referring to titles recorded in the Sasine Register.

5. If the area of ground, with the villa thereon has been registered in the Land Register before the villa has been split up, any subsequent transactions of parts of the villa will generate Transfer of Part applications. The instructions in 4(a) are generally applicable in this situation.

6. The Legal Manual will be updated in due course to include the above clarification.

(Sgd) BRIAN J CORR

Director, Land Register

20 August 1993

Sasine Memo No.23

ROT Legal Memo L20/93

STAMP DUTY

SALES BY BUILDERS: ONE TRANSACTION/TWO CONTRACTS

1. The Sasine Manual at paragraphs U.12.d(1) and U.17, and the ROT Legal Manual at paragraphs Y.11.d(1) and Y.16 cover the Stamp Duty position where a builder has transacted to sell land and buildings under separate contracts, which are treated as a single transaction for Stamp Duty purposes. In such a case, the consideration stated in the conveyance of the land by the builder may be only in respect of the land, notwithstanding which Stamp Duty has been exacted on a valuation of the land plus buildings as they existed at the date of completion of Missives.

2. This type of transaction is not common and at the present time it appears to be restricted to Wimpey Homes and associated companies.

3. Following a recent Court decision, the Inland Revenue have changed their practice and will now exact Stamp Duty upon the price paid for the land plus the value of the buildings as at the date of execution of the instrument of conveyance instead of the date of completion of missives. For practical purposes, the date of execution of the instrument means the date upon which it was delivered to the purchaser's agents, and not the date upon which it was signed.

4. Although the new practice came into effect on 10 August 1993, it applies only to documents executed (i.e. delivered) under agreements which were dated on or after 12 July 1993. There is also a temporary concession for unconditional contracts entered into on or before 9 August 1993: these may remain subject to the former rules where those would benefit the payer.

5. Legal examiners are asked to note the change in the operative date from the date of completion of Missives to the date of delivery. Builders' certifications should reflect this change. In all other respects, existing practice continues, with all cases of doubt and all public enquiries about the Stamp Duty position being referred to the Revenue.

(Sgd) ALEC M FALCONER

Senior Legal Adviser

27 August 1993

Legal Memo L21/93

MEMO TO LEGAL SETTLERS

COMPETING TITLES IN THE SASINE REGISTER

Paragraph J.2.3.1 of the Legal Manual and Paragraph H.1.05(b) of the Registration of Title Practice Book deal with the situation where, at **the time of the first registration**, there is a competing title in the Sasine Register and **the Keeper is aware of such competing title**. In order to clarify the information contained in the said paragraphs the following points should be noted.

1. Where the competing Sasine title ranks **prior** to the registered title then the insertion in the B Section of the title sheet of the exclusion of indemnity note given in Paragraph S.2.3.1(b) of the Legal Manual is sufficient.

2. Where the competing Sasine title does **not** rank prior to the registered title then an appropriate note along the following lines should be inserted in the B Section, viz:

"As regards the area on the title plan Mr X also has title by virtue of a Disposition recorded GRS . The title of the said Mr Y (the registered proprietor) is founded on a Disposition in favour of Mr Z recorded GRS which ranks prior to the Disposition in favour of Mr A recorded GRS on which the title of Mr X is founded".

For the avoidance of doubt it should be noted that in **neither** of the above situations should the competing Sasine proprietor be entered in the B Section as a registered proprietor. To complete the picture it should also be noted that where the Keeper discovers or is made aware of the competing Sasine title **after the first registration has been completed** then the Sasine competing titile (whatever its ranking in relation to the registered title) is not noted in the B Section of the relevant title sheet. This is because once the Keeper has issued a fully indemnified title the registered proprietor is entitled to rely on it unless he has acted fraudulently or carelessly. The Legal Manual and Registration of Title Practice Book will be appropriately amended in due course.

(Sgd) BRIAN J CORR

Director, Land Register

18 August 1993

ROT Legal Memo L22/93

CHARGING ORDERS BY LOCAL AUTHORITIES UNDER

SECTION 23 OF HEALTH AND SOCIAL SERVICES ETC ACT 1983

1. Sections 21 to 24 of the Health and Social Services and Social Security Adjudications Act 1983 (the Act is generally referred to as HASSASSA) were brought into effect by subordinate legislation on 12 April 1993. The sections give local authorities in Scotland, England and Wales powers to recover assessed charges for certain residential accommodation in those countries from the assets of residents. Previously, a local authority had no means of securing the debt for assessed charges if a resident was unwilling or unable to pay, and it merely ranked as an ordinary creditor on the estate of the resident after his death.

2. Only one of the new powers is relevant to the work of ROS. Section 23 provides that a local authority in Scotland, England or Wales may record or register a Charging Order over any one interest in land in Scotland owned by a resident: if a resident owns several properties in Scotland, only one property can be made subject to the charge. A Charging Order is competent even where the resident's interest in land is a mere *pro indiviso*share of property held on a common title, e.g. between a husband and wife equally. A Charging Order is also competent when the resident is an uninfeft proprietor. The Order will then include a clause of deduction of title if it is to be recorded in the Sasine Register, or will require to be accompanied by evidence of a link in title if registration is to take place in the Land Register.

3. The Charging Order has some but not all of the attributes of a Standard Security – for example it cannot be assigned – and it ranks in the same way as a Standard Security would rank, i.e. according to the date of registration in the absence of any agreement to the contrary. There is provision for the Charging Order to be formally discharged upon payment being made.

4. A local authority is able to call-up a Charging Order once the resident has died. If the resident is still alive, the local authority may only call-up the Charging Order in the event of:

(a) the resident's insolvency;

(b) the sale or transfer of the interest in land;

(c) the calling-up of any Standard Security over the same interest.

5. Copies of the statutory forms of charging Orders and Discharges thereof are attached hereto. A Charging Order cannot be executed before 16 July 1993. To be accepted for recording or registration, a Charging Order or Discharge must conform to the prescribed statutory form and if by a Scottish local authority it must be executed as a deed in terms of Section 194 of the Local Government (Scotland) Act 1973. Staff will be aware that Section `94 requires that a deed to which a local

authority is a party shall be sealed with its common seal and subscribed by two members of the Council and the proper officer (whether attested by witnesses or not) or, alternatively, that the execution take such other form as may be provided for in a local Act. Orders under HASSASSA merely executed in terms of Section 193 of the 1973 Act and purporting to bear the signature (or a facsimile thereof) of the proper officer will not be accepted for registration. Section 194 of the 1973 Act does not, of course, apply to English and Welsh local authorities which, however, will still require to execute Charging Orders or Discharges in accordance with the general Scottish law on execution of deeds. There is doubt as to the exact form such executions should take, and if any instances are encountered they should be referred to the Senior Legal Group.

6. Recommended styles of **Sasine minute** are as follows:

CHARGING ORDER by [local authority] over the following interest in land held by (name and designation of debtor) in respect of debt and interest thereon for accommodation in terms of section 23 of the Health and Social Services etc Act 1983, viz: (description of subjects). Dated.....

DISCH by [local authority] of Charging Order (recorded.....) over..... Dated.....; with Warrant on behalf of..... (design).

7. In the **Land Register**, Charge Certificates are not to be issued in respect of Charging Orders.

The recommended style of entry for the **Charges Section** is as follows:

Charging Order by [local authority] in exercise of powers conferred by Section 23 of the Health and Social Services and Social Security Act 1983 – Charging the subjects in this Title (or the area tinted..... on the Title Plan) with payment of the sum of £x (with interest thereon) (or all debts due or to become due) by Y (design if appropriate) to said Council in respect of assessed charges for accommodation.

When an applicant for registration derives his title from a local authority exercising a **power of sale** under a Charging Order, settlers should follow the guidance contained in Section Q.1.1.6 of the ROT Legal Manual.

8. Charging Orders and Discharges thereof under HASSASSA will incur **recording/registration dues** based upon Table B of Part XI of the Agency Fees Order. Where the amount secured is neither disclosed in the deed nor evident from any accompanying documentation a certificate should be requisitioned.

9. Section 21 of HASSASSA contains **avoidance provisions** intended to defeat a resident's attempt to avoid the assessed charge by, for example, transferring his property to a member of his family. Despite some publicity to the contrary, the avoidance provisions do not affect heritable title in any way and local authorities are not empowered to make Charging Orders over heritage so alienated by residents whether prior to or during their residence in the relevant local authority

accommodation. Instead, the party benefiting from an alienation made for the purpose of avoidance is personally liable to pay the assessed charge up to the value of the property received. It follows that if a Charging order is presented for recording/registration but the debtor designated in it is no longer the proprietor of the subjects, the Order may be *ultra vires*. Any such Order should be referred to the Senior Legal Group for action.

(*Note*: If, however, a Charging Order was recorded/registered prior to the alienation then the charge is already secured over the property and the local authority would be able to call it up if need be.)

10. Copies of the relevant legislation and background notes are held in the Senior Legal Group for consultation by staff as required.

(Sgd) ALEC M FALCONER

Senior Legal Adviser

7 September 1993

N.B. The opportunity is taken to bring the following (unconnected) matters to the attention of staff.

1. LEGAL AID (SCOTLAND) ACT 1986

Staff are advised that since 26 August 1991 it has not been competent to make Charging Orders under the above Act. Discharges of any such Charging Orders already recorded or registered should, however, be given effect to.

2. COPY DEEDS

For the avoidance of doubt, staff are advised that the reference to "copies" in line fourth of para 6 of ROT Legal Memo L19/93 (Plans Memo No.97) is intended to be construed as "copies" (other than Office Copies the issue of which is strictly regulated by statute as explained in para 3.1)".

FORM 1

FORM OF CHARGING ORDER

THE HEALTH AND SOCIAL SERVICES AND SOCIAL SECURITY ADJUDICATIONS ACT 1983

Charging Order

We (*name of local authority*), in exercise of the powers conferred upon us by section 23 of the Health and Social Services and Social Security Adjudications Act 1983 ("the 1983 Act"), hereby make a charging order over All and Whole

(*here describe the security subjects as in Note 1 hereto*) being an interest in land held by (*name and designation of debtor*) in respect of any debt due or to become due by the said (*name of debtor*) to us in respect of the provision by us of accommodation for the said (*name of debtor*), all in terms of the said section 23, together with any interest thereon as specified in section 24 of the 1983 Act as amended [see Note 3].

[to be attested by local authority]

NOTES FOR FORM 1

Note 1 The security subjects shall be described by means of a particular description or by reference to a description thereof as in Schedule D to the Conveyancing (Scotland) Act 1924(a) or as in Schedule G to the titles to Land Consolidation (Scotland) Act 1868(b), or where appropriate in accordance with the provisions of section 15(1) of the Land Registration (Scotland) Act 1979(c). Where the security subjects consist of an interest in land, other than ownership of the land, amend the description appropriately.

Note 2 Where a title to the subjects is recorded in the Register of Sasines but the debtor does not have a recorded title, insert at the end a clause of deduction of title as follows:- *Which subjects* (or*as the case may be*) *were last vested* (or *are part of the subjects last vested*) *in A.B.* (*designation of person last infeft*) *whose title thereto* (*was recorded in the Register for* (or *the said Register of Sasines*) on (or, if the last infeftment has already been mentioned, say *in the said A.B. asaforesaid*)), *and from whom the said* (name of debtor) *acquired right by* (there specify shortly the writ or writs by which that right was so acquired). Where the interest in the subjects is registered in the Land Register for Scotland but the debtor is not registered as entitled to the registered interest, in terms of section 15(3) of the Land Registration (Scotland) Act 1979 it is not necessary to insert a clause of deduction of title in the deed if evidence of sufficient links in title are produced to the Keeper of the Registers of Scotland on registration.

Note 3 Insert amendments to Section 24 of the 1983 Act; the current amendments are made by section 45(3) of the National Health Service and Community Care Act 1990.

_____

(a) 1924 c.27

(b) 1868 c.101

(c) 1979 c.33

FORM 2

FORM OF DISCHARGE OF CHARGING ORDER

THE HEALTH AND SOCIAL SERVICES AND SOCIAL SECURITY ADJUDICATIONS ACT 1983

Discharge of Charging Order

We (*name of local authority*), in consideration of £ being the whole amount secured by the charging order aftermentioned paid by (*name and designation of debtor* or *as the case may be*) hereby discharge the charging order over All and Whole (*describe the security subjects as indicated in Note 1 to Form 1 in this Schedule*), which charging order was made by us in our favour dated and (recorded in the Register of Sasines for on) (or *as appropriate* registered under Title No.).

[to be attested by local authority]

ROT Legal Memo L30/93

EFFECT OF SEQUESTRATION, LIQUIDATION &c UPON PRIOR INHIBITIONS

1. **Introduction**

1.1 In general, the effect of an inhibition is to strike at all **voluntary** deeds, whether onerous or gratuitous, granted by the debtor subsequent to its date of registration and affecting his heritable property. In terms of the 1979 Act, an effective inhibition is an adverse entry which requires to be disclosed on the Title Sheet.

1.2 A practical illustration is where an inhibition is recorded, say on 15 September, against a seller who concludes missives on 16 September. The disposition to be granted by the seller will be reducible by the inhibitor so far as it is prejudicial to him. It follows that a purchaser of the property is entitled to have the inhibition discharged by payment of the debt due to the inhibitor, before he pays the purchase price. If the inhibition is not discharged, it will require to be disclosed as an adverse entry.

1.3 This memo explains how, in some circumstances, prior inhibitions can lose their effectiveness and hence their status as adverse entries, so that they need not be disclosed in Title Sheets.

2. **Sequestration**

2.1 An inhibition against a debtor registered prior to the date of his sequestration ceases to be effective as an inhibition upon that date. The trustee in sequestration can therefore sell free of any prior inhibition against the debtor, and the purchaser's title will not disclose prior inhibitions as adverse entries. Equally, the trustee's own title (if registered) or the debtor's registered title (if updated) should not disclose prior inhibitions.

2.2 There are two reasons why acts by the trustee in sequestration are not affected by prior inhibitions against the debtor. In the first place, actings by the trustee are not voluntary acts by the debtor; and in the second place, s.31(2) of the Bankruptcy (Scotland) Act 1985 provides that the exercise by the permanent trustee of any power conferred on him by that Act in respect of any heritable estate vested in him shall not be challengeable on the ground of any prior inhibition. (Inhibiting creditors whose inhibitions have been registered more than 60 days before sequestration are compensated by having a preferential ranking on the debtor's estate).

2.3 Note, however, that if the debtor has taken a title which is subject to an inhibition against a **previous** proprietor, that inhibition will remain effective, on the principle that the trustee in sequestration can acquire no better title than the debtor.

2.4 If the debtor is discharged (usually after three years from the date of sequestration) heritage still vested in the trustee will revert to the debtor free of prior inhibitions against the debtor. As explained, prior inhibitions against a previous proprietor will have remained effective despite the sequestration; such inhibitions are

also unaffected by the discharge. (For more on the effects of the discharge of a debtor see para 7 of the Memo L6/93).

3. **Liquidation**

Whereas in sequestration the debtor's estate vests in the trustee, the assets of a company in liquidation remain vested in the company, with the liquidator taking over the powers of the Board of Directors. The liquidator takes no new or independent title, although in a winding up by the court an order may be sought, vesting the property of the company in the liquidator. Such orders are rare to the point of being unknown. Companies may be liquidated or, to use the alternative phrase, wound up, in two ways – (1) voluntary winding up either by members or by creditors and (2) compulsory winding up by the court.

3.2 Whatever the form of winding up, the liquidator is in the same position as a trustee in sequestration in that inhibitions registered within 60 days before the commencement of winding-up proceedings are equalised along with other diligences, and this means that the liquidator can sell heritable property belonging to the company free of such inhibitions. There is a surprising absence of specific legal authority on the effect of inhibitions registered before the 60 day period. Legal practitioners generally appear to believe that all liquidators can sell free of any prior inhibition against the company. That view finds support in Palmer's Company Law, but other legal commentators are less certain. For example, it has been argued that a voluntary liquidator cannot sell free of a prior inhibition, whereas a compulsory liquidator can do so, on the reasoning that the acts of a compulsory liquidator cannot be said to be voluntary acts of the company. Since all such views must remain speculative until the matter is clarified by Parliament or settled in court, the Keeper is obliged to take the prudent line that all prior inhibitions registered against the company before the 60 day period are effective, and so require to be disclosed as adverse entries.

4. **Administration Orders**

4.1 Prior inhibitions appear to be effective in the face of an administration order and they should therefore be disclosed as adverse entries. It may be possible for the administrator to obtain the consent of the court to sell free of the inhibition.
Para AC 8.1.4.3 of the Registration Manual is therefore revoked to the extent that it is at variance with this Memo.

4.2 Where a company is already under an administration order, a new inhibition against the company is not competent without consent as aftermentioned, because the company acquires immunity from other forms of legal process, including inhibition, from the date of presentation of a petition for an administration order. Sometimes the petition will be dismissed, but an inhibition registered without consent when the petition was before the court will still be incompetent. As such inhibitions are not competent, it follows that, in principle, they are not adverse entries. However, in terms of s.11 (2)(d) of the Insolvency Act 1986, the new inhibition will be effective provided the administrator has consented to it or the leave of the court has been

obtained (and any terms imposed by the court have been complied with). Unfortunately, it is not possible to ascertain the status of the inhibition without obtaining a statement from the administrator. Such a statement should be requisitioned when appropriate; if the statement is in the negative, the inhibition can be omitted. If the statement is to be the effect that consent of the administrator or leave of the court was obtained, or if no statement is forthcoming, the inhibition should be disclosed.

5. **Receivership**

5.1 A receiver is appointed under a floating charge, and the prudent view is that he cannot sell free from an inhibition which was registered prior to the creation of the floating charge.

5.2 If an inhibition was registered after the creation of the charge, but before its attachment or crystallisation, technically the charge prevails over the inhibition, so that the receiver can sell free of it. However, s.61 of the Insolvency Act 1986 indicates that it would be appropriate in such a situation for the receiver to obtain the court's sanction to sell. If, therefore, evidence of the court's sanction is not submitted, the inhibition should be disclosed as an adverse entry and indemnity excluded in the form prescribed in para S.2.3.3 of the Registration Manual.

5.3 The foregoing instruction does not, of course, apply if the receiver has obtained the consent of the inhibiting creditor.

(Sgd) ALEC M FALCONER

Senior Legal Adviser

8 December 1993

1992

Sasine Memo No.7

ROT Legal Memo L1/92

AGREEMENTS AS TO USE OF CROWN LAND

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1972 s.254

General

1. On 24 January 1992 section 49 of the Planning and Compensation Act 1991 came into effect. This section *inter alia* amends section 254 of the Town and Country Planning (Scotland) Act 1972 ("the 1972 Act") which regulates any agreement between a planning authority and either a Government Department or the Crown Estate Commissioners affecting the use of Crown land.

Effect of Amendment

2. Agreements in terms of section 254(1)(b) of the 1972 Act may be recorded in the Register of Sasines or registered in the Land Register. This is so even if the agreement is only for a prescribed period of time.

3. Any such agreement duly recorded/registered will be enforceable, at the instance of the planning authority, against persons deriving title to land from either a Government Department or the Crown Estate Commissioners.

Proviso

4. Under section 254(1B), however, such agreements will not be enforceable against a singular successor who acquires title (whether by infeftment or not) before the agreement is recorded/registered.

(Sgd) ALEC M FALCONER

Senior Legal Adviser

28 January 1992

Legal Memo L4/92

MEMO TO LEGAL SETTLERS

CONSENT OF LANDLORD TO ASSIGNATION OF LEASE

This memo modifies the terms of Memo L27/90.

Where a Lease contains a requirement, either in the destination or within the burdens clauses, for the Landlord's consent to any assignation or sub-letting, that requirement should always be shown in the entry for the Lease in the Burdens Section of the Title Sheet. Furthermore, if the requirement is contained within the destination in the Lease, that destination requires to be reflected in full in the Proprietorship Section, notwithstanding the fact that it will be removed at the DW stage following the next sale. The former practice of inserting permanent notes in the B Section should be discontinued.

Since the Leases containing such a requirement are almost invariably of a modern, commercial nature, the relevant D Section disclosure will be automatically achieved by the use of the Copy-in-Certificate procedure which is generally employed in such cases, and that is certainly the better option in the circumstances, particularly since it obviates the need for careful editing when the relevant stipulation is contained only in the destination. [Copy-in-Certificate procedure in regard to commercial leases is also preferable for a variety of other reasons unconnected with the topic under consideration].

Future practice can be summarised as follows:

Where the requirement is contained only in the burdens text of the Lease – it need be disclosed only in the Burdens Section of the Title Sheet.

Where contained only in the destination in the Lease, or where contained in both the destination and the burdens text in the Lease – the requirement requires to be disclosed in both the Burdens and Proprietorship Sections of the Title Sheet [- in the latter section, as a destination as opposed to a permanent note].

At the risk of stating the obvious, Settlers should note that, on the rare occasions where the requirement is contained in both the destination and burdens clauses in a deed, and Copy-in-Certificate procedure is not being employed for that deed, the destination does not require to be edited into the relevant D Section entry since the requirement will be shown within the burdens text of that entry. It should also be noted that existing Title Sheets created under the earlier instructions should not be amended to conform to the above instructions.

(Sgd) A G RENNIE
Director, Land Register

24 February 1992

Sasine Memo No.9

ROT LEGAL MEMO L6/92

BROADCASTING ACT 1990

1. By virtue of the above Act and the Transfer Scheme made thereunder the property etc. of the Independent Broadcasting Authority (IBA) is with effect from 1 January 1991 transferred to and divided among the following bodies:

(a) the Independent Television Commission (ITC)

(b) the Radio Authority; and

(c) National Transcommunications Limited (NTL).

2. From an examination of the Transfer Scheme it appears that almost all of IBA's heritable property in Scotland is transferred to NTL. The property mainly consists of the sites of transmitter and relay stations and the titles, many of which are leasehold, are, in some cases still in the name of the Independent Television Authority who changed their name to Independent Broadcasting Authority in 1972.

3. Because NTL appear to be granting securities over numbers of properties before completing title themselves and because of potential difficulties with descriptions of property in the Transfer Scheme, staff are asked to bring to the attention of the SLG any deeds submitted for recording or as part of applications for registration to which any of the above bodies is a party.

4. The Act also provides for the property of the Cable Authority to transfer to ITC on 1 January 1991. It is not expected that this will give rise to much (if any) conveyancing affecting ROS but if any relevant deed or application comes to light then the instruction in the preceding paragraph should be followed.

A M FALCONER

Senior Legal Manager

25 March 1992

Legal Memo L8/92

MEMO TO LEGAL SETTLERS

DEEDS WHICH INCLUDE COLOUR PHOTOGRAPHS

1. Recently, there have been several instances where one or more pages of colour photographs have formed part of a Schedule in a Lease forming the deed inducing registration. These photographs are being used to show pictorially the state of repair of the property at the time of granting the Lease, as a basis for the maintenance provisions between landlord and tenant. In registering such cases, the Copy in Certificate method is the norm.

2. Initially, a procedure was devised whereby the applicant's agent was asked to supply the requisite number of colour copies of such photographs for land registration purposes or to pay the cost of the Agency's providing such copies. In cases where this procedure has already been agreed with the Agent it will be used.

3. After further consideration by the Land Register Management Group and the First Registration Product Improvement Committee, it has been decided that colour reproduction of such photographs as part of the Land Register process is not justified in relation to any perceived benefit arising therefrom.

4. With immediate effect, where such colour photographs appear in any deed which accompanies an application for registration and require to be copied and there has been no contact with the Agent, Reprographic Section will be instructed (as in the normal course of events) to reproduce those photographs in monochrome (black and white); this will apply for all purposes, e.g. Copy in Certificate, subsequent Office Copies &c. The Legal Settler will insert a note under the appropriate entry in the D (Burdens) Section of the Title Sheet, e.g.

"The photographs referred to in the Schedule annexed to the said Lease have been reproduced in black and white".

5. The one exception to the above rule will be where the deed identifies a feature by referring specifically to a colour or colours in a photograph annexed to the deed. In such a case, the Legal Settler must consider if colour reproduction of the photograph is required or if some other method of identification of the feature is possible.

(Sgd) A G RENNIE

Director, Land Register

3 April 1992

1991

Legal Memo L3/91

TERM AND QUARTER DAYS (SCOTLAND) ACT 1990

1. The above Act clarifies the definitions of the Scottish Term and Quarter Days.

2. With effect from 13July 1991, the following definitions of Term and Quarter Days apply for the purposes of any enactment or rule of law:

Whitsunday means 28 May

Martinmas means 28 November

Candlemas means 28 February

Lammas means 28 August

The **Term Days** shall, unless the context otherwise requires, be
28 May and 28 November.

The **Quarter Days** shall, unless the context otherwise requires, be
28 February, 28 May, 28 August and 28 November.

3. The above definitions also apply for the purposes of any Lease, Agreement or Undertaking (whether written or oral) or any**document intended to have legal effect** executed on or after 13 July 1991.

4. The above definitions also apply to pre-existing Leases, Agreements, Undertakings and documents (i.e. documents executed before 13July 1991) if the reference therein to the Term or Quarter Days does not give further specification as to the date or month. However, in relation to the various documents covered by this paragraph, the Sheriff may make a declaration as to the specific date intended on summary application being made within twelve months of the date of passing of the Act, which was 13 July 1990. Any such declaration is binding and final.

5. If a Lease etc executed on or after 13 July 1991 refers to Whitsunday, Martinmas, Candlemas or Lammas, or to a Term or Quarter Day, and **also** specifies a date therefore which is a date other than the statutory date shown in paragraph 2 *supra*, the date disclosed in the Lease etc shall have effect and the statutory definition shall be disregarded.

6. The Act does not affect notices given before 13 July 1991 in relation to Leases etc except where the Sheriff has made a declaration.

7. Section 2(2) provides that nothing in the Act shall affect any right or obligation enforceable before 13 July 1991.

8. **Changes in Settling Procedure**

Date of Entry

In terms of the existing paragraphs J.3.10.1 and 2 of the Legal Manual, where the date of entry has been omitted from a DIR the Settler has to note the statutory date of entry prescribed by section 28 of the Conveyancing (Scotland) Act 1874. In relation to deeds executed on or after 13 July 1991, that date of entry will become 28 May instead of 15 May (for Whitsunday) and 28 November instead of 11 November (for Martinmas). An amendment to the Legal Manual will be issued in due course.

(Sgd) ALEC M FALCONER

Senior Legal Adviser

27 February 1991

ENTERPRISE AND NEW TOWNS (SCOTLAND) ACT 1990

PART I

SCOTTISH ENTERPRISE AND HIGHLANDS AND ISLANDS ENTERPRISE

1. On 1 October 1990 two new bodies (the "successor bodies") were established under the Act (1) Scottish Enterprise ("SE") and (2) Highlands and Islands Enterprise ("HIE"). These bodies will respectively exercise the powers and functions of the "existing bodies" (1) Scottish Development Agency ("SDA") and (2) Highlands and Islands Development Board ("HIDB"). Each successor body will also take over the functions of the Training Agency in Scotland within its geographical area of operation. Both SDA and HIDB will continue to exist until the Secretary of State for Scotland, on being satisfied that nothing further requires to be done by a body, will order its dissolution.

2. Section 22 of the Act provides that on the "transfer date" all property, rights and liabilities to which an existing body is entitled or subject immediately before the transfer date shall instead become property, rights and liabilities of, and vest in its successor body.

3. The transfer date in both instances is 1 April 1991 in terms of an Order by the Secretary of State for Scotland in exercise of the powers conferred by 22(1) and (3)(c) of the Act and others, dated 1 March 1991 and registered in the Books of Council and Session for preservation on 7 March 1991. A copy of this deed is fiched as a Common Link.

4. So far as interests in land in which the existing bodies are infeft are concerned, section 22 and the Order provide the links for completion of title by the successor bodies by way of Notice of Title. Likewise they can be used in a deduction of title in a transfer of the interest. SE intend to complete title to all such interests in the Sasine Register by a series of Notices of Title being prepared by three legal firms. HIE do not intend undertaking such a completion of title exercise and will deal with the matter as and when the need arises. In the Land Register SE will complete title by way of Form 2 application proceeding on section 22 and the Order. There may however be unregistered long leasehold interests in operational areas vest in SDA. In terms of section 2(1)(a)(v) of the 1979 Act the transfer of these will induce first registration.

5. Section 22 applies equally to rights vest in existing bodies arising out of ongoing transactions. Section 23(4) and paragraph 6 of Schedule 3, which deal with transitional arrangements in such transactions, provide that the successor

body will effectively be substituted for the existing body. At the transfer date these may be at any stage from conclusion of missives up to completion of title. So far as the Agency is concerned the critical point is the delivery of a deed in favour of an existing body. Where at the transfer date no deed has been delivered then the successor body as substitute under the contract should be in a position to insist on a deed in its favour. In cases where a deed has been delivered but not recorded/registered, the successor body being vest in the right itself, rather than the right to delivery of a deed, cannot insist on a new deed in its favour under the contract but may nevertheless be able to obtain one.

6. In the Land Register where the successor body holds an unregistered deed in favour of an existing body, title may be completed by an application in the name of the successor body founding on the deed, the Act and the Order.

7. In the Sasine Register a successor body holding an unrecorded deed in favour of an existing body may complete title by recording that deed docqueted with reference to a Notice of Title as prescribed by section 4(2) of the Conveyancing Act 1924. (See Sasine Manual I32).

8. The Keeper cannot refuse to take a deed on the Sasine Register after the transfer date which has a warrant of registration on behalf of an existing body as that body will still be in existence. No infeftment will however flow from such a recording as the right to complete title will have passed to the successor body by the transfer provisions. In the event of such a deed being presented for recording, the agent should be advised of the position and should be invited to obtain a deed in favour of the successor body or to proceed by the Notice of Title and docquet procedure outlined above. The position is of course the same in the Land Register but can be more readily corrected by the method outlined in paragraph 6 above. In the unlikely event of an agent failing to take such advice the registration will be completed with exclusion of indemnity as appropriate.

9. Paragraphs 5 to 8 above are directed at the most common cases where infeftment is achieved by registration. There are also many other deeds which although recorded/registered confer no infeftment in the usual sense. Among these are Discharges, Minutes of Waiver, Deeds of Servitude, Ranking Agreements and the like. The position in the Sasine and Land Registers as regards such deeds is however not the same. The reason for this is that in the Land Register many secondary or subsidiary interests created over registered interests in land, of themselves constitute registered interests. In the Sasine Register many of the deeds of the kind referred to are recorded for publication only and the recording itself, save in a few cases, is of no consequence in law. In such cases therefore a deed of the kind mentioned, presented for recording after the transfer date, with a warrant of registration on behalf of an existing body is acceptable. In the Land Register however any application in such circumstances must be made on behalf of the successor body despite the fact that it is not a party to the deed inducing registration. This is because by the

transfer arrangements the existing body is divest of its registered interest. Consequently only the successor body can deal in that interest.

10. Under the Scottish Development Agency Act 1975 interests vest in Scottish Industrial Estates Corporation and Small Industries Council for Rural Areas of Scotland vest in SDA. It may be that there still remain some such interests to which SDA have not completed title. SE will be able to complete title to these using as links the 1975 Act, this Act and the Order.

11. No deed entering either the Sasine or Land Registers should bear to have been executed by an existing body on or after the transfer date. This is because any interest which an existing body had in any land on the transfer date would vest in the successor body.

12. Deeds granted by an existing body before the transfer date but presented for recording/registration after that date might be latently defective. The reason for this is that it is not possible to discern from the deed itself when it was delivered. Where the deed contains a date of entry, this is generally, but not invariably, the date of delivery. If a deed is undelivered before the transfer date, then by the reasons stated in paragraph 5 above, the grantee is entitled to insist on delivery of a deed granted by the successor body. Such deeds granted by an existing body before, but presented for registration/recording after the transfer date will be accepted without enquiry in both Sasine and Land Registers. In the Sasine Register it is not the practice to look behind the deed itself and in the Land Register the risk in issuing a fully indemnified title is considered acceptable in such cases.

13. Paragraph 23 of Schedule 1 to the Act provides for the execution of deeds by successor bodies. These provisions are in like terms to the much criticised and recently repealed section 36B of the Companies Act 1985 (see Legal Memo L29/90). Both SE and HIE are aware of the potential problems and have resolved to remove any doubts by executing deeds in a more traditional manner. SE will seal the deed (as a matter of practice and not necessity) and a member, secretary or authorised person will sign before two witnesses. HIE will execute in like manner but without adhibiting the seal. Subscription/Sealing will be adhibited on the last page of the deed and at the end of any inventory, appendix, schedule, plan or other annexed document.

A M FALCONER

Senior Legal Adviser

27 March 1991

LEGAL MEMO L10/91

MEMO TO LEGAL SETTLERS

RECORDING/REGISTRATION OF TREE PRESERVATION ORDERS

1. s.58 TPOs

1.1 A planning authority can grant a Tree Preservation Order under s.58 of the Town and Country Planning (Scotland) Act 1972 ("the 1972 Act") as amended. The TPO is then confirmed at a later date by the planning authority itself, with or without modification, after it has considered any objections. S58(4) provides that, as soon as may be after a TPO has been confirmed, it shall be recorded or registered by the planning authority.

1.2 It is not competent to record or register a TPO before it has been confirmed. Any TPO presented for recording or registration before it bears to have been confirmed should be rejected.

1.3 Evidence that the TPO has been confirmed should be in the form of a docquet in suitable terms endorsed or annexed to the TPO. It may be authenticated by a 'proper officer' in terms of s.193 of the Local Government (Scotland) Act 1973 as an alternative to the normal method of execution of deeds by the planning authority. The docquet is recorded or registered as part of the Order.

1.4 Evidence in another form e.g. a letter from the Chief Executive of the planning authority is not sufficient to permit recording in the Sasine Register although it will suffice to permit registration in the Land Register of a TPO exclusively affecting registered land.

1.5 It has come to light that some TPOs may have been recorded or registered before confirmation. The standing of such recordings or registrations must be in serious doubt. The remedy, if a remedy is sought, is, as regards Sasine recordings, to re-record the TPO with a confirmation docquet under s.143 of the Titles Act 1868. When a Title Sheet reflects an unconfirmed TPO the position can be regularised by adding a note that the TPO was confirmed on whichever date, upon application being made on Form 2 with appropriate evidence.

2. s.59 TPOs

2.1 As an alternative to a s.58 TPO, a planning authority can make use of an emergency procedure under s.59 of the 1972 Act. S.59 allows a TPO to take

provisional effect at once; the TPO then has effect for six months or until it is confirmed, whichever happens first. Once again, the TPO cannot competently be recorded or registered until after it has been confirmed.

2.2 If a s.59 TPO is not confirmed within six months from the date on which it was made, it falls. The question then arises whether a planning authority can competently confirm the TPO on a later date, so that it revives. There is no statutory authority for reviving such a lapsed TPO and it is thought that a TPO which purports to have been confirmed after having been allowed to lapse is void, since it does not bear to have been made and confirmed in compliance with the statutory provisions. It follows that such TPOs are not acceptable for recording or registration.

3. TPO under s.2 of the Town and Country Planning Act 1984

3.1 Under s.2 of the 1984 Act a planning authority may make a TPO in respect of Crown land in which no interest is for the time being held otherwise than by or on behalf of the Crown, if they consider it expedient to do so for the purpose of preserving trees or woodlands on the land in the event of it ceasing to be Crown land or becoming subject to a private interest, i.e. an interest which is not a Crown interest. Such a TPO does not take effect until the land in question ceases to be Crown land or becomes subject to a private interest, whichever occurs first. Neither does the TPO require confirmation until after the occurrence of whichever event occurs first. Once the TPO is "triggered" by the appropriate event, it continues in force until either six months have expired or the Order is confirmed, whichever occurs first. The six month period runs from the date of notification by the appropriate Crown authority to the planning authority that the event has happened.

3.2 As in the case of TPOs under the 1972 Act, TPOs under the 1984 Act are not to be accepted for recording or registration until after they have been confirmed. The policy of not accepting s.59 TPOs which have lapsed before purported confirmation also applies to 1984 Act TPOs.

3.3 The effective date (being the date of receipt by the planning authority of the notification referred to at 3.1) will not be disclosed in the TPO so it is necessary to obtain evidence thereof from the planning authority (in the form of a certified extract of any planning authority records containing the relevant information, e.g. minutes of meeting or TPO Register), both in order to be satisfied that the TPO was confirmed before the lapse of the six month period which commenced with the notification and to enable the effective date to be disclosed in the minute or entry.

4. Procedures

4.1 The Sasine Minute or Title Sheet entry should disclose the enactment under which the TPO is made e.g. "Tree Preservation Order No.58 (under s.58 of the Town and Country Planning Act 1972) by .....".

4.2 The Sasine Minute or Title Sheet entry should also disclose the date of confirmation plus the effective date of the Order, if that is different. Thus:

(a) s.58 TPO: The date of confirmation is also the effective date of the Order. The Sasine Minute should say e.g. "Confirmed 19 May 1991". In the Title Sheet entry, the date of Confirmation may conveniently be inserted before the date of recording and/or registration.

(b) s.59 TPO Both the effective date of the Order (to be found in standard paragraph 15 of the TPO) and the later date of confirmation should be minuted or entered, e.g. "Effective on .... and confirmed ...." in the appropriate place in the Minute or entry.

(c) TPO under s.2 of the 1984 Act

Except that the effective date of the Order will have to be gleaned from the planning authority, the procedure is as for a s.59 TPO.

4.3 New procedures for handling draft TPOs and TPOs submitted for recording/registration are being devised by Sasine and Land Register managements, who will issue guidelines in due course. In the interim, current procedures should continue to be observed.

A M FALCONER

Senior Legal Adviser

20 September 1991

Legal Memo L11/91

MEMO TO LEGAL SETTLERS

AGE OF LEGAL CAPACITY (SCOTLAND) ACT 1991

The Age of Legal Capacity (Scotland) Act 1991 comes into force on 25 September 1991. The Act makes significant changes as regards those not of legal age. The main changes are:-

(a) abolition of terms and status of pupils and minors and substitution of "persons under the age of 16 years" (see (c) for those aged 16 and over);

(b) replacing the terms tutors/curators by guardians for those under 16 years of age; and

(c) provision for the reduction of transactions entered into by those aged 16 and 17 years of age.

The details of this and other changes are set out in the annex.

Main Implications for ROS

(1) Transactions given effect to in writs executed on or after 25 September and received for recording/registration should comply with the Act. In particular writs should be granted by a guardian for those under 16 years of age. Any dispute as to the date of transaction should be referred to the SLG.

(2) For those aged 16 years of age and over writs should be granted by the person alone, but see (5) for Land Register cases.

(3) Where writs in Sasines do not comply with the foregoing, the Agent's attention should be drawn to the matter. If the Agent insists that they be retained on the register, that request should be respected.

(4) In the Land Register, applications improperly made should be discussed with the Agency and when necessary referred to the SLG.

(5) In the Land Register, indemnity will be excluded in respect of transactions entered into by those aged 16 or 17 years, when not ratified.

(Sgd) ALEC M FALCONER

Senior Legal Adviser

4 September 1991

ANNEX

AGE OF LEGAL CAPACITY (SCOTLAND) ACT 1991

1. The Act comes into force on 25 September 1991 and sweeps way virtually all of the existing law on the legal capacity of pupils and minors.

2. "**Persons under the age of 16 years**"

2.1 The Act replaces the concept of pupillarity (by which is meant a boy under 14 years of age or a girl under 12 years of age) with the new status of "**a person under the age of 16 years**". With certain limited exceptions (detailed in para 2.4 below) such a person has no legal capacity to enter into any transaction. If a person under the age of 16 years were to purport to enter into a transaction which was not one of the limited exceptions, the transaction would be void. The definition of "transaction" in the Act includes the giving by a person of any consent having legal effect, acting as a trustee and acting as an instrumentary witness. Transactions would require to be entered into on behalf of the person under the age of 16 years by that person's guardian: in terms of the Act, the guardian of a person under the age of 16 years has, in relation to that person and his estate, the powers and duties which a tutor had in relation to his pupil.

2.2 The Act provides that nothing in it shall prevent any person under the age of 16 years from receiving or holding any right, title or interest, i.e. a person under the age of 16 years can take title, e.g. to heritage in his or her own name; if the property is being acquired by way of a gift while in the course of distribution of an estate in which the person under the age of 16 years is a beneficiary, there is no need to involve a guardian. But if a person under the age of 16 years is taking title upon the purchase of property, or is assuming obligations upon taking title, it would seem appropriate for the Disposition to make it clear that the transaction was effected by the guardian and that the title is being taken in name of the person under the age of 16 years by direction of the guardian.

2.3 This is broadly comparable to the position of pupil children before 25 September 1991, i.e. (a) heritable title being taken in name of the pupil child, not the tutor, and (b) a Disposition of the pupil's interest being granted by the tutor because of the pupil's lack of capacity. Likewise, from 25 September 1991, a "person under the age of 16 years" will lack the capacity to dispone so a Disposition of his or her interest will require to be granted by the guardian.

2.4 A person under the age of 16 years has legal capacity to enter into transactions of a kind commonly entered into by persons of his age and circumstances, on terms which are not unreasonable, e.g. making small purchases. In addition, a person of or over the age of 12 years can make a will and can consent to his or her own adoption. Also, a person under the age of 16 years can consent to medical treatment.

3. **Persons over the age of 16 years**

3.1 The Act provides that a person of or over the age of 16 years shall have legal capacity to enter into any transaction. The Act also provides that any existing rule of

law relating to the legal capacity of minors and pupils which is inconsistent with the provisions of the Act shall cease to have effect and that any existing rule of law relating to reduction of a transaction on the ground of minority and lesion shall cease to have effect. These provisions taken together mean that the consent or otherwise of a curator in a transaction by a person over the age of 16 years (but under the age of 18 years) is no longer relevant.

3.2 The Act introduces the concept of "**prejudicial transaction**". These are transactions which (a) an adult, exercising reasonable prudence would not have entered into and (b) have caused or are likely to cause substantial prejudice. A person under the age of 21 years may apply to the Court to set aside a prejudicial transaction which he entered into when he was aged 16 or 17 years but under the age of 18 years. These provisions replace the *quadriennium utile* rule under which a minor had 4 years from the age of majority within which to seek reduction of a deed to his prejudice. In principle, therefore, upon registration in the Land Register of any transaction to which a person of between 16 and 18 years was a party, it will be necessary to exclude indemnity in terms such as the following:-

"Indemnity is excluded in terms of Section 12(2) of the Land Registration (Scotland) Act 1979 in respect of any loss arising from the exercise by A, who attained the age of 16 on.....of any right in terms of Section 3 of the Age of Legal Capacity (Scotland) Act 1991 to set aside a transaction to which the said A was a party".

3.3 Whether or not a transaction falls into the "prejudicial" category should always be apparent from answers on the Application Form or from supporting documentation.

3.4 **Ratification**

The Act does, however, provide a means of ratifying a proposed transaction involving a person aged 16 or over. It is provided that all parties to a transaction to be entered into by a 16 or 17 year old can jointly apply to the Sheriff to have the transaction ratified. Such an application will be granted unless it appears to the Sheriff that an adult exercising reasonable prudence and in the circumstances of the young person would not enter into the transaction in question. The Sheriff's decision is final and Court approval of a proposed transaction prevents subsequent challenge on the ground of substantial prejudice. This means that when evidence is submitted to the Keeper that a transaction was ratified by the Sheriff before it was entered into, it will not be necessary to exclude indemnity in the terms stated above. Satisfactory evidence of ratification will consist of a copy of the Sheriff's determination.

4. Transactions involving persons under the age of 16 years or 18 years, as the case may be, which are entered into on or after 25 September 1991 are governed by the Act. Transactions entered into before 25 September 1991 are governed by the previous law. Thus writs referring to pupils and tutors, or minors and curators, will continue to be recorded or registered on the same basis as hitherto provided they relate to transactions entered into before 25 September 1991. If such a writ was executed prior to that date then it will be self-evident that the old law applies. However a few writs may be executed on or after 25 September in implement of

transactions concluded before 25 September. In these cases it will be for the Agent to certify the date of transaction, which will normally be taken to be the date upon which missives were concluded.

5. Some of the implications of the Act may only become apparent in the course of time. Queries arising from its operation should be referred through line management to the Senior Legal Group.

see following addendum

ADDENDUM*

3.5 When a proposed transaction has not been ratified by the Sheriff under s.4 of the Act, it can be ratified afterwards by the young person once he or she has attained the age of 18, provided that ratification is in the knowledge that the transaction could be the subject of an application to the Court to have it set aside. Such ratification has the effect of barring a future application by the young person to have the transaction set aside. There is no prescribed form for such ratification, and for the Keeper's purposes it will suffice to have sight of a simple letter from the young person, ratifying the transaction and stating that the young person knows that the transaction could be the subject of an application to the Court under section 3 of the Act to have it set aside.

3.6 It follows that, where the Sheriff has not ratified the transaction, indemnity will require to be excluded in all cases at least until the person has attained the age of 18. After the age of 18, indemnity will continue to be excluded for a further 3 years unless the young person ratifies the transaction. Once the young person has attained the age of 21 and it is established that no application to have the transaction set aside has been made, the exclusion of indemnity can be removed.

3.7 There are two other potential situations relevant to ROS in which a person under the age of 21 years is barred from applying to the court to set aside a transaction which he entered into while he was of or over the age of 16 years but under the age of 18 years, on the grounds that it is a prejudicial transaction:-

(a) a transaction in the course of the applicant's trade, business or profession; and

(b) a transaction into which any other party was induced to enter by virtue of any fraudulent misrepresentation by the applicant as to age or other material fact.

3.8 The problem here is that the Keeper may come under pressure not to exclude indemnity, on the allegation that either of the above situations applies. It will, however, be for a court of law and not the Keeper to decide whether such situations apply. In other words, whatever the allegations, in the absence of ratification (by whatever method) the Keeper must exclude indemnity until a court of law has settled the matter by rejecting an application to set aside a transaction as a prejudicial transaction. An additional reason for the Keeper to take this cautious line, if one were needed, is to be found in another provision of the 1991 Act, which provides that a

trustee in bankruptcy and certain other legal representatives, where appointed, could apply on the same basis as the young person to have the transaction set aside. That being the case, it can be anticipated that whenever a person of between 18 and 21 years is made bankrupt and a transaction entered into before that person was 18 years old has not been ratified, a challenge is liable to be mounted by the trustee in bankruptcy.

*as per Memo L4/94

LEGAL MEMO L12/91

CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION) ACT 1990 ETC.

This Memo is further to Memo L18/90 which was originally issued for information purposes to Assistant Keepers only. Attention is also drawn to part AC/12/2 of the ROT Legal Manual.

L18/90 lists three new offences introduced by Sections 12, 14 and 19 of the above Act conviction in respect of which would justify the making and enforcement of a confiscation order under Section 1 of the Criminal Justice (Scotland) Act 1987.

The above three Sections were brought into force on 1 July 1991 by the Criminal Justice (International Co-operation) Act 1990 (Commencement No.1) Order 1991.

It should be noted also that the Confiscation of the Proceeds of Drug Trafficking (Designated Countries and Territories) (Scotland) Order 1991, came into force on 10 July 1991. It provides, inter alia, that the provisions of the said 1987 Act (as amended by the Order) are to apply to external confiscation orders, i.e. orders made by a Court in a designated country or territory for the purpose of recovering from the "realisable property" (including heritable property) of an offender, payments or other rewards received in connection with drug trafficking.

The statutory provisions relating to drug trafficking and the recovery of the proceeds thereof, including the prevention from dealing with and confiscation of realisable property by means of restraint orders and confiscation orders are very detailed and include, inter alia, provisions for the registration of such Orders in the Register of Judgments, provisions for inhibition of a person holding realisable property and provisions in the event of the sequestration of a person holding realisable property.

Any deed submitted for recording in the Sasine Register or submitted as part of an application for registration in the Land Register appearing to be under one of the statutory provisions relating to drug offences should, therefore, in the first instance, be submitted to the SLG for consideration.

Similarly, any inhibition at the instance of the Lord Advocate, under Section 11 of the 1987 Act, to prevent a party dealing with realisable property should be brought to the attention of the SLG. Horning Office staff have been asked to notify the SLG should any such inhibition be registered in the Register of Inhibitions and Adjudications.

A M FALCONER

Senior Legal Adviser

4 September 1991

Legal Memo L16/91

MEMO TO LEGAL SETTLERS

NOTING OF PUBLIC RIGHTS OF WAY

SCOTTISH RIGHTS OF WAY SOCIETY LTD

The Scottish Rights of Way Society Ltd is an incorporated body which has a long history of interest in public rights of way in Scotland going back in one form or another to the 1840s. Recently the Keeper was asked whether he would accept an application for noting of a public right of way from the Society or whether the application would require to be made by a private individual. The Keeper was also asked what nature and quality of evidence he would require in order to note a public right of way on the Land Register. The following notes summarise the Keeper's response.

(1) In terms of s.28(1)(g) of the Land Registration (Scotland) Act 1979, the right of a member of the public in respect of any public right of way is, in relation to any interest in land, an overriding interest over it. S.6(4) of the 1979 Act and Rule 13 of the Land Registration (Scotland) Rules 1980 provide for the noting of overriding interests (or their discharge) on the appropriate Title Sheet. The Keeper is prepared to accept an application for the noting of a public right of way from the Society because the Courts have accepted that the Society has a right to sue regarding the maintenance and defence of public rights of way.

(2) Noting is distinct from registration and it follows that the noting of any overriding interest on a Title Sheet does not change the quality of the right so noted: the purpose and effect of noting is publication, no more and no less. The Keeper's role is restricted to publicising, by noting in the Register, public rights of way whose existence has already been established.

(3) **Nature and Quality of Evidence Required for Noting**

The evidence to be submitted to the Keeper will require to serve two functions. It must adequately define the route and it must show to the Keeper's satisfaction that the right of way is established.

(a) Definition of Route

The route must be defined so as to enable the Keeper to plot it on the title plan of the affected land at whatever scale is in use for the title plan. In other words, a clear line of route shown on a sketch or plan is normally going to be required. A mere statement that there is a path between points A and B will not usually suffice unless the route between A and B is identified by reference to a physical feature shown on the Ordnance Map.

(b) Evidence that Public Right of Way is Established

If the existence of the right of way has been vindicated by a court declarator, entered on a local authority register or is the subject of an agreement with the proprietor of the land, the Keeper will normally accept an extract or copy of the relevant documentary evidence as sufficient.

If the existence of the right of way cannot be established by reference to a declarator, public authority register or agreement, the Keeper will accept an affidavit by a duly authorised official acting on behalf of the Society provided that the affidavit contains sufficient information for the Keeper to be satisfied that there exists a *primafacie* right. Preferably the affidavit will note that the right of way is entered in the Society's own register and also that to the best of the Society's knowledge and belief the right of way has been possessed by the public for a stated continuous period of twenty years openly, peaceably and without judicial interruption. An affidavit in such terms would indicate that a *prima facie* right exists and the Keeper could then note it in good faith. If for some reason an affidavit cannot be granted in such terms then it is unlikely that the Keeper would feel able to accept the application to note. While the Keeper will be prepared to place reliance upon an affidavit in suitable terms granted by an official of the Society, he will not be prepared to entertain complex and conflicting evidence at first hand.

The possibility cannot be excluded that the Keeper might be faced with opposing applications, one for the noting of a right of way and the other for the removal of the note. If such a situation arose it is unlikely that the Keeper would allow himself to be drawn into any dispute and a court declarator would appear to be the only means of resolving the issue.

The foregoing relates to applications for noting made on behalf of the Society. Applications from individual members of the public unsupported by a court declarator or other conclusive evidence raise different considerations, and any such application should be referred through line management to the Senior Legal Group.

(Sgd) ALEC M FALCONER

Senior Legal Adviser

19 September 1991

Legal Memo L17/91

MEMO TO LEGAL SETTLERS

REGISTRABLE LEASES

1. **Definition of Long Lease**

1.1 Settlers will be aware that Long Leases (as defined by statute) are acceptable for recording in the Sasine Register and registration or noting in the Land Register, whereas Short Leases are neither recordable in the Sasine Register, registrable in the Land Register nor capable of being noted as an overriding interest. Section 28 of the 1979 Act defines "Long Lease" as –

"a probative Lease –

(a) exceeding 20 years; or

(b) which is subject to any provision whereby any person holding the interest of the grantor is under a future obligation, if so requested by the grantee, to renew the Lease so that the total duration could (in terms of the Lease, as renewed, and without any subsequent agreement, expressed or implied, between the persons holding the interests of the grantor and the grantee) extend for more than twenty years."

1.2 In this context, "probative" is used in its strictest sense to mean executed in accordance with the statutory solemnities, which usually means a formal attested deed. A Lease that is merely holograph or adopted as holograph, although valid at common law, cannot be recorded in the Register of Sasines nor registered in the Land Register. Neither can an informal document that has been validated by *rei interventus* or homologation. Missives of Let are acceptable in either Register **provided** they have been executed in accordance with the statutory solemnities.

1.3 It should be noted that a lease for a period exceeding 20 years which falls outwith the definition of "long lease" in the 1979 Act because it is improbative is not a long lease within the meaning of the Act and so is not capable of being registered in the Land Register. Neither is such a lease capable of being noted (s.6(4) refers). Likewise, an improbative long lease over subjects in a non-operational area cannot be recorded in the Sasine Register because it is outwith the scope of s.1 of the Registration of Leases (Scotland) Act 1857.

1.4 Notwithstanding section 28, short leases which do not contain obligation to renew but which nonetheless have been renewed so that the total period of lease exceeds 20 years are nowadays seen as qualifying as Long Leases. As such, they are registrable or capable of being noted as overriding interests. In the past few years, many such Leases have been accepted in the Land Register. It matters not that upon First Registration (or noting) the Lease has less than 20 years still to run: the Lease is seen to qualify as a Long Lease if the total period exceeds 20 years.

2. It is no bar to recording or registration that a lease starts at a future date, provided it meets the other criteria.

3. It is not competent for the tenants in a Lease to grant a sub-lease for a period exceeding the term of their own Lease. Any Agent presenting such a sub-lease for recording or registration should be asked to reconsider the position. If his decision is that the deed should be recorded or registered as it stands, the matter should be reported to the Senior Legal Group for further action. Depending on circumstances, it may become necessary to refuse to record the deed or to exclude indemnity.

(Sgd) ALEC M FALCONER

Senior Legal Adviser

25 September 1991

Legal Memo L18/91

MEMO TO LEGAL SETTLERS

BURDENS SECTIONS OF LEASEHOLD TITLES

When the landlord's title is subject to feuing conditions and/or other burdens, such conditions are capable of being enforced against the tenant and must therefore be disclosed in the tenant's Title Sheet. Failure to disclose feuing conditions etc could mean that a Superior although able to irritate the feu against his feuar (the landlord) would be unable to proceed against the tenant's interest and consequently would have a claim upon the Keeper's indemnity. The Burdens Section of a leasehold title should therefore reflect the various burdens appearing in the landlord's Title Sheet subject only to the elimination of burdens which are irrelevant e.g. because of geographical location.

(Sgd) ALEC M FALCONER

Senior Legal Adviser

23 September 1991

Legal Memo L19/91

MEMO TO LEGAL SETTLERS

PLANNING AND COMPENSATION ACT 1991

The Planning and Compensation Act 1991 makes changes to the existing provisions regulating "Town and Country Planning" and the payment of compensation. The Act, generally, proceeds by way of amending existing legislation such as the Town and Country Planning (Scotland) Act 1972 and the Land Compensation (Scotland) Act 1973.

Parts II, IV and V apply to or in Scotland but relatively few of the sections affect ROS directly.

The Act will come into force by means of Commencement Orders and staff will be notified when relevant provisions come into force.

Section 60 and Schedule 12 contain provisions affecting ROS and are brought into force by Commencement Order on 25 September 1991.

Compensation Notices

Section 60 abolishes payment of compensation (and its recovery) in respect of planning decisions **restricting new development**, while at the same time preserving arrangements for payment of compensation where existing planning permission is revoked or modified. With Schedule 12 the amending provisions in section 60 *inter alia* regulate the recording/registration of Notices in respect of the latter type of compensation.

Fuller details of these changes are set out in the annex.

Action for Settlers

Where, in any application for registration, the Settler becomes aware that a Notice of Payment of Compensation under Part VII (but note Part VIII) of the Town and Country Planning (Scotland) Act 1972 has been recorded/registered, the case should be referred to the SLG for decision as to whether the Notice should be disregarded/struck out because the compensation is no longer recoverable.

(Sgd) ALEC M FALCONER

Senior Legal Adviser

27 September 1991

ANNEX

PLANNING AND COMPENSATION ACT 1991

Statutory Provisions as regards Notices of Payment of Compensation

Section 60 of the 1991 Act provides for the repeal of Part VII of the Town and Country Planning (Scotland) Act 1972. Part VII provides for compensation in respect of **planning decisions restricting new development**. Section 60(8) provides that where in terms of section 147 of the 1972 Act a Notice has been recorded/ registered in relation to compensation for a planning decision and recovery is due of sums (or part thereof) from the owner, any such sums will cease to be recoverable and any security in respect of such sums is discharged.

Schedule 12 *inter alia* amends the 1972 Act as regards Notices of Payment of Compensation under Part VIII of that Act. Part VIII provides for **compensation following upon the revocation and modification of existing planning permission**. Unlike Part VII, Part VIII is not repealed but continued. Section 155 of the 1972 Act provides for the recording of Notices of Payment of compensation under Part VIII. A new sub-section (5A) is added to section 155 by Schedule 12 and deals with apportionment.

Schedule 12 also adds a new section 156B in which sub-section (7) provides for the recording/registration of Notices and for the recovery of compensation (or part thereof) or as to non-recovery of such compensation. Previously Part VII arrangements in respect of recovery etc, were applied to Part VIII payments and the amendment is necessitated by the repeal of Part VII.

Sasine Memo No.1

ROT Legal Memo L22/91

Plans Memo No.86

DISPOSITIONS *A NON DOMINO*

1. A Disposition *a non domino* is a Disposition of property which is granted by a person who has no title to it (whether recorded or not). Upon recording, the Disposition is capable of becoming a foundation writ on which prescription can run. If prescription is allowed to run unchallenged for ten years, and the requirements of section 1 of the Prescription etc (Scotland) Act 1973 are satisfied, the grantee's title is said to be fortified by prescription. It will then be a good foundation writ and it will cease to matter that the Disposition was granted by someone who lacked the right to grant it.

2. The Disposition *a non domino* is a recognised and legitimate device for making good a lack of title which cannot otherwise be made good without inordinate expense and/or difficulty. It may be used, for example, when property has been in the same family for generations and unrecorded links in title were either not created or have been lost. It is also used to regularise boundary problems and where, for example, a proprietor of land seeks to acquire an adjoining strip of waste land but cannot trace the owner.

3. Although many Dispositions *a non domino* clearly serve a legitimate purpose, it has to be recognised that there is scope for mischief in that they might be utilised by unscrupulous persons seeking to obtain control of property belonging to other people. Some Dispositions *a non domino* may be viewed as, at best, speculative in purpose and possibly as frivolous or vexatious. The Keeper is responsible for maintaining the purity and accuracy of the public registers, and would not wish to see public confidence in them undermined by such deeds. Accordingly, it is necessary for **every** Disposition *a non domino* identified by a Sasine Drafter or Land Register Settler (whether Plans or Legal) to be referred without delay to the SEO District Manager who will take appropriate steps to ensure that the deed serves a legitimate purpose.

4. Sometimes land is included *a non domino* in a Disposition of other subjects to which the granter has good title. Such deeds too should be referred to the District Manager.

(Sgd) ALEC M FALCONER

Senior Legal Adviser

14 November 1991

Sasine Memo No.2
ROT Legal Memo L23/91

PORTS ACT 1991

1. The Ports Authorities operating the various Trust Ports, such as Clyde Port Authority, are independent authorities established under local legislation to operate ports and harbours. As statutory bodies they may do only what they have been given powers to do. Government policy is to encourage the various Port Authorities to privatise, and in order to facilitate privatisation the Ports Act 1991 has been enacted.

Transfer of Statutory Port Undertakings

2. The main purpose of the 1991 Act is to enable any relevant Port Authority to form a company which will have the power to acquire the property of the authority and to assume its functions (s.1.)

3. Properties belonging to a Port Authority will be transferred to its successor company in terms of a Scheme upon the date on which the Scheme comes into force (s.2). A Scheme may be made by the Port Authority on its own initiative (s.9), or by the Port Authority on the direction of the Secretary of State (s.10), or by the Secretary of State (s.12). A Scheme takes effect on a date specified in an Order by the Secretary of State which both confirms the Scheme and brings it into force. In Scotland the appropriate "Secretary of State" is in respect of the larger ports the Secretary of State for Transport and for the fishing harbours and smaller harbours the Secretary of State for Scotland.

4. Staff will be advised when the first Scheme and Order have taken effect.

Transfer of Lighthouses

5. The Act also sets out circumstances in which lighthouses, buoys or beacons are to be transferred from General Lighthouse Authorities to Harbour Authorities. Such transfers will either be effected by an Order by the Secretary of State on an appointed transfer date (s.32) or may be effected at any time after the said transfer date with the consent of the Secretary of State (s.33).

6. The Act also amends s.654 of the Merchant Shipping Act 1894 as regards circumstances in which a Harbour Authority may surrender a lighthouse etc to the General Lighthouse Authority.

Stamp Duty

7. Stamp duty will not be exigible on transfers under the Act.

(Sgd) ALEC M FALCONER
Senior Legal Adviser
22 November 1991

1990 **Legal Memo L1/90**

MEMO TO LEGAL SETTLERS

EUROPEAN ECONOMIC INTEREST GROUPING REGULATIONS 1989
(SI 1989 No.638)

EEC Council Regulation (No.2137/85) on European Economic Interest Groupings (EEIGs) has been supplemented in this country by the making of the above Statutory Instrument, which came into effect on 1 July 1989.

Background

1. An EEIG is a new form of undertaking, designed primarily to encourage co-operation between businesses of all shapes and sizes which carry on their activities in different Member States of the Community. It is essentially a creature of Community Law. It can be viewed as a type of supra-national partnership, transcending national boundaries and legal systems, which is intended to help in overcoming some of the existing barriers to effective cross frontier co-operation. It is, moreover, a unique type of entity in that it contains elements of both companies and partnerships.

2. An EEIG enables persons, companies, firms and other legal entities to form a loose combination to facilitate or develop the economic activities of its members. Its purpose is not to make profits for itself. Its activity is related to the economic activities of its members and must not be more than ancillary to those activities. It cannot dominate nor exercise management functions over its members whose individual independence is thus secured. Within these limitations an EEIG possesses autonomy derived from the full legal capacity it enjoys.

Constitution

3. An EEIG is created by simple contract amongst its participant members who have unlimited joint and several liability for all debts and liabilities of the Grouping. In Great Britain, however, an EEIG is also given the status of a body corporate (paragraph 3 of the 1989 SI) – unlike a partnership. In terms of Article 7 of the EEC Regulation and Part III of the SI the contract of formation must be filed with the Registrar of Companies along with certain other documents, including a notice of appointment of the manager(s) of the EEIG and notice of appointment of liquidator(s) of the Grouping.

Charges

4. Paragraph 18 of the SI applies certain other provisions of the Companies Act 1985 to EEIGs, including in particular so far as this Department is concerned Part XII of the 1985 Act for the purpose of the creation and registration of charges. Heritable securities granted by EEIGs will therefore require to be dealt with in the Sasine and Land Registers in the same manner as such securities granted by companies incorporated under the Companies Act 1985.

Winding Up

5. Article 31 of the EEC Regulation provides that an EEIG may be wound up by a decision of its members (i.e. voluntarily). Paragraph 8 of the SI indicates, however, that an EEIG is to be wound up as an unregistered company under Part V of the Insolvency Act 1986. This latter provision conflicts with Article 31 for Part V of the 1986 Act applies to unregistered companies the same rules that apply to registered companies but with some exceptions and additions. One such exception is contained in section 221(4) of the 1986 Act which specifies that no unregistered company shall be wound up under this Act voluntarily. In the light of Article 31 a provision in the SI for voluntary winding up would have been more appropriate. It is not known why section 221(4) has not been disapplied in the SI.

Recognising Deeds by EEIGs

6. If a Grouping's name is in English, little difficulty will be encountered in recognising the EEIG. The words "European Economic Interest Grouping" or the initials "EEIG" must appear in the name. Further, an EEIG cannot include "limited", "unlimited" or "public limited company" (or equivalent abbreviations) in its name. Unfortunately authorised equivalents of "European Economic Interest Grouping" and "EEIG" in the other languages of nations in the EEC may be used to identify Groupings. In case of doubt deeds should be referred to the Senior Legal Group.

Execution of Deeds by EEIGs

7. Both the EEC Regulation and the SI are silent as to the method of executing deeds granted by EEIGs. Article 7 of the EEC Regulation does, however, provide for the filing (with the Registrar of Companies under paragraph 9 of the SI) of notice of the appointment of the manager(s) of a Grouping, notification that they may act alone or must act jointly and the termination of any manager's appointment. Under Article 20 of the EEC Regulation it is provided that each of the managers shall bind the Groupings as regards third parties but also that the contract for the formation of the Grouping may provide that the Grouping shall be validly bound only by two or more managers acting jointly. From this it is to be assumed that a deed granted by an EEIG will be signed by the manager or managers. Because the need for the signature of more than one manager can be determined only from the terms of the contract of formation of the EEIG all deeds to which an EEIG is a party should be referred to the undersigned in the first place.

Vires of an EEIG

8. As regards Land Register applications Settlers should ensure that satisfactory replies are given to question 7 on Forms 1 and 3 and question 5 on Form 2 Applications for Registration.

(Sgd) A A SNOWDON
Senior Assistant Keeper
9 January 1990

Legal Memo L2/90

Plans Memo No.75

MEMO TO LEGAL SETTLERS

SELF-GOVERNING SCHOOLS &c (SCOTLAND) ACT 1989

1. Part I of the above Act, which came into effect on 16 November 1989, makes provision whereby a public school may be transferred from the management of the education authority to that of a board of management constituted for the purpose. Such schools are to be known as self-governing schools.

2. Under section 19(2) of the Act where a school, after a favourable ballot of parents, proposes to opt for self-governing status and those proposals are approved by the Secretary of State for Scotland, then on the proposed date for implementation of the proposals (the incorporation date), a board of management shall be constituted and shall become a body corporate under the proposed corporate name. On the incorporation date the existing school board shall cease to exist.

3. In terms of section 36 on the incorporation date there shall be transferred to and vest in the Board of Management of a Self-Governing School *inter alia* all land which immediately before that date is owned by an education authority and used or held by that authority for the purposes of that School together with all liabilities and obligations of the Authority in respect of property used or held for the purposes of that School. The definition of "land" in the Act includes interest in land, land obligations and any other liabilities and rights over land.

Section 39 and Schedule 8 to the Act provide for the preparation by a Commissioner for School Assets (appointed by the Secretary of State in terms of section 38 and Schedule 9) of a Certificate specifying the land &c which are to transfer, or have transferred, to the Board of Management of a Self-Governing School. Such a Certificate may be recorded in the Sasine Register and shall be treated as a deed sufficient in respect of its terms to constitute in favour of a Board of Management a title to an interest in land and as a conveyance of land (section 39(4)). This provision is limited to the Register of Sasines since section 4(1) of the Land Registration (Scotland) Act 1979 gives discretion to the Keeper regarding the documents and evidence which he may accept in support of an application for registration. While a Certificate by the Commissioners will not induce first registration in the Land Register it will be accepted in support of an application for registered land where it includes an interest in land that has already been registered.

In terms of paragraph 3 to Schedule 8 a Certificate issued under section 39(1) in relation to land shall specify all interests in land and land obligations which are transferred, shall state from whom and to whom these interests and obligations are

transferred and shall where necessary be accompanied by a map or plan identifying the transferred land.

4. Under paragraph 11(1) of schedule 8, a transfer from an Education Authority to a Board of Management under section 36 shall be binding on all other persons notwithstanding that it would, apart from that sub-paragraph, have required the consent or concurrence of, or the Waiver of a right by, any person other than the Authority and the Board.

5. A major concern is that an Education Authority, fearing that a school might intend to opt for self-governing status, might place its property beyond the grasp of a Board of Management by transferring the property used by the school to a third party nominee, and thus retain control of the assets. This occurred in England where a local Education Authority sold all the premises of a school for full market value to a holding company owned by the Authority. The company then leased back the premises to the Authority, the purchase being financed by the rent payable by the Authority. As a result of this arrangement only the leasehold interest and not the ownership of the land vest in the governing body of the school under the equivalent English legislation. The Scottish Act contains provisions designed to defeat such asset stripping devices.

6. Section 36(7) prohibits an Authority from transferring or entering into any transaction involving any land which would fall to be transferred to a Board of Management in the event of a School becoming a self-governing School. Where a property has been transferred by an Authority in breach of this prohibition the commissioner for School Assets may apply to the Court of Session for the reduction or setting aside of such disposal (sections 42 and 45). Protection is provided by sections 42(5) and 45(3) for the rights of third parties who have acquired property in good faith and for value from an Authority. The conditions under which an Authority may dispose of school property after notice has been received that a school Board proposes to initiate the procedure for acquiring self-governing status are contained in section 43.

7. It was originally proposed to amend section 9 of the Land Registration (Scotland) Act 1979 to ensure that rectification of the register would be available in the event of a disposal of property by an Education Authority designed to defeat the transfer of assets to the Board of Management of a self-governing school, but this proposal was dropped as unnecessary on the understanding that the Keeper would be able to identify from the OS Map a disposal which affected the most obvious schools assets, - school buildings and playing fields and would requisition evidence from an applicant for registration that the provisions of the Self-Governing Schools &c (Scotland) Act 1989 did not strike at the transfer. If satisfactory evidence is not provided, indemnity will be excluded in respect of any loss arising as a result of the operation of the 1989 Act, such exclusion of indemnity making possible a future rectification of the register under section 9(3)(a)(iv) of the 1979 Act. If evidence is provided but a Court thereafter makes an order which sets aside the disposal or reduces the deed whereby the property was transferred by the Authority, rectification of the register could still be effected under section 9(3(a)(iii) on the basis that inaccuracy in the register arises from the fraud or carelessness of the applicant by producing inaccurate evidence to

the Keeper. These remedies depend on the ability to identify deeds by Regional Councils which transfer school buildings and playing fields. Both types of property are "labelled" on the OS map and where an application is received which relates to school buildings and/or playing fields and the granter of the DIR is a Regional Council, Plans staff shall refer the application to Mrs V Ferguson of the Senior Legal Group as soon as the property has been provisionally identified on the Index Map.

8. The procedure outlined in paragraph 7 above will cover the major items of school property, but occasions could arise where no identification is possible from the OS Map, - e.g. where buildings outwith the curtilage of a school are used for school purposes. Where a transfer of such property has been effected and the title has been registered without the evidence referred to above having been requisitioned by the Keeper, the situation will be remedied by Court procedure. In terms of sections 40(4) and 45(4) of the 1989 Act when a Court makes an order setting aside a transfer by an Authority to a third party it may also make any ancillary order which it considers expedient to ensure that that order is effective. It is proposed to make use of that power and where the Court makes an order setting aside a transfer of school property it should also order a third party who holds a registered title to the property without the exclusion of indemnity already referred to to reconvey that property to the Authority. On the re-investment of the transferred property in the authority it will be available for inclusion in a Certificate by the Commissioners for School Assets in favour of the Board of Management of a self-governing school.

9. When dealing with applications for registration received on or after 16 November 1989, where the granter of the DIR is a Regional Council acting as Education Authority and there is no indication in the papers that evidence as to the effect of the 1989 Act has been requisitioned and obtained, Legal Settlers should consider whether such evidence should be obtained. Unless it is clear that the 1989 Act does not apply, such cases should be referred to the undersigned.

(Sgd) A A SNOWDON

Senior Assistant Keeper

11 January 1990

Legal Memo L5/90

LOCAL GOVERNMENT AND HOUSING ACT 1989

Sections 176 and 178 of the above Act (which came into force on 16 January 1990) slightly amend the right to buy provisions of a tenant as contained in the Housing (Scotland) Act of 1987. Section 179 (which came into force on 1 December 1989) amends the Housing (Scotland) Act of 1988 as regards the powers of Scottish Homes to dispose of land.

In particular:

(1) **Section 176** amends the rules contained in section 61(10) of the said 1987 Act as regards the definition of the "occupation" required for the purchase of a house by a member of the family of the secure tenant.

(2) **Section 177** restricts the provisions of section 69 of the said 1987 Act which gives the Secretary of State for Scotland power to authorise refusal to sell certain houses provided with special facilities to persons of pensionable age.

The provisions of section 69 remain applicable to houses first let on a secure tenancy before 1 January 1990.

The above two sections are unlikely to affect any practice in the Department but staff should be aware that the earlier provisions are altered.

(3) **Section 178** amends section 76 of the 1987 Act and introduces a new section 84A to the latter Act to extend the application of the right to buy provisions to cases where the selling landlords are themselves the lessees under a registered lease. The new provisions provide for the acquisition of the landlords' interest in a house by the tenant of the house where the landlords themselves hold only a tenant's interest under an earlier registered lease of the house or of land which includes it.

The new provisions also provide for the obtaining of a loan by the tenant in the above circumstances.

In the above provisions "a registered lease" is defined as a lease –

(a) which is recorded in the General Register of Sasines, or

(b) in respect of which the interest of the lessee is registered in the Land Register of Scotland under the Registration of Leases (Scotland) Act 1857.

(4) **Section 179** amends section 2 of the 1988 Act which sets out the general powers and functions of Scottish Homes.

In terms of section 2 certain functions of Scottish Homes (for example the disposal or acquisition of land) require the consent of the Secretary of State for Scotland or

require arrangements to be made between Scottish Homes and the Secretary of State before the function can be carried out.

Section 179 slightly amends the requirements for consent as regards the disposal of land.

Disposal of land by Scottish Homes can be made under a variety of different schemes and the separate consent of the Secretary of State for Scotland is required for different schemes.

To date, it appears, from evidence supplied to the Keeper, that the following consents have already been granted.

(1) Consent to the sale of surplus land.

(2) Consent to the disposal of land by way of lease.

(3) Consent to the sale of land under a scheme known as the "Portable Discount Scheme".

(4) Consent to sales under the Scottish Homes "Voluntary Sales Scheme".

(5) Consent to sales under the "Rents to Mortgages Scheme".

In some cases certain conditions are laid down.

Settlers, in applications to which Scottish Homes are a party, need not concern themselves as to whether the appropriate consent by the Secretary of State has been given or not but they should ensure that question 7(a) and question 11 on Application Forms 1 have been answered YES and NO respectively. On Forms 2 the relevant questions are numbered 5(a) and 9(a) while on Forms 3 the questions are again numbered 7a and 11.

If the questions are so answered the Keeper can rely on those answers as sufficient warrant that proper consent has been given and can proceed to register without further enquiry.

Further consents are presently being considered by the Secretary of State and notification of any consents granted will be made to the Keeper by the Scottish Development Department.

Any problems arising with regard to the operation of section 178 or with transactions involving Scottish Homes should be notified to the Senior Legal Group.

(Sgd) R C CLARK
Assistant Keeper
1 March 1990

Legal Memo L23/90

MEMO TO LEGAL SETTLERS

PROPERTY SERVICES AGENCY AND CROWN SUPPLIERS ACT 1990

1. Section 1 of this Act which came into effect on 29 June 1990 enables the Secretary of State to make a scheme or schemes which provide for the transfer to any person or persons of such property, rights and liabilities as are specified in or determined in accordance with the scheme, being property, rights or liabilities

(a) to which a Minister of the Crown (or in the case of copyright Her Majesty) is entitled or subject immediately before the day on which the scheme providing for the transfer comes into force; and

(b) which then subsisted for the purposes of or in connection with or are otherwise attributable (wholly or partly to either of the Crown Services known respectively as the Property Services Agency and the Crown Suppliers).

A scheme under this section shall come into force on such day as may be specified for that purpose in the scheme and on that day the property, rights and liabilities to which the scheme applies shall be transferred and vest in accordance with the scheme.

2. In terms of paragraph 1 of the Schedule to the Act a certificate by the Secretary of State that anything specified in the certificate has vested in any person by virtue of a scheme under section 1 of this Act shall be conclusive evidence for all purposes of that fact.

3. Paragraph 3 of that Schedule provides that stamp duty shall not be chargeable on any instrument which is certified to the Commissioners of Inland Revenue by the Secretary of State as being a scheme under section 1 of this Act (or as having been made or executed in pursuance of such a scheme) and as effecting a transfer of property, rights or liabilities to a company all the issued shares in which are held by or on behalf of the Crown but no such instrument shall be taken to be duly stamped unless

(a) it is stamped with the duty to which it would but for this paragraph be liable, or

(b) it has, in accordance with section 12 of the Stamp Act 1891, been stamped with a particular stamp denoting that it is not chargeable with duty or that it is duly stamped.

4. Normal conveyancing procedures will be required in order to make the person or persons to whom anything is transferred infeft in the properties belonging to the Property Services Agency and the Crown Suppliers. Where title is deduced the links in title will be the Act, the relevant Transfer Scheme and, where appropriate, a Certificate issued under Schedule 1 to the Act. In Land Register transactions, the Act

has already been examined and need not be requisitioned but the relevant Transfer Scheme and any appropriate certificate must accompany an Application for Registration.

(Sgd) A A SNOWDON

Senior Legal Adviser

10 August 1990

Legal Memo L25/90

FOREIGN PARTNERSHIPS AND COMPANIES

Recently, Applications for First Registration were lodged by agents acting for "SCI Quatreff of 134 Rue de Vaugirard, 75015 Paris, France". On investigation it became clear that SCI Quatreff was a French partnership. Title had been taken in the name of the firm and not in the name of trustees acting on behalf of the firm.

The case illustrates a problem which may often arise in coming years, with the advent of the Single European Market and the dismantling of trade barriers among EEC member states. It is possible that more foreign businesses will enter the Scottish property market, either to acquire heritable property or to provide loans to be secured over heritable property.

Scots law adheres to a long-established rule that a partnership cannot take title to **feudal** property in its own name. (For the avoidance of doubt, a firm can hold title to a lease in the firm name). Title to feudal property can be held only by specified individuals, usually (but not necessarily) the partners, as trustees on behalf of the firm. This applies to foreign as well as Scottish partnerships, even though a foreign partnership may be allowed by its own legal system to take title to property in its own country in the name of the firm.

Staff must therefore be alert to the possibility of deeds being presented or lodged in which foreign partnerships purport to deal with feudal property in the firm name, as in the case of SCI Quatreff. Such deeds are invalid. Agents who submit them are to be reminded that title should be taken in name of trustees acting on behalf of the foreign firm.

No such problem arises in relation to a foreign company or corporation because Scots law does permit such a body to take title to heritable property in Scotland in its own name.

It is foreseeable that staff may sometimes find it difficult to recognise a foreign partnership for what it is or to recognise the difference between a foreign company and a foreign partnership, especially when a business name is expressed in another language. To help staff overcome this problem, a list of various types of business organisation commonly found in other West European countries is annexed hereto as Appendix A. The list is not exhaustive. It mostly concerns companies rather than partnerships, but it is hoped that staff will still find it to be useful. In cases where there is doubt as to whether a particular foreign business is a company or a partnership, the deed should be referred upwards for consideration.

I would take this opportunity to remind staff of the contents of Staff Notice L1/90, on the related subject of European Economic Interest Groupings (EEIGs). Authorised equivalents of the EEIG in other languages of the EEC are given in Appendix B to this Notice.

(Sgd) A A SNOWDON

Senior Legal Adviser

August 1990

APPENDIX A

TYPES OF BUSINESS ORGANISATION FOUND IN OTHER

WEST EUROPEAN COUNTRIES

Country	Business Organisation	Abbreviations Used
Austria	1. Aktiengesellschaft (public company) 2. Gesellschaft mit beschränkter Haftung (private company)	AG GmbH
Belgium	French 1. société anonyme (public company) 2. société privée à responsabilité limitée (private company) Flemish 1. naamloze vennootschap (public company) 2. besloten vennootschap met	SA SPRL NV BV or BVBA

	beperkte aansprakelijkheid	
Denmark	1. aktieselskab (public limited company) 2. anpartsselskab (private limited company)	AS ApS
Finland	1. osakeyhtiö (public company) 2. avoin yhtiö jakommanduttiyhtiö (private company)	Oy AYJ
France	1. société anonyme (public company) 2. société à responsabilité limitée (private company) 3. société en nom collectif (general partnership)	SA SARL SNC SCS SCPA SC

	4. société en commandite simple (limited partsership) 5. société en commandite par actions (limited partnership, with shares) 6. société civile (civil partnership: a type of business used especially to handle conveyancing transactions such as purchase of land for development and resale, rental of buildings, etc. A "société civile immobilière" (SCI) for example, is a property holding firm.)	
Germany	1. Aktiengesellschaft (public joint stock company) 2. Gesellschaft mit beschränkter Haftung private limited company) 3. Offene Handelsgesellschaft (general partnership)	AG GmbH OHG KG

	4. Kommanditgesellschaft (limited partnership)	
NB: In Germany, the names of partnerships may or may not contain the abbrevi-ations "KG" or "OHG". However, the common abbreviation "& Co", does indicate the existence of partners.		
Greece	1. anonymos etaira (public company) 2. etaira periorismenis efthynis (private company)	AE EPE
Ireland	As in the UK, generally	
Italy	1. società per azioni (corporation) 2. società a responsibilità limitata (limited company) 3. società in accomandita per axioni (limited partnership, with shares, **but** having corporate status)	SpA SRL SApA

Luxembourg	1. société anonyme (public company) 2. société à responsabilité limitée (private company)	SA SARL
Netherlands	1. naamloze venootschap (public company) 2. besloten venootschap (private company)	NV BV
Norway	Aksjeselskap (company)	A/S
Portugal	1. sociedade anonima (public company) 2. sociedade por quotas –Lda (private limited company)	SA Lda - -

	3. sociedade em nome colectivo (general partnership) 4. sociedade em comandita simples e por acção	
Spain	1. sociedad anónima (public company) 2. sociedad de responsabilidad limitada (private company)	SA SRL
Sweden	1. aktiebolag (limited company) 2. handelsbolag or enkla bolag (partnership)	AB or A/B -
Switzerland	French société anonyme (public company) German	SA AG

	Aktiengesellschaft (limited company)	

APPENDIX B

EUROPEAN ECONOMIC INTEREST GROUPINGS (EEIGs)

AUTHORISED EQUIVALENTS IN THE OTHER LANGUAGES

OF THE EEC

Language	Equivalent	Abbreviation Used
Danish	Europaeiske Økonomiske Firmagruppe	EØFG
Dutch	Europese Economische Samenwerkingsverbanden	EESV
French	Groupement Européen d'interêt économique	GEIE
German	Europäische Wirtschaftliche Interessenvereinigung	EWIV
Greek	Evropaikos Omilos Economicou Skopou	EOOS
Irish	Grupail Eorpach um Leas Eacnamaioch	GELE

Italian	Gruppo Europeo di Interesse Economico	GEIE
Portugese	Agrupamento Europeo de Interesse Economico	AEIE
Spanish	Agrupación Europea de Interés Economico	AEIE

Legal Memo L26/90

LEASES – TACIT RELOCATION

When a Lease is continued by tacit relocation, the original Lease is not regarded as having terminated (despite the indication to the contrary in section 0.1.13.1 of the Registration Manual); the relocation is considered as simply an extension, on a year-to-year basis, of the existing Lease.

The law does not presume that a Lease automatically expires at the specified termination date; instead, the presumption is that if neither the landlord nor the tenant has intimated a desire to terminate [by sending the other a notice to quit], both parties wish the Lease to continue, and it is therefore automatically extended (for one year at a time in the case of registrable Leases) until formally terminated by either party.

It therefore follows that, in the absence of the appropriate evidence of termination, a Title Sheet for a registered leasehold interest should not be cancelled, nor should the details of the relevant Lease, as an overriding interest, be removed from the landlord's Title Sheet.

Whenever a Title Sheet is cancelled, Plans Section should be advised accordingly.

These instructions supersede those in section 0.1.13.1 to 0.1.13.3 of said manual.

(Sgd) J RYNN

Assistant Keeper SLG

17 August 1990

Legal Memo L27/90

Modified by L4/92

LEASES AND SUB-LEASES – THE EFFECT OF INHIBITONS

1. **Leases**

The question of whether or not a Lease is affected by an Inhibition against the tenant hinges on whether or not the Lease is adjudgeable which, in turn, is determined by whether or not the Lease is freely assignable – i.e. if a Lease contains a stipulation, either within the destination contained in the operative clause, or within the burdens provisions, that it cannot be assigned without the consent of the landlord, then that Lease is not freely assignable, cannot be adjudged, and is therefore unaffected by such an Inhibition. Conversely, a Lease which can be freely assigned without any requirement for the landlord's consent is adjudgeable, and will be struck at by any future Inhibition against the tenant.

It is therefore important that the terms of a leasehold title sheet divulge whether or not that interest is assignable/adjudgeable; failure to adequately reflect the non-assignability of a Lease could render the Keeper vulnerable to a substantial claim on his indemnity, and, in order to obviate the possibility of such a claim, the practices hereinafter outlined should be adhered to in leasehold Titles:

Firstly, it should be noted that the requirement for the landlord's consent is, even if narrated only in the destination in a Lease, an ongoing condition of that Lease, and its continuing disclosure in the Title Sheet must be ensured.

Therefore, where a Lease contains a stipulation, either in the destination or within the burdens clauses, for the landlord's consent to any assignation (or sub-letting, as hereinafter dealt with), a permanent note, along the following lines, should be inserted in the Proprietorship Section of the Title Sheet, viz.,

"Note: The Lease referred to in Entry..... of the Burdens Section contains a requirement for the landlord's consent to any assignation [or sublet]."

[The wording in the above style is not intended to be conclusive – the terms of the note should reflect those of the relevant provision in the Lease].

The use of the above style of note overcomes the need to narrate the destination itself in the B Section, and thus obviates the risk of erroneous removal of that destination at subsequent DW stage.

Additionally, where the said requirement is contained within the burdens clauses of the Lease, it should also be disclosed in the relevant Burdens Section entry, notwithstanding its disclosure in the B Section.

[N.B. When the relevant stipulation is contained only in the destination of the Lease, it is preferable that the "copy in Certificate" method be employed for the relevant D Section entry; this will preclude any future challenge regarding the accuracy of the terms of the B Section note].

Future Title Sheet practice in relation to non-assignable Leases can be summarised as follows: where the consent provision is contained only in the destination in the Lease, the insertion of the aforesaid style of note in the B Section is the only action required; when the provision is narrated in both the destination and the burdens clauses of the deed, **or** within the burdens clauses alone, the aforesaid B and D Section practices should be followed.

The above instructions hold good for all cases where the landlord's unqualified consent is required, but what of the Leases where the stipulation for such consent is qualified by the phrase "**which consent shall not be unreasonably withheld**"? – the position *re* such Leases is unclear, but on balance of probability it seems that they would be deemed assignable, and settlers should work on that basis, referring any such Leases to the appropriate higher referral point when necessary.

2. **Sub-Leases**

The position as regards Sub-Leases is somewhat unclear, but it is generally thought that Inhibitions will strike at Sub-Leases where there is unfettered power to sub-let; it therefore seems reasonable to assume that, where the power to sub-let is conditional on the landlord's consent, the reverse holds good, and these instructions have therefore been compiled on that basis.

Where a Lease contains prohibitions against sub-letting without the landlord's consent, the immediately subordinate Sub-Lease interest should be regarded as non-adjudgeable and the Title Sheet for that interest should clearly reflect the relevant consent requirement (e.g. as an integral part of the burdens provisions in the relevant D Section entry for the higher, or over, Lease, **or**, if the consent stipulations are contained solely within the destination in the Over-Lease, by the insertion in the B Section of said Title Sheet of a note along the following lines:

"Note: The lease referred to in entry.....of the Burdens Section contains a requirement for the landlord's consent to sub-letting"].

It should be noted, however, that in contrast to the aforementioned procedures *re* assignation of Leases, when the sub-letting restrictions in the Over-Lease are disclosed in the D Section, they need not be duplicated in the B Section of the Sub-Lease Title Sheet; such disclosure would be necessary only when the relevant condition was absent from the burdens disclosures in the Over-Lease Burdens entry.

Additionally, when a Sub-Lease itself contains additional constraints on assignation and sub-letting, these must obviously also be reflected in the Title Sheet for the sub-let interest in accordance with the instructions in section 1 hereof.

A further point should be noted: the adjudgeability of an individual Sub-Lease within a "chain" of sub-let interests is governed solely by the terms of the Sub-Lease itself and those of the immediately "higher" Lease in the chain – any other higher interests need not be considered in this context.

In any doubtful cases, settlers should follow the established referral procedures; all cases involving outstanding Sequestrations, however, should be instantly referred to an AK in the SLG.

(Sgd) J RYNN

Assistant Keeper

SLG

13 August 1990

Legal Memo L28/90

LEASEHOLD CASUALTIES

Omission from a Title Sheet of a leasehold casualty exigible on assignation of the lease has led to a claim on the indemnity fund. This suggests that there is an element of uncertainty in the minds of some settlers and a reminder of the legal position on such casualties appears appropriate.

Section 16 of the Land Tenure Reform (Scotland) Act 1974 provided that "it shall not be lawful to stipulate for the payment of any casualty in a lease executed after 1 September 1974". This provision did not affect casualties in leases executed before that date which consequently remain exigible. Para 0.5.7.1 of the Registration of Title Manual makes it quite clear that if casualties are specified in a lease executed on or before 1 September 1974 they must be shown in the burdens entry in the Title Sheet.

In order to trap any cases in the pipeline between legal settlers and despatch where such a casualty may have been omitted in ignorance or by mistake Despatch Section have been instructed to refer all Land Certificates pertaining to leasehold subjects back to the legal settler if the case is a First Registration. The settler should check to see that the instructions in the Manual have been followed in respect of any casualties and if he or she is satisfied on this score, note the fact on the Draft Title Sheet and return the case to Despatch. If amendment is necessary the case obviously will have to be re-routed through the support sections and appropriate instructions for amendment given. In such a case the legal settler will give the appropriate instructions on the Draft Title Sheet and send it to the Expedite Control Officer in Legal Services Section who will ensure the case passes through the system expeditiously.

(Sgd) A G RENNIE

Director, Land Register

3 October 1990

Legal Memo L19/90

MEMO TO LEGAL SETTLERS

SYNDICATED LOANS

Syndicated loans (otherwise known as mezzanine loans) are the means whereby several banks combine to lend to a borrower under a single loan agreement. The composition of the group of banks may change during the currency of the loan as individual members drop out or alter their shares, or as new members join the syndicate. This type of loan has its origins in international finance where individual financial institutions were either unable or unwilling to lend large sums of high risk money on their own. These loans are now becoming more common in the home market where, in contrast to the international market, some security is usually taken. In consequence of this, the Department has recently received Standard Securities in respect of syndicated loans in both the Sasine and Land Registers.

Syndicated loans are usually arranged by one financial institution which generally is, but need not be, also the principal lender. Such an institution is usually referred to as the arranger and agent for the syndicate. Given the fluctuating nature of the syndicate membership, individual members are not usually disclosed in any documents other than the unregistered loan agreement itself and any subsequent variations.

In Standard Securities it is therefore usual for the arranger and agent to be named and designed, with the only reference to the syndicate members being as those who were a party to the loan agreement and any variation thereof. On the face of the Standard Security therefore what is disclosed is a named agent for principals whose identity is undisclosed.

Standard Securities in respect of syndicated loans are acceptable in both Sasine and Land Registers, subject to the proviso that the arranger must hold the security in trust for the undisclosed members of the syndicate. Grants in favour of **the arranger as agent only** for the syndicate **are unacceptable**. The reason for this is that the effect of recording/registration is to vest the security interest in the grantee. Under the law of agency vesting in an agent is also vesting in his principal. Vesting in the arranger as agent for the undisclosed and changeable syndicate members would be vesting in those members. This would offend one of the cardinal principles of the registers that any person vest in a real right by virtue of registration must be identifiable on record.

Any difficulties encountered in recording/registration, or any deviations from the above acceptable style, should be referred to the Senior Legal Group.

(Sgd) DAVID McCALLUM

Assistant Keeper

1989

Legal Memo L29/89

PRISONS (SCOTLAND) ACT 1989

This measure, which comes into effect on 16 February 1990, consolidates certain enactments relating to prisons. The only provisions which have any relevance to this Department are sections 36, 37 and 38.

In terms of section 36 the legal estate in all heritable or moveable property belonging to a prison shall be vested in the Secretary of State and may be disposed of in such manner as he, with the consent of the Treasury, may determine. Under section 37 the Secretary of State may by order discontinue any prison, and any prison so discontinued shall be sold or otherwise disposed of as the Secretary of State, with consent of the Treasury, may direct. Section 38 confers powers on the Secretary of State to purchase, by agreement or compulsorily any land required for prison purposes. For the purpose of compulsory purchase of land, the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 is applied, while in relation to the purchase of land by agreement the Lands Clauses Acts (under certain normal exceptions) are incorporated with section 38.

These provisions re-enact without modification the provisions which previously existed.

(Sgd) A A SNOWDON

Senior Assistant Keeper

29 December 1989

1987 **Legal Memo L37/87**

STANDARD SECURITY GRANTED BY PROPRIETOR: EFFECT ON LEASEHOLD INTEREST SUBSEQUENTLY CREATED

When a heritable proprietor has granted a Standard Security over his property and then leases the property in whole or in part, settlers must satisfy themselves that the written consent of the creditor has been obtained to the lease (Standard Condition 6 in Schedule 3 to the Conveyancing and Feudal Reform (Scotland) Act 1970).

A copy of the consent therefore must be submitted with the Application for Registration of the leasehold interest or requisitioned if it is not submitted.

Standard condition 6 also may be varied or disapplied to allow the granting of the lease without consent but again evidence of such variation or disapplication must be supplied.

When such evidence of consent, variation or disapplication has been supplied the Standard Security will **not** be entered in the Charges Section of the tenant's Title Sheet.

In cases where it is not supplied, settlers must warn Applicants' agents that unless such evidence is produced the landlord's security will be disclosed in the tenant's Title Sheet.

If consent, variation or disapplication of standard condition is not supplied and the Standard Security is not disclosed in the Charges Section of the tenant's Title Sheet, it is considered unlikely that the tenant could pursue successfully a claim upon the Keeper's indemnity, for the latter could rely on section 12(3)(n) of the Land Registration (Scotland) Act 1979, the carelessness of the claimant having caused the loss. The area of concern is that the loss may be suffered by a third party who acts in reliance upon a Title Sheet for the tenant's interest which does not disclose the risk that the lease is voidable at the instance of a pre-existing heritable creditor of the landlord.

In such cases therefore the disclosure of the landlord's Standard Security on the tenant's Title Sheet should be sufficient to put a third party dealing with the tenant upon enquiry as to whether or not standard condition 6 affects, and it is considered unnecessary to exclude indemnity from the tenant's Title Sheet in respect that such a Standard Security has been disclosed in the Charges Section of that Title Sheet, even although standard condition 6 may render the lease voidable as above described.

This instruction will be re-issued in due course as an addition to the appropriate manual.

(Sgd) R C FULTON
Assistant Keeper
12 August 1987