

Regulatory Impact Assessment

Title of proposal

1. The Fees in the Registers of Scotland Amendment Order 2006 (“the Order”).

Purpose and Intended Effect

Objectives

2. The objectives of the Order are as follows:
 - to set revised fees for registration or recording in the registers under the management and control of the Keeper of the Registers of Scotland (the Keeper);
 - to set fees for registration of title in the Land Register of Scotland by means of the Automated Registration of Title to Land (ARTL) system; and
 - to consolidate the regulations for fees charged by the Keeper in respect of both registration or recording in the registers and for the provision of searches, reports, certificates or other documents or copies of any document or of information from the registers.

The Order is intended to come into effect on 22nd January 2007.

Background

3. The Order will amend the Fees in the Registers of Scotland Order 1995¹ (the 1995 Order). The Order will be made under and in terms of section 25 of the Land Registers (Scotland) Act 1868².
4. The Keeper is responsible for the management of 15 public registers. The Order provides a new fee structure for registration or recording in 9 of these³. The two main registers provided for in the Order are the Land Register of Scotland and the General Register of Sasines, both of which are concerned with the ownership of land and other rights in land. The remaining registers provided for in the Order are collectively known as the Chancery and Judicial Registers, and they provide for the registration or recording of a range of legal documents, including deeds relating to succession, court documents relating to diligence for debt, state appointments and the like.

¹ [SI 1995/1945 as amended by S.I. 1999/1085, S.S.I. 2001/163, S.S.I. 2004/507 and S.S.I. 2005/580](#)

² [31 & 32 Vict. C.64](#)

³ [Land Register of Scotland; General Register of Sasines; Register of Inhibitions and Adjudications; Register of Deeds and Probative Writs in the Books of Council and Session; Register of Judgments; Register of Protests; Register of Great Seal; Register of Cachet Seal and the Register of Quarter Seal. No provision is made for the Register of Community Interests in Land where the fees are fixed under different legislative provisions the Land Reform \(Scotland\) Act 2003 and the Agricultural Holdings \(Scotland\) Act 2003. The remaining five registers held by the Keeper are no longer operative.](#)

5. Presently, registration or recording in the registers is only permitted by means of paper application in respect of paper documents. However, ARTL will enable electronic registration in the Land Register of Scotland by means of an automated process. ARTL will be introduced in early 2007. The Order sets out new fees for applications made using the ARTL system.
6. Fees for the provision of searches, reports, and certificates or other documents or copies of any document or information from the registers were revised in terms of the Fees in the Registers of Scotland Amendment Order 2005⁴.

Rationale for Government Intervention

7. The Keeper is required by statute to charge fees for the services provided by him. Section 25 of the Land Registers (Scotland) Act 1868 provides that the fees payable "in respect of registration or recording in any register under the management and control of the Keeper.....*shall not be greater than is reasonably sufficient for defraying the expenses of the department of the Keeper, including the expenses of the improvement of the systems of such registration or recording.*"
8. The Keeper discharges his functions and duties through the Registers of Scotland Executive Agency (the Agency). The Agency has a status akin to a Trading Fund⁵ and as such is expected to ensure that its income is sufficient to meet its expenditure, taking one year with another, and to achieve certain financial returns on the capital employed by it. Cash reserves should not be built up as a matter of routine.
9. As a result of these requirements, it is the Keeper's policy that the fees charged are regularly and systematically reviewed to take account of changing circumstances including, in respect of fees applicable to registration and recording in the Land Register and Register of Sasines, alterations in the housing market and house price inflation. The planned introduction of ARTL also necessitated a review of the fees appropriate to registration by means of the ARTL system.
10. Utilising the data and assumptions in respect of predicted future levels of registration and recording activities in the registers contained in the Agency's five year Corporate Plan⁶, the review indicated that if no changes were made to the level of fees set in terms of the 1995 Order, a significant annual surplus of registration income over expenditure would be generated. Therefore, it is necessary to implement a restructuring of registration and recording fees, involving a number of fee reductions and adjustments, to ensure fee income reflects a level commensurate with the statutory requirements noted above.

⁴ S.S.I. 2005/580

⁵ Public Finance and Accountability (Scotland) Act 2000, section 9

⁶ A copy of the plan is available on the Agency website (<http://www.ros.gov.uk/citizen/literature.html>)

Consultation

Within Government

11. The proposed scope of the review of registration fees was discussed and agreed with the Registers of Scotland Ministerial Advisory Board. In addition, a pre-review consultation exercise was undertaken to seek comments from Agency staff experienced in applying the existing fee structure set out in the 1995 Order.

Public Consultation

12. As part of the review process a pre-consultation exercise was undertaken to seek the views of the public (through their appointed agents e.g. solicitors) and representative professional bodies. The pre-consultation exercise gathered views on various issues including the level of fees, the complexity of the current fee structure, potential weaknesses and other relevant issues.
13. As part of the review process, Scottish Ministers agreed that a public consultation exercise should be carried out on the changes proposed to the fee structure. The consultation period ran from 21 April 2006 through to 19 June 2006.
14. Ten key stakeholders were identified and were contacted individually in writing regarding the proposed fee changes and the methodology of calculation. The consultees included the Law Society of Scotland and the Scottish Law Agents' Society. The full list of the key stakeholders is contained in Annex 1. The consultation was also published on the Agency's website to allow other interested parties the opportunity to comment.

Options

15. Option 1: Do Nothing

Given the legal requirements set out above, and taking into account the predictions for future levels of registration and recording in the registers, the option to do nothing was rejected as this approach would have resulted in an unacceptable level of surplus annual income.

16. Option 2: Introduce a New Fee Structure

The introduction of a new fee structure for registration and recording in the registers is the only means by which an appropriate reduction in fee income in future years could be made and this requires to be effected through subordinate legislation under and in terms of s.25 of the Land Registers (Scotland) Act 1868. As a result, Option 2 was selected. The costs and benefits of Option 2 are set out at paragraph 18 *et seq.*

Sectors and Groups affected

17. The registration and recording services provided by the Agency are offered to the public at large and to corporate bodies, partnerships, associations and other organisations on the same basis. The same fee structure is applied to all persons, bodies, sectors and groups for registration or recording in the registers irrespective of their size or legal status.

Costs and Benefits

18. Based on projected volumes of registration and recording activities in the registers, the changes to the fee structure to be brought about by the Order will result in an estimated 26% reduction in expected Agency annual financial turnover by the financial year 2007-08.
19. There will be costs and benefits for Agency customers in complying with the Order, depending on the type of transaction being undertaken. It is difficult to produce an accurate estimate as to the impact of the changes on the Agency's "typical" customer. However, for a customer who has purchased a house at the average house price in Scotland⁷, and is also obtaining a mortgage in connection with that purchase, the reduction in the total registration and recording fees payable would be £78 (£138 if using the ARTL system). Assuming that the current pattern of registration and recording activities remains consistent, the vast majority of applications processed by the Agency in a year will benefit from a reduced fee. Further, the new fees contained in the Order for applications for registration in the Land Register made using the ARTL system, are generally 25% less than the equivalent registration fees for paper applications. (There is a minimum saving of £10 and a maximum saving of £500 on each application made using the ARTL system.)
20. The main changes are set out below, according to the register concerned

The Land Register and General Register of Sasines

- i. The existing 51 band ad valorem fee structure (where fees are charged according to the consideration or value of the land concerned) for registration or recording of transfers of title or conveyances in the Land Register and General Register of Sasines have been reduced to 12 bands with reduced fees in all but 4 of the old bands, and an increase in only 1 of the old bands. The minimum fee has been increased from £22 to £30 better to reflect actual process costs, whilst the fees payable in respect of the three highest value bands remain unchanged (reflecting transfers where the consideration or value does not exceed £3 million and £5 million respectively and where the consideration or value exceeds £5 million). The fees payable for applications made using the ARTL system are set at generally 25% lower than the equivalent non-ARTL fee.
- ii. The existing 31 band ad valorem structure for the fees payable for the registration or recording of heritable securities and related deeds is replaced by a fixed fee of £30 per title sheet affected in the case of the Land Register or £30 per deed recorded in the General Register of Sasines. ARTL applications receive a further £10 reduction on those fees. The provisions in the 1995 Order for abated fees of £22 for registration or recording of heritable securities and related deeds (where they accompany a transfer of title or conveyance) are replaced by the fixed fee.

⁷ Based on average house price in Scotland as at February 2006 of £126,000

- iii. The fixed fee charged where more than one title sheet in the Land Register, the memorandum fee charged where a deed is submitted for recording in the General Register of Sasines in more than one county, and the dual registration fee, are all increased to £30.
- iv. For a number of deeds and applications involving special parties, fixed fee provisions are increased to £30. These include application for registration of a survivorship destination by the survivor; application to complete title by (amongst others) a local authority, police, fire, valuation or other authority and for recording of Notices of Title presented with a lease or deed of servitude.
- v. The fee for miscellaneous deeds or applications (including Form 5 Noting applications and Form 9 rectification applications) is increased from £25 to £30. Equivalent applications using the ARTL system will receive a further £10 reduction on those fees.

Chancery and Judicial Registers – Main

- vi. The fixed fee charged for each document presented in the Register of Inhibitions and Adjudications is reduced from £20 to £15.
- vii. For deeds submitted to the Books of Council and Session, Register of Protests and Register of Judgements, the feeing arrangements based on the length of a document are repealed and the fee will be fixed at £10, irrespective of length.

Chancery and Judicial Registers- Minor

- viii. The intake of documents into these registers⁸ can vary widely from one year to the next. Although an increase in income deriving from these registers is forecast as a result of the provisions of the Order, the increase is expected to be minimal and better reflects the cost of providing the service. The Agency's average fee income deriving from these registers (for the last three years) is less than £10,000 per annum.
- ix. For registration of a Charter of Incorporation in the Register of the Great Seal, an increased fee of £250(*£170*⁹) would be levied, and in respect of a Crown grant of land increased fees of £60 (*£44*) for an unsealed document or £250(*£170*) for a sealed document would be charged. For registration of a Commission, the increased fee is £630(*£500*).
- x. The fee for each impression of the cachet seal is increased to £30(*£15*).

⁸ The intake has been less than 80 deeds per annum over the past three years, ranging from 55-78, excluding the Register for Community Interests in Land which is not part of the review.,

⁹ The old fee is shown in italics

- xi. The fee for registration of a Gift of Ultimous Haeres in the Register of the Quarter Seal is increased to £130 (*£44*).
- xii. The fee for a certificate issued under the Civil Jurisdiction and Judgements Act 1982, is increased to £30 (*£21*) and for each Certificate of Custody, to £20 (*£10*).

Equality and Fairness

21. The fees proposed in the Order apply to all customers utilising the same services. No discounted fees are proposed for volume customers. This ensures that the fees charged are fair to all those who use the services. Land Register applications submitted using the ARTL system will attract a lower fee to reflect the reduced process costs under this system.

Small Firms Impact Test

22. There is no differential impact on small businesses. As explained at paragraph 17, the registration or recording services provided by the Agency are offered to the public at large on the same basis and the fees levied for each service apply equally to all customers. The substantial overall reduction in registration or recording fees will benefit customers generally, with no particular prejudicial effects foreseen for small firms.

Competition Assessment

23. The fee proposals in the Order will have no effect on competition. In respect of the provision of registration or recording services, the Agency is not in competition. The fees for such services are in respect of the provision of a public service.

Enforcement, Sanctions and Monitoring

24. The Order prescribes fees for the services to which it relates. The Keeper is under a legal duty to enforce the Order. In respect of the provision of fees for registration in the Land Register and recording of deeds in the General Register of Sasines, there is a statutory requirement for most types of application to be accompanied by the appropriate fee (section 4(2)(e) of the Land Registration (Scotland) Act 1979 and section 1 of the Land Registers (Scotland) Act 1995), failing which registration will be refused.

25. In the minority of applications for registration or recording in one of the registers under the Keeper's control where prepayment of the fee is not a legal requirement, the Keeper will invoke debt recovery procedures to recover monies due.

Outcome of Consultation

26. A consultation exercise was conducted in respect of the proposals set out in paragraph 16 and paragraphs 18 to 24. The consultation exercise generated nine responses of

which three respondents had no comments to make. Of the six respondents who did make comments, these can be broken down as follows:

- One respondent requested confidentiality.
- One respondent welcomed the simplification of the fee structure and the introduction of reduced fees for ARTL.
- One respondent welcomed the introduction of a fixed fee for securities and related deeds and approved of the simplification of the fee structure and the introduction of reduced fees for ARTL.
- One respondent appreciated the benefits of the savings to the consumer in the costs of non ARTL transactional or remortgage work and was supportive of the further reductions for ARTL.
- One respondent welcomed the proposed simplified system and in particular the reduction in fees with regards to Securities and Discharges.
- One respondent welcomed the revised fee, in particular the simplified charging structure and the flat rate charge for Heritable Securities. They also welcomed the introduction of reduced fees for ARTL.

No respondent raised any objection to the fee structure proposed in the Order. No alterations were made to the proposals on which the Agency consulted.

Implementation and Delivery Plan

27. The intended implementation date for the Order is 22 January 2007.

Post Implementation Review

28. The Keeper will regularly monitor the fees set out in the Order to ensure that these continue to meet the cost recovery principle on which they are set as detailed in paragraphs 7 to 10 above.

Summary and Recommendation

29. Based on projected volumes of registration and recording business, the changes brought about by the Order represent a 26% reduction in expected Agency annual financial turnover. Depending on the level of uptake of ARTL between 75% and 95% of Land Register Agency customers will benefit from the fee reductions. **Table 1** below shows the impact of the reductions in fees in the Land Register for a customer purchasing a house at the average house price in Scotland and for customers who re-mortgage.

30. The fee structure set out in the Order represents a very significant saving in registration and recording fees to the majority of customers of the Agency. For those cases where the fee is being increased, the increase is moderate and reflects the cost of providing the service.

31. As is evidenced by the responses to the Consultation on the Order, the Order is welcomed by consultees. It is recommended that the Order be promulgated.

Table 1- Standard Land Register Transaction Average Fees¹⁰

Transaction Type	Status Quo £	Proposed Fees for Non- ARTL	Proposed Fees under ARTL
£126k House Purchase and Security	308.00	230.00	170.00
£126k House Purchase, Security and Discharge	330.00	260.00	190.00
£65k Security <u>or</u> £65k Discharge	77.00	30.00	20.00
£85k Security <u>and</u> £85k Discharge	198.00	60.00	40.00

Based on average house price in Scotland as at February 2006 of £126,000

Declaration and Publication

32. I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.

Signed.....

Date

**DES MCNULTY
DEPUTY MINISTER FOR COMMUNITIES**

¹⁰ In the first two examples in the table provided, the calculation of the status quo fee figures assumes that the applications are presented at the same time, and therefore the security and discharge receive the benefit of an abated fee of £22 each. Otherwise, the fee would be higher, and the benefit achieved by the proposals would be greater.

ANNEX 1

1. Convention of Scottish Local Authorities (COSLA)
2. Society of Local Authority Lawyers & Administrators in Scotland (SOLAR)
3. Council of Mortgage Lenders
4. Homes for Scotland
5. Law Society of Scotland
6. Lord President of the Court of Session
7. Royal Institution of Chartered Surveyors
8. Scottish Consumer Council
9. Scottish Law Agents' Society
10. WS Society