

POLICY NOTE

THE LAND REGISTER OF SCOTLAND (RATE OF INTEREST ON COMPENSATION) REGULATIONS 2014

SSI 2014/XX

The powers to make these Regulations are conferred by sections 79(4), 84(7) and 95(4) of the Land Registration etc. (Scotland) Act 2012 (“the Act”). These powers are being exercised in the pre-commencement period in accordance with section 4 of the Interpretation and Legislative Reform (Scotland) Act 2010. Sections 79(4), 84(7) and 95(4) of the Act will come into force on 8th December 2014 which is the day designated by order by the Scottish Ministers under section 122 of the Act. This instrument is laid before the Scottish Parliament under section 116(3)(g), (h) and (i) of that Act and is subject to affirmative procedure.

Policy objective

These Regulations make provision as to the rate of interest to be applied to payments of compensation made by the Keeper of the Registers of Scotland (“the Keeper”) under the Act.

The Government’s policy in this area is that interest should be available to a person who is due payment of compensation under the Act, to acknowledge the fact that during the period between a loss being sustained and the payment being made the person has been unable to benefit from the sum in question.

The intention is that the payment of interest should be purely compensatory in nature, and not act as a penalty on the Keeper. Its purpose is to put a person who has incurred a loss as a result of a breach of the Keeper’s warranty, in consequence of an inaccuracy in the register, or as a result of the operation of Part 9 of the Act, in the position that they would have been had that loss not occurred. The Government has therefore set a rate which a person may have been able to achieve by, for example, depositing the sum in a savings account. Payment of interest will therefore have a neutral financial impact on any individual, private company or public sector organisation who has received compensation.

The Government considers that the rate should be suitably flexible to respond to changing market conditions, and considers that this aim is best achieved by setting a fluctuating rate of interest which is aligned to the official dealing rate of the Bank of England.

On balance, the Government has concluded that one per cent above the Bank of England Base would presently be a fair rate of interest to be set in the proposed legislation. In the event that circumstances change in future, rendering it fairer to increase or decrease the figure added to base, the percentage payable could be amended from time to time by statutory instrument. The statutory interest is simple, not compound, interest.

Background

Section 77 provides that the Keeper must pay compensation for loss incurred as a result of a breach of the Keeper’s warranty. Section 79 makes provision regarding the quantification of compensation payable under section 77. Section 79(2) provides that interest will run on the

compensation payable and sets out the three possible dates (depending on the circumstances) from which interest will run, until compensation is paid.

Section 84 provides that the Keeper must pay compensation for losses incurred in consequence of an inaccuracy in the register, and certain expenses incurred in securing rectification of the register, and makes provision regarding the quantification of that compensation. Section 84(5) provides that interest is payable on the compensation and the dates from which it will run.

Section 94 provides that the Keeper must pay compensation for loss incurred as a result of the operation of Part 9 of the Act, namely, persons who have been deprived of rights, or whose property has been burdened by a servitude through the process known as realignment.

Sections 79(4), 84(7) and 95(4) confer upon the Scottish Ministers the power to set the rate of interest payable on compensation under sections 77, 84 and 94, respectively.

Consultation

A consultation on the implementation of the Act took place between September and December 2013 to inform stakeholders of changes necessary for implementation of the Act and to seek views on proposals for the policies to be adopted by the Keeper under the Act:

<http://www.scotland.gov.uk/Publications/2013/09/4291>

As part of that consultation consultees were asked whether they agreed that any interest rate paid on claims for compensation should be aligned to the Bank of England Base Rate. The vast majority of consultees were in agreement.

Impact Assessments

A partial Business and Regulatory Impact Assessment and an Equality Impact Assessment were carried out as a part of that consultation.

<http://www.scotland.gov.uk/Topics/Business-Industry/support/betterregulation/partial-assessments/full/2011/LandRegistrationBill>

<http://www.ros.gov.uk/lrbillconsultation/consultation.html>

Financial effects

No business and Regulatory Impact Assessment (BRIA) has been prepared for these Regulations as no financial effect or impact on the private, voluntary or public sector is foreseen.