

REGULATORY IMPACT ASSESSMENT

1. Title of proposal

The Fees in the Registers of Scotland Amendment Order 2009 - SSI/2009/171

2. Purpose of the Order

The Amendment Order revises the fees and charges set out in Part I 2 (Reports) and Part XII (Fees applicable to all registers) of the Schedule to the Fees in the Registers of Scotland Order 1995. Those fees are in respect of:

- (I) inspection of the registers maintained by the Keeper of the Register of Scotland (the Keeper) through the Keeper's on-line access system known as Registers Direct;
- (II) the provision by the Keeper of Land Register reports on title to land; and
- (III) the provision by the Keeper of copy deeds, extracts, Office Copies and other information-based services.

Annex 1 contains a table listing the proposed fees and comparing them with current fees.

3. Rationale and Intended Effect of the Order

The Keeper is required by statute to charge fees for the registration and information services he provides. The changes made by this Fee Order follow on from a fee review, which included a public consultation exercise. The changes are in respect of fees for information services, as specified in paragraph 2 above. Scottish Ministers fix the fees charged by the Keeper by Statutory Instrument under Section 25 of the Land Registers (Scotland) Act 1868.

Section 25 of the Land Registers (Scotland) Act 1868 provides that the amount of the fees fixed by Scottish Ministers 'shall not to 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 and recording.'

The aim in setting fees is to recover the full operating costs of Registers of Scotland through income raised from the provision of those services. The fee review was conducted on the basis that any future charging regime needs to be set at a level which meets these requirements in respect of the individual information products for which a charge is made.

4. The main changes including costs and benefits

On present volumes of requests for information and services, the overall effect on fee income to Registers of Scotland would be a reduction of some 45%.

Registers Direct

The proposed fees for inspection of the registers through Registers Direct, as set out in Section A in Annex 1, represent a reduction of some 50% of the annual income stream from Registers Direct compared with the annual income stream from current charges. The Fee Order introduces a simplified flat rate fee for all chargeable searches of the registers through Registers Direct. Although this results in a marginal increase in the fee for searches of the General Register of Sasines, from £1.65 to £1.80 per search, this is more than offset by the reduction in fee for the more frequent, in terms of the volume of searches conducted, search of the Land Register, from £3.30 to £1.80. In addition, fees for Land Register searches on Registers Direct that do not generate a positive result will no longer attract a charge. A wide range of customers use Registers Direct. The largest group of customers is the Private Search Firms, who compile reports on title on behalf of solicitors as part of the conveyancing process. In 2007-2008 Private Search Firms accounted for over 60% of Registers Direct income. Other major customers include lending institutions, local authorities, various government bodies, the legal profession and also the citizen. The proposed reduction in fees will allow all customers access to the registers at a reduced cost.

Land Register Reports on Title

The proposed fees for Land Register Reports are set out in Section B in Annex 1. These show an average increase over the current fees for such Reports of 6%. This is because the compilation of Land Register Reports is labour intensive and the bulk of the cost of providing each Report comprises staffing costs, which have risen since fees were last set for these products in 2005. In addition, each Report requires one or more inspections of the registers. The overall increase in respect of fees for Land Register Reports is moderated by the reduction in charges for inspection of the registers via Registers Direct.

Copy deeds, extracts, office copies

The proposed fees for copy deeds etc. are set out in Section C of Annex 1. The Amendment Order will standardise charges for the different types so as to make the costs more transparent to the customer. There is a general moderate reduction in proposed the fees with the sole exception of fee for additional copies requested at the same time as the first, where the fee increases from £6 to £8. This modest increase is more than offset by the reduction in fees for all other copies and extracts.

Register of Inhibitions and Adjudications

Registers of Scotland provides a daily transfer of all minutes in this register to a small number of Private Search firms. The IT costs incurred by Registers of Scotland in provision of this service have reduced marginally and this is reflected in the reduction in the proposed fee, from £21 to £19.50, for that product.

Data extraction and data reports

The Amendment Order will include, for the first time, fees for a number of products developed from the property data held on the General Register of Sasines and the Land Register.

5. Equity and Fairness

The proposed fees apply equally to all customers. No discounted fees are proposed for high volume customers. This ensures that the fees charged are fair to all who use the services.

6. Small firms' impact test

The adverse impact on small businesses of some limited fee increases in the Amendment Order is insignificant given the overall level of fee reductions. The bulk of users of Registers Direct are Private Search Firms who comprise over 60% of the income received from this service. The reduced costs for inspection will directly benefit those firms, reducing their costs for producing Land Register Reports and will also benefit all other small firms who inspect the registers.

7. Competition Assessment

The proposed fees have been set on a basis that is consistent with UK and EC competition law. The fee review was conducted in accordance with generally accepted accounting principles. As noted, the Keeper competes with firms of Private Searchers as regards the provision of Land Register Reports. The proposed fees for those products reflect the full cost of providing this service. It is considered that the Amendment Order will have no effect on competition.

8. Enforcement and sanctions

The Amendment Order will prescribe the fees for the products to which it relates. The Keeper is under a legal duty to enforce the Amendment Order. In the event that a customer does not pay a required fee the Keeper will invoke debt recovery procedures to recover monies due.

9. Consultation

The Keeper undertook a review of fees for the provision of information from the registers in 2007-08. To inform the review a working group was set up. The group included key stakeholders such as the Law Society of Scotland, the Council of Mortgage Lenders, the Scottish Consumer Council, the Scottish Society of Private Searchers and the Society of Local Authority Chief Executives. The RoS review team produced a consultation paper taking account of the working group's deliberations and agreed the final form of the paper with the group. Scottish Ministers agreed that a consultation exercise with stakeholders be carried. The consultation period ran from 31 March to 23 June 2008.

The Keeper identified 77 relevant stakeholders, who were sent electronic copies of the consultation paper and invited to submit responses on the views and options set out in the paper. In accordance with Scottish Government guidelines, the consultation paper was accompanied by a covering letter informing consultees on how their responses would be handled. A copy of the consultation paper and response information form relating to the consultation exercise was also placed on Registers of Scotland's website to allow members of the public and other stakeholders the opportunity to comment on the proposals. During the course of the consultation there were 641 hits recorded on the consultation document. A list of consultees is included at Appendix 2.

The consultation exercise generated fourteen responses and of these one response indicated that the respondents had no comments to make and one respondent requested confidentiality of personal details. A detailed analysis of responses has been published on Registers of Scotland website.

Several respondents welcomed the intention to reduce fees and, overall, respondents were:

- supportive of the principles of openness, transparency and fairness that had been identified to guide the provision of information;
- supportive of the ways the Keeper currently provides information on-line, by email, telephone and postal enquiries, through his Customer Service Centres and by contractual arrangements for tailored and bulk services. Some respondents sought further development of electronic services such as the provision of copy deeds by email;
- of the view that demand for citizens' portal access, which had been flagged up in the consultation document as a possible development, was not quantifiable or that it would most likely be restricted to house price information;
- strongly of the view that fees for information services should not be cross-subsidised from registration fees and that the current system of charging all customers for information provided should continue; and
- of the view that a mix of payment methods for charges levied should be offered so that customers could choose the most convenient method for themselves.

The Working Group met to consider the responses to the public consultation. In light of the responses, they suggested one change to what had been proposed in the consultation paper, namely that, in the interests of simplicity, Ministers should set a single, unified fee for each of the two classes of copy deeds supplied by Registers of Scotland. This is reflected in the Amendment Order.

10. Monitoring and review

The Keeper will monitor the information fees in order to ensure these continue to meet the cost recovery principle under which they are set, as detailed in paragraph 3.

11. Summary and recommendation

On present volumes of requests for information and services, the overall effect on fee income to Registers of Scotland would be a reduction of some 45%. The reduced fees for Registers Direct represent a significant saving to Registers of Scotland customers, in particular Private Search Firms, as this will reduce the costs involved in compiling a Land Register Report. For those services for which fees are being increased, the increase is moderate and does no more than recover the costs of providing those services. As evidenced by the responses to consultation exercise on the Fee Amendment Order there is strong stakeholder support for the proposed new fees.

It is recommended that a Fee Amendment Order based on the fees consulted upon be promulgated.

12. Declaration

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

Signed.....

Jim Mather, Minister for Enterprise, Energy and Tourism

Date.....

13. Contact point

**Sheenagh Adams
Managing Director
Registers of Scotland
153 London Road
Edinburgh
EH8 7AU**

Tel. 0131 659 6111

e-mail sheenagh.adams@ros.gov.uk

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Annex 1

Current and proposed fees

SECTION A:		Current Charge	Proposed Charge
Inspection of the Registers			
Sasine Presentment Book		£ 1.65	£ 1.80
Sasine Minute Book		£ 1.65	£ 1.80
Sasine Search Sheet		£ 1.65	£ 1.80
LR application record		£ 3.30	£ 1.80
LR index map		£ 1.65	£ 1.80
LR title Sheet Record		£ 3.30	£ 1.80
Books of Council and Session		£ 1.65	£ 1.80
Register of Inhibitions and Adjudications (ROI)		£ 1.65	£ 1.80
Copy of the daily ROI minute entries		£21.00	£19.50
Property Price Search		£ 3.30	nil
SECTION B:		Current Charge	Proposed Charge
Reports			
Form 10	Report prior to registration	£ 27.00	£ 28.50
Form 11	Continuation of report prior to registration	£ 15.00	£ 16.50
Form 12	Report over registered subjects	£ 27.00	£ 28.50
Form 13	Continuation of report over registered subjects	£ 15.00	£ 16.50
Form 14	Report to ascertain whether subjects registered	£ 27.00	£ 28.50
P16	Comparison of bounding description with Ordnance Map	£ 27.00	£ 28.50
P17	Comparison of Certificate Plan with Ordnance Map	£ 27.00	£ 28.50
Form 10/P16	Combination	£ 40.00	£ 41.00
Form 12/P17	Combination	£ 40.00	£ 41.00
SECTION C:		Current Charge	Proposed Charge
Miscellaneous Services			
	For a plain or duplicate copy	£ 16.50	£ 8.00
	For a certified copy or official extract	£ 20.70	£ 15.00
	For an official extract obtained from National Archives of Scotland		£5 plus NAS fee
	For an Office Copy	£ 25.00	£ 15.00
	For the handling of second copies requested at the same time as the first	£ 6.00	£ 8.00
	Provision of Land Register Archive Information	£14.20	£ 8.00
	Sales for consideration (for all of Scotland.) Note:	n/a	£450 per

Product also available on a registration county basis for a reduced fee.		month
Land values report (for all of Scotland). Note: Product available on a registration county basis for a reduced fee.	n/a	£622 per month
Creditor/legal agent report	n/a	£100 per month (or quarter)
Data set of registration county boundaries	n/a	£100
Information on General Register of Sasine minutes	n/a	£252 per month
Report on post code sectors	n/a	£105 per month (or quarter)

Annex 2: List of consultees

1. Convention of Scottish Local Authorities (COSLA)
2. Council of Mortgage Lenders
3. First Scottish Searching Limited
4. Homes for Scotland
5. Joint Consultative Committee of the Keeper of the Registers of Scotland and the Law Society of Scotland
6. Law Society of Scotland
7. Lord President of the Court of Session
8. Millar & Bryce Limited
9. National Association of Estate Agents
10. Oswalds
11. Ross Lornie & Company Limited
12. Royal Institute of Chartered Surveyors
13. Scottish Consumer Council
14. Scottish Courts Service
15. Scottish Law Agents' Society
16. Society of Scottish Searchers
17. SPH (Scotland) Limited
18. TMG Search Limited
19. WS Society
20. Society of Local Authority Chief Executives and Senior Managers (SOLACE)
21. The Royal Incorporation of Architects in Scotland
22. Institute of Chartered Accountants of Scotland
23. Faculty of Advocates
24. Society of Local Authority Lawyers and Administrators in Scotland (SOLAR)
25. All Scottish local authorities
26. All Scottish police forces
27. Scottish Crime and Drugs Enforcement Agency
28. HM Revenue and Customs
29. DKA Searching
30. Scottish Water
31. Scottish and Southern Energy
32. Scottish Hydro Electric
33. Scottish Gas
34. Consumer Council for Water