

Nuggets from the Land Registration etc. (Scotland) Act 2012



The 2012 Act effectively replaces the Land Registration (Scotland) Act 1979, which was sufficiently brief that it resulted in much of the land registration system being based on the practice of the Registers, rather than being on the basis of legislation. The 2012 Act provides a firm statutory basis for land registration more in line with other jurisdictions.

As at 2012, only 23.33% of land in Scotland was registered on the Land Register, the remainder being on the pre 1979 Sasine Register. A policy aim is to complete the Land Register and close the Sasine Register. The 2012 Act includes measures to promote completion of the Land Register so that any deed transferring ownership will trigger transfer to the Land Register, as will the grant of standard securities. The Keeper of the Registers will have power to transfer title to the Land Register without any action by the owner.

The 2012 Act permits all conveyancing documents to be electronic, including missives, although technical details have to follow in further legislation through statutory instrument along with practical points on the issue of relevant electronic signatures. It will be possible to submit deeds for registration in electronic form to the Land Register.

There are new procedures to address inaccuracies in the Land Register and to avoid difficulties which have occurred over inaccuracies which could not be corrected. The terms of the existing guarantee with a registered title means a person who acquires the registered title from someone without a valid title, but in good faith, will usually keep the land and the person with the valid claim is compensated by the Register, although often that person would rather hold on to the land. This is to change so that the person acquiring is compensated and the person with the valid claim gets the land.

Each share of shared land under current practice is included in each one of the titles with a share which means those with a share do not readily know who else also has a share. This will change and there will be a separate title for the land which is shared

with the details of all who hold a share in it being set out.

Where land is occupied by someone for more than a year who is not the owner and notice is given to anyone who may have a better title to the land than the occupier, the occupier may register a title deed in their own name, an a non domino disposition, which may then lead to a good title being acquired if occupation continues unchallenged – a significant change in the current position.

Paper copies of registered titles, Land Certificates, will no longer be required. Instead, extracts of registered title sheets will be available, if required, for evidential purposes and unlike the situation at present, copies of the underlying deeds relating to a land registered title will be available.

The 1979 Act envisaged each registered title having a title plan and presupposed a single plan of the whole of Scotland, however, the 1979 Act did not actually provide for any such map. This is addressed in the 2012 Act and is the Cadastral map which exists in electronic form.

Current conveyancing practice relies on the sellers' solicitors issuing letters of obligation to protect purchasers' interests and which are accompanied by inherent challenges of enforcement. The 2012 Act introduces advance notices for use by solicitors in place of a letter of obligation. This provides 35 days for a deed detailed in the advance notice, for example a disposition, being registered with the purchaser being protected from any adverse entries arising during this period.

Royal Assent was granted on 10 July 2012, but a delay is expected before the 2012 Act comes into force which may be in the second half of 2014 or even 2015.

So what does this mean?

More clarity, a more client focused service and a single point of reference. Let's wait and see, but there is one matter not in doubt - there will be a greater reliance on the submitting solicitor and their clients to get it right - a good working relationship with your solicitor will be paramount, particularly in the stages leading up to land registration.

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In this edition

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A comparison between the new 2012 Act and the former Land Registration (Scotland) Act 1979.

Welfare Reform - The Early Impact

A look at the initial impact of the Welfare Reform on registered social landlords.

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What's on the horizon for the Social Housing sector?

Welfare Reform - The Early Impact



Grant heads the “**proactive and experienced**” social housing litigation team at **bto** (Chambers UK). The team handles a wide range of commercial dispute resolution for RSLs. Grant, in particular, has conducted two significant arbitrations for **bto**'s RSL clients arising out of Local Authority Stock Transfers, involving claims of £500k and £800k.

He has also acted on behalf of RSLs in Mediations (an alternative form of dispute resolution).

Grant participated in the Scottish Government's Consultation Paper on the possible creation of a new Housing Panel to replace the existing use of the courts. He has also been approached to comment on the impacts of the recent welfare reform on our RSL clients. Below Grant discusses the key facts surrounding the welfare reform.

The Scottish Housing Regulator (“SHR”) published its research findings on the early impact of Welfare Reform on social landlords. The research, gathered between July and September and designed to provide an early snapshot, found small changes in the level of arrears in rent due to RSLs in the three months following the removal of the Housing Benefit Spare Room Subsidy (widely referred to as the ‘bedroom tax’). It estimated that 1 in 8 tenants (13%) were affected by the removal of the subsidy.

The publishing of the findings coincides with the announcement by the UK Government of an independent review of the impact of the “bedroom tax” amid criticism from MPs that a thorough impact assessment had not been undertaken before the introduction of the changes. Details of the UK Government's review will be published soon. For the UK Government, it was claimed that the Department for Work and Pensions “routinely commissions” research on their new policies, suggesting that this review was not out of the ordinary.

The SHR's research, based on the participation of 84% of social landlords, provides the most complete available picture of the early effects of Welfare Reform on Scottish landlords' rent arrears.

The research examined change patterns across individual RSLs between March and June 2013, the first three months of the removal of the Spare Room Subsidy. It found that arrears as a percentage of rent due increased for around two thirds of those RSLs who participated in the survey. However, it was pointed out that an increase between March and June did not represent a new trend. The Regulator's analysis found that percentage arrears levels had also risen over the same period in both 2011 and 2012 for more than half of the responding RSLs. It was noted that the rise in 2013 was more marked.

The SHR's research estimated an aggregate increase in rent arrears of around £0.4 million between March and June for those RSLs which provided full data, compared with reductions of £3.5 million and £2.8 million for the same RSLs over the same period in 2011 and 2012 respectively.

Aggregate rent arrears of responding RSLs as a percentage of annual rent due fell slightly between March and June 2013. However, aggregate percentage arrears also fell over the same period in both 2011 and 2012. The fall in March to June 2013 was less than the fall in each of the previous two years.

Around 66% of social landlords estimated that up to five per cent of arrears at the end of June 2013 were attributable to the removal of the Spare Room Subsidy. 20% of social landlords estimated that the removal accounted for around 10% of arrears. The findings also showed that local authorities were more likely than RSLs to estimate a higher level of impact on arrears.

The research found consistencies in the challenges facing RSLs and local authority landlords. RSLs have acted responsibly in the face of these changes by offering tenants continued support, profiling those most at risk and engaging with them, and providing advice and information to address the early impact of the new regime. Over 80% of RSLs are also reviewing their business plans, revising their budgets and annual projections.

If you have any questions in relation to welfare reform, please do not hesitate to contact Grant.

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Watch out for...

- **The Housing (Scotland) Bill 2013** was introduced in the Scottish Parliament on 21 November 2013. The abolition of right to buy is well advertised. Some other proposed changes relate to: social housing allocations, licensing of travelling persons sites, registration of letting agents and the Scottish Housing Regulator's powers to transfer RSL assets after an inquiry.
- **The Financial Conduct Authority (FCA)** takes over Consumer Credit licensing on 1 April 2014 – RSLs that hold a current OFT licence should ensure they have “interim permission” from the FCA prior to that hand-over date, and keep an eye out for further FCA guidance.
- **Procurement reforms** are anticipated in 2014, from both new Scottish Parliament legislation and a new European Directive.

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