

Briefing for the Public Petitions Committee

Petition Number: [PE01676](#)

Main Petitioner: Tony Rosser

Subject:

Calls on the Parliament to urge the Scottish Government to review the Land Registration etc. (Scotland) Act 2012, particularly with regard to i) the cadastral map and ii) the provision of supporting materials such as death certificates.

Background

Overview

In Scotland all land and buildings ('property') are registered (or recorded) in one of two property registers.

The property register which is the subject of this petition – the 'new' **Land Register of Scotland** – has been around since the 1980s. The Scottish Government's target is for all property to be registered in it by 2024.¹

The property registers are maintained by the [Registers of Scotland](#) (RoS), a non-ministerial department of the Scottish Government. RoS is headed up by a senior official known as the Keeper of the Registers of Scotland.

The **Land Registration etc. (Scotland) Act 2012**, which came into force in December 2014, resulted in a number of important shifts in the law and policy associated with the Land Register.²

Mapping in the Land Register

The Land Register is a map based system. The **base map** currently used is the OS map.³

¹ See further: <https://www.ros.gov.uk/about-us/news/2014/target-set-to-register-all-of-scotlands-land>

² It replaced the Land Registration (Scotland) Act 1979.

³ As provided for in the 2012 Act, section 11(5).

Each individual registered property has a **title sheet** contained various pieces of information about that property. This includes a reference to the **relevant part of the OS map** with the **legal boundaries to the property** marked on it.

The petition (and associated background information) refers to the **cadastral map**. This is the statutory term given to the map which covers the whole of Scotland. In layperson's terms it shows all the individual title sheets (and tiles of the OS map) joined together like a jigsaw.⁴

Other systems of mapping

The 2012 Act⁵ empowers Scottish Ministers to make regulations **to allow other systems of mapping to be used** – either entirely, or in conjunction with the OS map. No relevant regulations have been made to date.

Updates to the base map

RoS has told SPICe that it receives 500 updated map tiles per week from OS, each of which covers an area of land where there may have been a number of changes to the base map.⁶

One of the petitioner's key issues (described in the background information to the petition) is how RoS should respond to the situation where there have been changes to the base map affecting an individual property.

Consequential changes

Section 11(7) of the 2012 Act allows RoS to make **consequential changes** to the Land Register when the base map is updated.

Boundaries to individual properties can be adjusted as long as the adjustment "falls within the Ordnance Survey mapping specifications for the base map" (Explanatory Notes to the 2012 Act, para 56).

Rectification of the Land Register

The Keeper must **rectify** (correct) the Land Register where there is a **manifest inaccuracy** in a title sheet or the cadastral map and **note** other inaccuracies (2012 Act, section 80).

A person with an interest can refer a question relating to an inaccuracy or whether the Land Register needs to be rectified to [the Lands Tribunal for Scotland](#) for it to determine.

⁴ See further: <https://www.ros.gov.uk/services/registration/land-register/faqs/cadastral-mapping-overview>

⁵ Section 11(6).

⁶ Email from RoS to SPICe dated 19th December 2017.

The Keeper **must pay compensation** in relation to any loss sustained by someone **as a result of an inaccuracy being rectified** (2012 Act, sections 82– 84).

The Keeper’s liability to pay compensation is excluded in a range of circumstances (section 85) including, for example:

- if the inaccuracy is as a result of an error in the cadastral map and that error was made in reasonable reliance on the base map
- in so far as the inaccuracy is caused by some act or omission on the part of the claimant

Where a property owner has died

When a property changes hands, or there are changes to certain other rights held over that property, these changes will be reflected in the title sheet of the individual property.

With some exceptions, these changes are triggered by **an application to RoS**. A **solicitor** (or other legal adviser) acting for the person involved plays an important role in preparing the relevant documents.

Section 111 of the 2012 Act imposes a **duty on a solicitor** (or other legal adviser) to **take reasonable care** to ensure that the Keeper does not inadvertently make the Land Register inaccurate.

The petitioner argues that where RoS receive a request to revise a title sheet to show that someone has died then this application should be **supported by a death certificate**. In the background information to the petition he comments:

“My understanding is that the submission of supporting material such as death certificates was commonplace under the previous legislation that supported land registration, and the removal of that requirement from the current legislation has created a major flaw in the process”

If a solicitor (or other legal adviser) informs RoS that **someone has died** RoS’s current position is as follows:

“Solicitors have a legal and professional responsibility to check the identity of their clients. **The Keeper takes the view that if a solicitor tells us that a proprietor is deceased, we are entitled to rely on that**, if the information is expressly stated on an application form in which the solicitor has certified that the information is ‘complete and correct to the best of my/our knowledge and belief’. The Keeper does not therefore ask for production of a death certificate; she relies on the solicitor.” *[emphasis added by SPICe]*⁷

⁷ Extract of an email to SPICe from RoS, dated 19th December 2017.

How the legal profession is regulated

The legal profession is regulated by statute. The gatekeeper for **complaints about solicitors** is the [Scottish Legal Complaints Commission](#) ('the SLCC'). Where a complaint is upheld, the solicitor can be asked to take a range of steps, including paying **compensation to an affected person**.

Separately, in some circumstances, a person affected by the fault of a solicitor may be able to raise a civil court action relating to **professional negligence**. Again the court may order that the person at fault pays **compensation to the person who has suffered a loss**.

Time limits apply in relation to both these procedures and, for any professional negligence claim, there are usually associated legal costs.

Solicitors are required to have **professional indemnity insurance** to ensure that they can meet any financial liabilities related to compensation.

Scottish Parliament Action

The [Public Audit and Post-legislative Scrutiny Committee](#) has shortlisted the 2012 Act as one of the Acts which will form the basis for the **post-legislative scrutiny** aspect of its work programme.⁸

The [Economy, Jobs and Fair Work Committee](#) (and its predecessor committee) has **scrutinised various pieces of secondary legislation** associated with the 2012 Act.

Most recently, on 21st November 2017 the Committee [took evidence](#) on the Land Registration etc. (Scotland) Act 2012 (Amendment) Order 2017 [draft] and the Registers of Scotland (Digital Registration etc.) Regulations 2017 [draft]. The relevant instruments [were not approved](#). A **replacement draft instrument**⁹ has now been laid and will be considered by the [Delegated Powers and Law Reform Committee](#) at its meeting on 16th January 2018.¹⁰

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Senior Researcher

11th January 2018

SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However if you have any comments

⁸ See further:

<http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/105094.aspx>

⁹ The Registers of Scotland (Digital Registration, etc.) Regulations 2018 [draft]:

<http://www.legislation.gov.uk/sdsi/2018/9780111037829>

¹⁰ See: <http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/delegated-powers-committee.aspx>

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