AN INTRODUCTION TO

Basic Scottish Conveyancing

5TH EDITION





Millar&Bryce

150 YEARS

Contents

Forewords

In releasing this 5th Edition of the Millar & Bryce Introduction to Scottish Conveyancing, we mark a significant milestone following the celebration of our 150th anniversary as a business. Few survive this long in Scotland and a key characteristic is the ability to innovate and adapt – which is in essence what this Handbook is all about with this latest edition including refreshed and updated content to reflect change and innovation in Property Law and Conveyancing.

The Handbook continues to offer practical guidance and advice that complements academic learning, helping users handle both routine tasks and the less common situations they may face in practice. We are grateful to all of our contributors for bringing their practical experience to life, sharing concise and insightful content which we hope will be of value to you.

In an age of AI responses being at our fingertips this approach may seem anachronistic yet we have received frequent requests for a new edition, with continued value being seen in hearing directly from leading sources active in Scottish property law on topics that are relevant. Whether you are a Diploma student or trainee, a paralegal, or a more experienced lawyer looking to stay up to date, we hope you find the Handbook a useful resource for building deeper understanding.

Richard Hepburn

Richard Hepburn

Managing Director | Millar & Bryce

It has been my absolute pleasure and privilege to be involved in the 5th Edition of the Handbook, which has now become a staple for those studying law and for members of the profession grappling with far-reaching changes in the legal world and beyond.

As with previous editions, it is gratifying that so many lawyers, both in the academic world and in practice, who are specialists in their fields have given freely and enthusiastically of their time and expertise to contribute to this edition. As before, it covers what are considered to be important changes in the land registration process, as well as developments in both commercial and residential practice.

It is a feature of modern times that solicitors are particularly vulnerable to the attentions of hackers and scammers, so solicitors must therefore remain constantly aware of all kinds of unseen dangers that lie outside the conveyancing process. I commend the article on cyber attacks.

Finally, I pay tribute to Millar & Bryce who have provided a high quality service to the solicitor profession not just for years but for generations and may they go from strength to strength.

Debra Clapham

Debra Clapham

Principal | Clapham Solicitors

Property Excellence: Past, Present and Future

150 Years of Searching

Brian King

2025 marked the one hundred and fiftieth anniversary of Millar & Bryce – a remarkable achievement for any organisation, particularly one operating in a commercial environment. The company's roots, however, go back even further than 1875. From around 1840, William Millar was in business at 37 Castle Street, Edinburgh as a 'transcriber of ancient manuscripts and searcher of records.' In 1869, Millar entered into a partnership with his assistant, Robert Gagie, forming the short-lived firm of Millar & Gagie.

William Millar died in 1870. Five years later, Robert Gagie left the firm and was replaced by William Moir Bryce who had been an official in the government Sasine Office, giving birth to the firm of Millar & Bryce. With the death of William Millar's widow, Rosina, in 1878 the involvement of the Millar family in the firm which still bears their name came to an end. The Bryces, meanwhile, would remain prominent in the company for more than a century.

William Moir Bryce was in many ways responsible for creating the modern searching profession. In 1879, Millar & Bryce sought an opinion from the Lord Advocate JB Balfour as to whether searches obtained from non-official searchers were sufficient to meet the obligation to provide them in a transaction. Balfour stated that, "*A search by professional non-official searchers, habit and repute skilful, is sufficient implement of an express or implied obligation to procure and deliver a search*". He added that professional searchers should *"be viewed as the members of a separate profession, whom it was necessary to employ*."

Bryce was also credited with developing the standard format for memoranda for instructing searches and innovated in many other ways. In 1885, for example, Millar & Bryce produced a Handbook of the Records in HM General Register House which also included advice on submitting instructions for searches. Copies of the book were distributed to the legal profession.

Indeed, in some ways, this can be seen as the predecessor of the book you are reading now.

Millar & Bryce were early adopters of the modern technology of the day, employing the telegraph in 1888 and the telephone in 1905 to speed up the delivery of searches. Employee A. J. Adamson, writing of his time at the company in the period before the First World War remembered the arrival of some innovative technology, "*It was some time also before the first typewriter came to the office, and when one did arrive, it was soon followed by others, and I began to realise for the first time the gradual evolution of things.*" This gradual evolution would speed up as the years went by, but the company continued to adapt to new technology and circumstances.

Millar & Bryce also secured a Searchers' indemnity with Lloyds of London in 1905. This more than matched that given by the official searchers and increased confidence in the independent searching profession, aiding its expansion.

William Moir Bryce died in 1919 – just a week after being awarded an honorary degree of Doctor of Laws by the University of Edinburgh. As well as his work in expanding the searching profession, he had been the author of several important history books and president of the Old Edinburgh Club.

Millar & Bryce continued under the stewardship of Bryce's family members, surviving the economic upheavals of the Great Depression and the Second World War, which, like the Great War before it, saw business initially dry up and the company lose staff. This was followed on both occasions by an upsurge in work following the end of hostilities.

The business continued to adapt to changes in the law on conveyancing over the years. Meanwhile, the creation of the new Charges Register in 1961 opened up a whole new avenue of work. In the 1970s and 1980s there were also the first steps towards computerisation particularly in the area of the Register of Inhibitions and Adjudications.

The introduction of Land Registration to Scotland following the Act of 1979 necessitated the introduction of new types of pre and post registration reports and would eventually give rise to other plan-based services such as Plans Reports and Land Referencing.

Millar & Bryce was incorporated as a limited company in 1980 allowing greater investment and expansion. The Tenants' Rights, etc. (Scotland) Act passed the same year allowed for the sale of council houses and transformed the pattern of home ownership in Scotland. The increase in conveyancing transactions that followed led to greater competition in property searching and required new ways of thinking to meet the challenges that this presented.

It was the end of an era in 1986 when Millar & Bryce was sold to the Pergamon Group. Peter Ross Bryce, great nephew of William Moir Bryce, acted as a consultant for a period but, after this, the Bryce family's involvement in the company came to an end. The company also moved from 22 York Place, Edinburgh where it had been based since 1900. Six years later, though, a successful management buyout led by the then managing director, Tom Brown, returned Millar & Bryce to independent ownership.

There would be two more changes of ownership, however, before the company was acquired by DMGT and became part of the Landmark Information Group, the leading provider of information to the UK property market. This provided the degree of stability and timely investment that saw Millar & Bryce well positioned to meet the challenges of the Covid pandemic in 2020 and the sudden shift to remote working that that necessitated.

It was perhaps unsurprising that Millar & Bryce could adapt so readily to this, because, if there is a theme that emerges from the company's history, it is a readiness to adapt to changing circumstances and create opportunities. Millar & Bryce today provide a range of services that were unheard of in 1875 and deliver them in ways that would have been unimaginable at that time. At the company's core, though, is a desire to provide fast and accurate information to the legal profession to enable informed property decisions that would be instantly recognisable to William Moir Bryce, and, indeed, William Millar.

Interested in a paper version of the handbook?

Scan the QR code >

Conveyancing in the Modern Era – Unlocking Efficiency While Navigating Challenges*

Scott Brymer

Like many others in the legal ecosystem, Millar & Bryce is exploring how Artificial Intelligence (AI) can be integrated into day-to-day conveyancing processes. The goal is not to replace human expertise but to enhance productivity, particularly for routine and repetitive tasks. However, for those familiar with Sasine Search Sheets, it will come as no surprise that AI has not yet mastered this area. While automation may assist in certain aspects, human judgment remains essential for nuanced tasks like these.

Conveyancing has always been detail-driven, requiring precision and efficiency. As technology evolves, AI is emerging as a powerful tool to support – not replace – legal professionals. Understanding AI is essential because it:

- streamlines repetitive tasks, freeing time for higher value work
- simplifies compliance and document review
- improves client communication through automation and real-time updates
- can quickly prepare a draft document as a 'starter for 10' to work from

AI should not be seen as a threat to your role; it's an opportunity to work smarter, reduce risk, and deliver better client experiences. The key is knowing where AI fits, and where human judgment remains irreplaceable.

Evolution of technology

The conveyancing landscape has undergone significant transformation over the past two decades.

Key developments include:

- 2004 – Abolition of the feudal system
- The rise of social media, the iPhone, and modern CRM/CMS platforms
- Advances in computing power and storage
- Advent of the 2012 Act
- 2015 – Introduction of LBTT

In each case, it wasn't just a case of move on and forget what came before. Each development brought opportunities but also challenges. Importantly, progress has never meant discarding what came before. Legal professionals must remain mindful of historical context because nothing is ever simple in practice.

A lot of people have shared concerns about how AI might become a business replacement tool and/or threaten jobs when, in reality - and similar to the foregoing – AI is more likely to become a business enablement tool.

Consider the evolution of dictation:

1980s: Handheld devices with tiny cassette tapes.

1990s-2000s: Transition to digital formats.

During the 2000s: Digital recording on desktops and laptops.

- Outsourcing transcription to offshore typists
- Introduction of Microsoft Word's built-in dictation tools

Today: AI-powered transcription and voice recognition, reducing manual effort for routine tasks.

This progression illustrates how technology augments rather than replaces professional roles – a pattern we can expect with AI in conveyancing.

The role of data and AI in modern conveyancing

Data already plays an essential part in conveyancing in past and present property values, historical property data and land ownership data. What is changing is the method by which this data is accessed, used and interpretation of this data

What are some use cases for this type of data and how might it be exploited by AI in the future?

Property characteristics

- Extracting data from Home Reports and public sources for faster client updates.
- Generating tailored property reports for buyers.
- Creating virtual agents to match properties to client preferences using demographic and trend analysis.

Legal rights

- Preliminary interpretation of title deeds before solicitor review
- Presenting complex legal data in a client-friendly format – but backed up by the detailed report prepared by a solicitor

Compliance checking

- Automating LBTT calculations and compliance checks
- Validating mortgage and security documentation for completeness

Client communication

- Already quite commonplace, AI can handle drafting correspondence with consistent tone and accuracy
- Automated client updates via CRM integration and trained on an established Checklist, with escalation options for solicitor intervention

Document review

- Cut back on the involved task of reviewing and comparing multiple similar documents like leases
- Use AI to identify certain key or problematic terms in a contract which may be negative to your client

Proceed with caution

Regulation does not pause for technology. GDPR and intellectual property laws are complex and they continue to evolve alongside AI adoption.

However, at the pace with which large technology companies want their AI to develop and to learn, the concern (rightly so) is that question marks surrounding legal implications are getting thrown to the wayside.

This is therefore only a reminder to (1) choose your partners carefully; (2) select AI that benefits your business needs; and (3) do not overlook your ongoing statutory obligations.

What challenges could AI bring to practice? What do bad actors look like?

A. Phishing and spam emails could become so convincing that they become increasingly challenging to spot. Everyone must be diligent.

B. Fake AI 'experts' working their way around the market and offering bespoke services. An example might be someone who goes around smaller firms offering help with AI, gaining access to client and address databases. While this might seem innocent enough, this could be a simple con to gain access to systems and confidential data. Alternatively, if an AI tool is being built, it could be learning and being trained from that business' intellectual property and confidential data without proper restrictions or oversight.

C. A lack of preparedness and a lack of staff awareness could be detrimental to a business. Policies and procedures should be in place to help ensure that staff appreciate the risks in uploading information or documents to an AI tool. Staff could be using these AI tools without considering the consequences. Anything entered into generic AI is training it and, in turn, that data will then form the part of future responses. This is obviously risky when confidential information is concerned. As a rule of thumb, a company and its clients' data should remain in its own environment and under its control, it should not be uploaded into an AI tool.

Ignorance of the law is no defence. The trouble with legislation such as the Data Protection laws is that what comes with ignorance is some hefty fines and/or reputational damage.

Conclusion

Uniquely human skills such as critical thinking and trust building can and will continue to form a keystone of what a property practitioner does in practice. These tasks can certainly be developed and enhanced by AI. Similarly, while there is a certain amount of the tasks that are carried out which are likely to never be able to be replaced by technology and AI, that does not mean that anyone can ignore it.

Millar & Bryce acknowledges the opportunity in ensuring that the AI supports and empowers its business and the Scottish legal profession to ensure that it can continue to deliver the same industry leading service. Millar & Bryce's services, through its solutions teams, are already marrying together the use of technology with the expertise and analytical thinking of its experienced team. As AI evolves and improves in the coming months and years, this will no doubt serve to further enhance this service.

AI is reshaping everyone's working environment and even how people interact with traditional search engines. One thing which is certain is that it cannot simply be ignored. As with the advent of any new technology, there are some processes or roles which will become redundant due to AI. However, in most cases, AI will be there as a business enablement and advancement tool – provided that it is carefully managed and implemented.

**This article was first written and edited by a human and then enhanced by a selection of AI.*

Spatial Data in Property Transactions

Josh Rains

What is geospatial data?

Geospatial data refers to information that is connected to specific locations on the Earth's surface. In everyday life and within industries such as conveyancing, geospatial tools and data play a crucial role in how we understand, manage, and communicate about land and property. For example, environmental reports and local authority documents depend on accurate location-based data to assess risks and present detailed information.

Over time, the ways in which geospatial data is collected and used have evolved significantly. Traditionally, much of this data came from on-site surveying, where measurements were taken directly in the field. As technology advanced, digital methods and automated georeferencing became standard. Georeferencing is the process of assigning real-world coordinates to data points or features, ensuring they appear in their correct locations on a map. This makes it possible to combine information from different sources into a single, accurate representation.

Today, the availability of data has expanded further with the use of earth observation data, which consists of images or measurements collected by satellites and aircraft. This type of data is especially useful for monitoring changes in the earth's surface, such as urban development, deforestation, or flooding. Alongside this, modern techniques such as artificial intelligence (AI) and machine learning help automate the capture and analysis of geospatial information, making it more accessible and detailed than ever before.

Another important concept in geospatial data is attribution. This refers to the additional information attached to a specific location or feature – such as describing a property wall and noting the materials it is made from – so that users can understand not just where something is, but also detailed information about it.

With these advancements, geospatial data is now easier to obtain and use, allowing people to explore property and asset information more thoroughly. It has become a powerful tool for communicating insights to clients and supporting better decision-making.

One of the most impactful applications of geospatial data is through Geographic Information Systems (GIS). GIS are designed to capture, manage, analyse, and display geographic data. They provide users with the tools to interrogate analyse and investigate patterns and relationships within the data, as well as producing outputs to communicate insight. Common applications of GIS range from urban planning, transportation and logistics, and agriculture to disaster management and environmental monitoring. In all these areas, GIS provides crucial geospatial data management and analysis tools that inform smarter decisions.

An example of geospatial data in land registration: Scotland's approach

Geospatial data underpins the land registration process in Scotland, making property transactions clearer and more efficient. For every registered property, its legal boundaries are drawn onto this cadastral map using authoritative Ordnance Survey (OS) base maps. Each property is assigned a unique Title Number and a corresponding cadastral unit, ensuring every plot is distinctly identified and recorded.

A cadastral map is a detailed map showing property boundaries and ownership, while the Sasine register is Scotland's historic deeds-based land register, previously used to record property transfers before the adoption of mapping-based registers. The INSPIRE ID is a standardised identifier used across European land registries for tracking parcels, helping link each cadastral parcel to its legal title and making information easily accessible and auditable.

The use of geospatial data ensures that no two property titles can overlap on the cadastral map. Since 2014, Scottish law requires that every new registration includes a map or description sufficient for the Keeper to draw the property on the cadastral map, guaranteeing accuracy and transparency.

For property owners, this geospatial approach reduces disputes and streamlines transactions, helping to clarify exactly what is owned and where the boundaries lie.

Surveyors benefit from having precise, authoritative mapping to inform their work, while policymakers gain access to more accurate data for planning, land management, and environmental monitoring.

Geospatial data has also enabled new forms of analysis in land registration. For example, Registers of Scotland used title polygons (geospatial shapes representing registered property extents) to calculate that by 2025, about 59.6% of Scotland's land mass was formally registered, with the remainder either pending registration or inferred from other sources. Innovative projects like Unlocking Sasines used Geographic Information Systems (GIS) to generate indicative polygons for properties still recorded in the old Sasine register, covering an additional 34% of land and providing provisional mapping for areas not yet officially registered. These advances support the policy goal of achieving a complete cadastral map of Scotland in the future.

Finally, integrating geospatial data and unique identifiers such as the INSPIRE ID ensures that land registration records are kept up to date, fully auditable, and easily cross-referenced with other systems. This location-based approach supports transparency, efficiency, and better decision-making for everyone involved in the land and property sector.

Key considerations when using geospatial data and GIS

Understanding the main considerations when handling geospatial data and Geographic Information Systems (GIS) is essential for industry professionals, legal advisors, and surveyors. Addressing these factors helps ensure the data is reliable, fit for purpose, and legally compliant.

1. Currency

Currency is a key component of Data , this refers to the specific date or time period when the data was collected, digitised, quality checked, and published. This is important because it allows users to know how current the information is and whether it reflects the situation on the ground. For example, using property boundary data collected ten years ago may miss recent changes such as new extensions or boundary adjustments, potentially leading to disputes.

2. Update frequency

Data has an update frequency, which refers to how often the data is refreshed or maintained. This is important because it affects how well the data reflects real-world changes and how suitable it is for different types of analysis.

For example, flood risk data that is updated quarterly can be trusted for strategic planning, but if you were to rely upon a regular changing dataset such as planning applications and yet the dataset is only updated annually could mean missing important recent developments, making it less useful for up-to-date legal advice.

3. Licensing and permitted use

All data has licensing and permitted use terms, which refer to the rules that specify who can use the data, for what purposes, and under what conditions. This is important because not all data is freely available, and using restricted data without the right licence can lead to legal or financial consequences. For example, if a law firm uses a dataset without appropriate licensing in place, this could present a financial or reputation risk.

4. Interoperability

The interoperability of data refers to how easily it can be combined or linked with other datasets, often through shared identifiers or standard formats. This is important because connecting data sources improves analysis and supports better decision-making. For example, using datasets with Unique Property Reference Numbers (UPRNs) allows surveyors to join building information, addresses, and energy certificates, creating a complete property profile without manual matching.

5. Scale

Data scale refers to the geographic extent and level of detail it covers, such as site-specific, local, or national. This is important because the scale determines how suitable the data is for the intended use. For example, using a national geological map to assess the soil conditions of neighbouring plots is not precise enough, in this instance a detailed local mapping to make informed recommendations about specific property risks is most appropriate. However, this is often a choice between around the feasibility and availability of data for each decision point.

Introduction to geospatial data and AI in property technology

Geospatial data is becoming increasingly influential in the property sector. The industry has seen a significant rise in property technology (often called 'proptech'), ranging from platforms that aggregate data to sophisticated tools for visualising information. As a result, legal professionals can often be expected to deliver deeper insights and intelligence to their clients at earlier stages in the process, drawing on these technological advances.

This position is becoming more prominent as the availability of generative AI tools and capabilities enhance in the market. It is expected that generative AI and other accessible tools will accelerate the accessibility of geospatial data into the legal industry. However, challenges remain, including ensuring the accuracy of AI generated information, managing liability for automated recommendations, addressing potential biases in data or algorithms, and understanding complex licensing requirements for proprietary datasets.

Conclusion

In summary, the integration of geospatial data and AI within property technology presents significant opportunities for the legal sector, enabling more informed, timely, and strategic decision-making. Nonetheless, legal professionals must remain vigilant about the nuances of data update frequency, licensing, interoperability, and scale to ensure compliance and accuracy. Additionally, as generative AI tools continue to evolve and become more widespread, it is essential to address the associated challenge including; liability concerns, algorithmic bias, and licensing complexity. By thoughtfully navigating these factors, the industry can harness the benefits of innovation while upholding robust standards of legal due diligence and client service.

Registration

Searches

Gary Donaldson

Searches (and by these we mean largely searches in the personal and property registers) are an essential part of the examination of any heritable title in Scotland and no conveyance can safely settle without them. During the due diligence process there are many points that you must satisfy yourself on but you will require assistance to obtain the information required to do this. Searching the Records and Registers is a specialised, exacting and highly technical exercise which, since the mid nineteenth century, the profession have been happy to leave to professional searchers and rely implicitly on their expertise. Millar & Bryce have served the profession in this specialised role for more than 150 years, and within Millar & Bryce there is currently over a 1000 years of substantial knowledge, skill and technical know-how which makes them an indispensable resource for all conveyancers.

MB Online

By far the easiest way to procure searches from Millar & Bryce is through MB Online *www.mb-online.co.uk*. MB Online is a user friendly website, storing data to minimise administration and allows the conveyancer to keep on track of search requests for each transaction. It is constantly enhanced to ensure user requirements are met. It has the added bonus of working as a checklist of the information required to instruct a search.

Legal Report (unregistered) and continuation

A Legal Report (unregistered) is required when a transaction induces land registration for the first time. The subjects being transacted must be described in a way that they can be identified in the Sasine Register as this is source for the search, the most common way to do this is by referencing the subjects of the search to a pre-recorded title.

The Legal Report (unregistered) response will detail all relevant common entries within a 40 year Sasine Search period as well as listing the prescriptive progress of title and any outstanding securities within the prescribed period. Any Discharges recorded in the preceding 5 years are also disclosed. The report will confirm if there have been any alienations from the property description supplied as well as confirming if the property is already subject to registration in the Land Register. The Legal Report (unregistered) will also confirm if there any valid Advance Notices which have been recorded.

An Advance Notice is a notice that protects an intended deed (it's worth noting that this protects a deed not a transaction) between two or more parties for a 35 day protected period.

It's normal practice to cover the period between receipt of the Legal Report (Unregistered) and the settlement of a transaction by ordering a continuation of the original search. The continuation report will update the information provided in the original Legal Report to a date usually immediately prior to settlement.

Legal Report (registered) and continuation

A Legal Report (registered) is required when the subjects have been, or are in the process of being, registered in the Land Register. The report covers the relevant details as disclosed on the Title Sheet or Application Record. The report will confirm any variance to the postal address provided as well as current ownership details and any outstanding charges affecting the property. It will also disclose any registered leases or real burdens affecting the property along with details of any miscellaneous burden deeds or alienations registered subsequent to the current proprietorship or as narrated on the Title Sheet as a schedule of removals. When a report relates to the whole of the registered interest, use of the Title Number alone is sufficient to identify the subjects, however, best practice is to supply both a Title Number and full postal address when instructing a Report. The Legal Report (registered) will also confirm if there any valid Advance Notices which have been entered in the Application Record.

As with a Report over unregistered property, it is normal practice to cover the period between receipt of the Legal Report (registered) and the settlement of a transaction with a continuation report, thereby ensuring that nothing has happened to the title in the intervening period. A Legal Report (unregistered) also includes a Personal Search.

Plans reports

On First Registration, the Keeper will expect the subjects being registered to be shown on a plan. Prior to submitting an application for Registration it is essential to confirm that the plan that has been prepared is suitable for registration, to compare the boundaries as described in the title deeds as are indicted on the OS Map and to ensure that there are no conflicts in title with titles which are already registered.

To ensure that these checks are made, two types of plans reports are available.

Basic plans report

These confirm whether a plan is suitable for registration and if there are any competing registered interests. This level of service is fine for most straightforward registered property.

Standard plans report

These also confirm whether a plan is suitable for registration and if there are any competing registered interests and provide an illustrative print showing the extent of any competition. They also disclose relevant information, including servitudes/burdens and other registered interests such as minerals. For all First Registration transactions, it's recommended that a Standard Plans Report is obtained.

Personal searches

A Personal Search is a search in the Personal Register (which is sometimes known as the Diligence Register although it is officially called the Register of Inhibitions (Conveyancing (Scotland) Act 1924 s. 44)) and is a search against an individual (or individuals) involved in a transaction.

Millar & Bryce's Personal Searches include information relating to Inhibitions which may affect a transaction, Sequestration, Trust Deeds for Creditors and other court notices from the Register of Inhibitions. In addition, information from the Register of Insolvencies relating to Sequestration (Bankruptcy) and Protected Trust Deed proceedings are included as standard in a Millar & Bryce search. Full details are clearly stated and any information needed for potential 'follow-up' action is included.

Company searches

When purchasing a property from a company, a Company Search is required. The Company Search will identify any existing mortgages or charges (including Floating Charges, which are charges over part or all of a company's assets that do not attach until the charge crystallises) on a property and report on any adverse entries.

The report will include:

- A Search in the Register of Charges to disclose outstanding entries and any adverse notices relating to liquidation, receivership, administration order, winding up or striking off
- A Search in the Register of Insolvencies for all Scottish Registered Companies
- A Search to disclose the current Registered Office
- A Search to disclose the current officers
- A Final (updated) Search (if requested) is then provided to a specified date

When Company Searches are carried out by Millar & Bryce all the relevant original documents filed at Companies House in relation to the Charges Register are searched and cross checked to ensure that the reports issued are accurate.

Companies House Direct can be used to obtain this information however the results from the online site merely reflect the information contained in the non statutory mortgage register. Experience shows that the results from this register cannot be relied upon alone in a transaction involving a Company.

Property Enquiry Certificate

In addition to the above searches in the Property and Personal Registers there is a Property Enquiry Certificate (PEC). This provides essential information, collected from Local Authority data sources, on the status of a property. The PEC will advise if properties or areas of land are affected by statutory matters that are the responsibility of the Local Authority such as whether any alterations have been carried out to the property and whether the property is ex adverso a publicly adopted road.

There is not set standard for a PEC, it must however comply with the current edition of the UK Finance Mortgage Lenders' Handbook, the content will normally include data from the following statutory registers:

- planning
- building control
- statutory notices
- roads
- water and sewerage
- contaminated land

Searches in the Register of Community Interests in Land

The Register of Community Interests in Land (RCIL) was established on the introduction of the Right to Buy in the Part 2 of the Land Reform (Scotland) Act 2003. If a community body wishes to exercise a right to buy, the interest must be registered in the RCIL.

The register was extended by the Agricultural Holdings (Scotland) Act 2003. This allows people holding an agricultural lease to register notices of interest in purchasing the land that they currently lease. Agricultural tenants can register a notice of interest over agricultural land they lease so that they can buy it if it becomes available for sale. This is only possible if a tenant holds an agricultural tenancy in terms of the Agricultural Holdings (Scotland) Act 1991.

The Community Empowerment (Scotland) Act 2015 extended the Community Right to Buy across Scotland from April 2016.

The extension of the right to all areas in Scotland means that the possibility of a community interest will have to be considered in all property sales and a notice of interest from an agricultural tenant, in rural sales. A search in the RCIL has now become an essential component of most disposal transactions, to check whether the land is affected by an interest, as the sale could activate a community body's (or agricultural tenant's) right of first refusal.

It is not always the case that a landowner will be made aware of the registration of such an interest, and subsequently more firms are requesting a search in the RCIL, as a matter of course, for most property transactions.

Searches in the Register of Applications by Community Bodies to Buy Land

Since 27 June 2018, the Keeper of the Registers of Scotland is obliged to maintain the publicly available Register of Applications by Community Bodies to Buy Land (RoACBBL). The RoACBBL contains details of any application submitted by a community body to purchase abandoned, neglected and detrimental land and also any application made by a community body to buy land for sustainable development.

A purchaser will want the seller to confirm that they are not aware of any interest in the land from a community body and that they have not been asked by any community body to sell the land. A clear search in the RoACBBL will be required at completion.

A RCIL Search from Millar & Bryce will disclose if a property is subject to a community body interest or a notice of interest from an agricultural tenant and also includes a search in the RoACBBL.

Coal mining report

There are many areas of Scotland which have in the past been affected by coal mining. Where a transaction involves property that falls within an area that has previously been affected by coal mining it is essential to request and examine a coal mining report which will provide details of past and future mining activity in the area and highlight any fault or weakness in the surface geology and any subsidence claims in the area.

A coal mining report also provides information on:

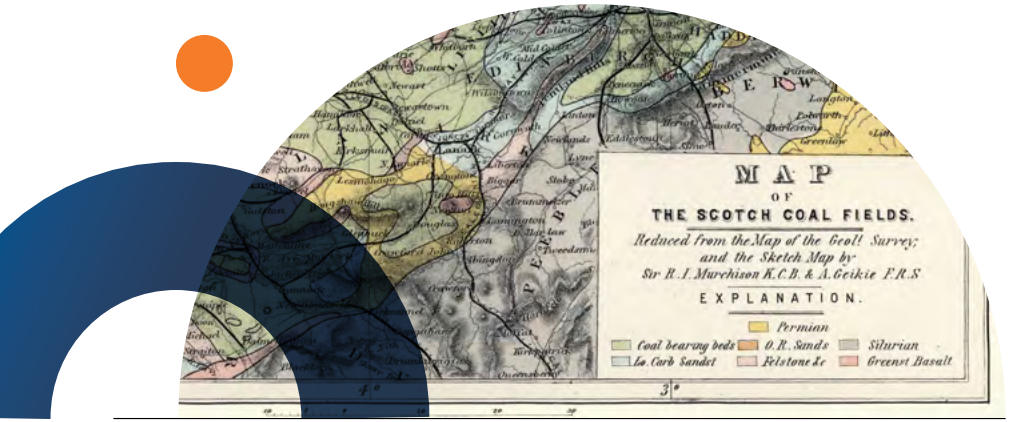
- mine entries within 20 metres of a property's boundaries
- gas emissions from coal mines
- other coal mining hazards reported in the area
- plans for future coal mining in the area

A more detailed ground stability report can also be obtained which includes all the existing coal mining and brine subsidence information, together with information and expert interpretation on natural ground subsidence hazards.

Environmental reports

An environmental report will, based on site history, highlight the risk of contaminated land at the property, as well as providing an indication of other possible environmental risks, including flood, ground stability, radon and energy and infrastructure projects.

A typical environmental report will be easy to interpret with a clear summary front page providing a 'passed' or 'referred' status. Generally they come with a professional opinion and recommendations that can be provided to clients.



Property Registers

Gary Donaldson

The Registers of Scotland

The Registers of Scotland is a Government Agency responsible for looking after certain registers involving interests in land, most notably the Sasine Register and the Land Register. It is headed up by the Keeper of the Registers.

Sasine Register

Created by the Registration Act 1617, the Register of Sasines is a public record of deeds relating to land in Scotland. It was established to provide protection to rights in land by allowing such rights to be publicly recorded. The Sasine Register is slowly being replaced by the Land Register. It is in the intention of the Land Registration etc (Scotland) Act 2012 (the 2012 Act) to close this historic register altogether by increasing the mechanisms for inducing first registration and allowing for voluntary and even Keeper induced registrations.

Although the Sasine Register has been in existence for more than 400 years (it's the oldest property register in the world) it has continued relevance today. The Sasine Register still requires to be searched to support 'First Registration' transactions and also to identify ownership of areas of ground that are not yet registered. It's also becoming more common to require to 'look back' at the Sasine Register to understand why a property has been registered the way it has and potentially resolve registration issues.

The Land Register will ultimately reduce the need for the Sasine Register however, until that time the Sasine Register has a place to be considered in Scottish conveyancing practice.

Land Register

While the Sasine Register is a register of deeds, the Land Register is a map based register, registering title to Land (real rights) rather than simply recording deeds. The Land Register was introduced by the Land Registration (Scotland) Act 1979. Land registration had a phased introduction across Scotland with the first county becoming operational in 1981 and the final county in 2003. Once a county was operational in the Land Register, the main trigger for registration under the 1979 Act, was the transfer of title for monetary consideration. The Sasine Register remained active for recording of deeds that didn't meet the criteria for first registration in the land register.

The current version of the Land Register was introduced by the Land Registration etc. (Scotland) Act 2012 (the 2012 Act), which came fully into force on 8 December 2014.

The result of registration in the Land Register is the production of a Title Sheet which provides a description of the property including any rights, burdens and servitudes, details of the current proprietor, any charges or securities over the property and any burdens or conditions affecting the property.

The title sheet will also include a plan of the property based on an extract from the Ordnance Survey.

Unlike the Sasine Register, the Land Register also comes with a state guarantee, therefore if a person suffers loss which is not their fault, they may be entitled to recover losses according to the terms of the 2012 Act.

The principle changes under the 2012 Act include the following;

Under the 2012 Act, the Keeper doesn't require to see evidence of sufficiency of title, that responsibility now falls to you. It is up the conveyancer to ensure that the seller has both right and title to grant any transfer. You are also required to confirm whether there is any limitation or restriction in your examination of the title, which would not have allowed you to check that the seller had the right and title to grant the deed. You need to confirm that the deed you are applying to have registered is valid and also that you have seen any links in title (if appropriate). In order to prepare the title sheet, the Keeper must also see evidence of any burdens and of servitudes.

The 2012 Act introduced the concept of 'no registration without mapping' and while there are certain circumstances when this doesn't apply, generally you will require to supply a plan conforming to the Keepers Deed Plan Criteria for each first registration. The 2012 Act also introduced the term Cadastral Map which is an international term for a map defining land ownership. One of the main purposes of the Cadastral Map is to ensure that none of the cadastral units overlap as an area of land cannot be included in more than one cadastral unit. This is crucial because if they do overlap then your application for registration will be rejected. So it's key to ensure that that there are no overlaps with an already registered cadastral unit and this is why Plans Reports are so in important in the registration process.

Upon registration the Keeper will warrant that the title sheet is accurate. If the title sheet is inaccurate, warranty is breached and the keeper may be liable to pay compensation to the applicant where the inaccuracy is rectified.

Land Registration

Gary Donaldson

First registration – the cadastral map

As we have already seen in the 'Property Registers' section of this Handbook, in Scotland, practitioners must navigate two distinct property registers: the Sasine Register and the Land Register. The differences between these Registers adds complexity to the conveyancing process, with much of the professional and academic attention focused on the Land Register. A crucial step in any property transaction is determining whether the property is already on the land register. Which Register a property is in can correlate to how complex the title examination will be, the types of legal and plans reports required, the registration process itself, and ultimately the cost to the client. One major benefit of the land register is its map-based system, which clearly displays the legal boundaries of a property. These boundaries are represented on the cadastral map.

The advent of the Land Register is a clear advancement from the Sasine Register, however, it does mean that it is important to accurately define the boundaries on first registration so that it can be plotted on the cadastral map. Registers of Scotland defines the cadastral map as a map of Scotland showing the totality of registered real rights in land. It displays the boundaries of each property title, as well as any mapped rights and specific encumbrances associated with the land.

For unregistered land, you must consider the following factors:

1. Will the Keeper be able to identify and plot the subjects on the cadastral map?
2. If the subjects are capable of plotting, does the legal extent match with what is being occupied on the ground?
3. Would an attempt to plot the subjects have the potential to overlap with an already existing cadastral unit?

The aim is to get a positive answer to questions 1 and 2 and a negative answer to 3.

Identifying property on cadastral map

When registering a property that has not previously been registered, the deed must describe the land in enough detail for the Keeper to locate and map its boundaries on the cadastral map (see s23(1) of the Land Registration etc (Scotland) Act 2012). Many solicitors may not be familiar with interpreting conveyancing descriptions and connecting the details of a deed to the cadastral map, as this often requires expertise similar to that of a geographer or mapping specialist. Nevertheless, solicitors with the support of Millar & Bryce are usually best positioned to identify which deeds are relevant to defining the property's extent, and there are some general signs that can indicate whether there might be difficulties in mapping the property's boundaries.

Unlike the Land Register, the Sasine Register was not based on maps, so the standards for property descriptions in sasine deeds have historically been less rigorous than the map-based requirements of the land register. Additionally, deed plans were sometimes rare, and even when present, they may not provide enough detail to allow the property to be accurately mapped. This raises the question: how can you be sure the property can be properly identified?

There are some general points:

- A description that runs along the lines of "*all and whole the farm and lands of…*" is unlikely to be sufficient to meet the Keeper's requirements. Such descriptions, even if bolstered by an actual extent (i.e. 2400 acres in parishes of x and y etc) will not be capable of being mapped without further information. Quite simply, such a description gives no indication of the position of the boundaries.

- In the above example, even if there was a deed plan that would not likely be of much help, other than as a general guide as to the location of the subjects. This is because old deed plans tend to be limited in size to fit in with the deed. Often they are shown on one or two sheets of the same size of paper as the deed itself. As such, any boundary that is marked will tend to be indicative only for the line showing the boundary on the deed plan will equate to many metres on the ground. It will not provide the certainty the Keeper requires.

- Beware the 'floating shape'. A deed plan that simply plots the property itself without any reference to surrounding land and properties – often referred to as a 'floating shape' – will often be deemed insufficient. The reason being, that the plan does not actually detail where the subjects lie in relation to other properties. Sometimes the text in the conveyancing description will help or it may be that the neighbouring properties are already on the land register making it easier to identify on the cadastral map.

- Beware of bounding descriptions that relate to features that have no modern relevance; i.e. "*bounded on the north by land belonging to Mr and Mrs Smith*" or "*bounded on the south west by a line of stones…*".

- Tenement flats are, on the whole, more straightforward for the description in the deed will generally suffice unless (1) another flat in the tenement has the same description or (2) the transaction you are involved in will be the first time that any flat from the tenement has been registered. If that is the case you will need to provide a plan showing the tenement extent.

Legal and occupied extent

When considering land registration, it's not enough to simply confirm that the Keeper can plot the property on the cadastral map. It's also essential to ensure that the legal description of the property – found in the deeds or plans – matches what is actually occupied on the ground. In other words, does the seller truly own everything that is being sold? There are three main scenarios:

1. **Ideal case:** The legal boundaries of the property align perfectly with what is occupied. To confirm this, it's standard practice to commission a plans report, which compares the legal extent to the features shown on the ordnance survey map (the basis for the cadastral map). No site visit or specialist equipment is needed for this step.

2. **Legal extent exceeds occupied area:** Sometimes, the plans report shows that the legal boundaries are larger than what is occupied. This could be intentional (for example, to allow access for maintenance), or it might be due to errors in the ordnance survey map or misaligned boundary fences. The client may accept the occupied area, but further investigation may be needed, especially if neighbouring properties are registered and include the disputed area. Rectification may be considered if necessary.

3. **Occupied area exceeds legal extent:** If the occupied area is smaller than the legal boundaries, the seller may not have title to all the land being used. The solution depends on the size and significance of the discrepancy and whether the true owner can be identified. Sometimes, the parties may agree to proceed with the transaction, possibly with a price reduction or title insurance. If the issue is more substantial, it may be necessary to identify the owner and arrange a conveyance, or consider using prescriptive claimant provisions if the owner cannot be found.

Cadastral map conflict

Another important mapping issue is identifying whether the area you wish to register overlaps with an existing cadastral unit. If there is such an overlap, the Keeper will reject any application that includes the conflicting land. In these cases, you generally have two options: either revise the plan to exclude the disputed area, or attempt to correct the title of the neighbouring registered property.

The best course of action often depends on who actually occupies the contested land. Sometimes, this is straightforward – for example, if the disputed area lies outside a neighbour's established fence and there is strong evidence that the property you are dealing with has long possessed it. In such cases, it may be clear that the neighbouring title is inaccurate and should be amended to remove the overlap.

However, there are situations – especially in rural areas – where it's not obvious who is in possession, perhaps because there is no physical boundary. Sometimes, both neighbours may claim the same land. In these circumstances, finding a solution can be particularly challenging.

Plans reports

Plans reports have been discussed elsewhere in this manual. They are essential when dealing with unregistered land.

Realignment

The Land Registration etc. (Scotland) Act 2012 focuses on maintaining the accuracy of the land register. Unlike the previous 1979 Act, which gave the Keeper discretion and only limited circumstances to correct errors, the 2012 Act requires the Keeper to fix any manifest errors in a title sheet or the cadastral map (see section 80(2)). There are exceptions, particularly when someone is already in possession of the property (see section 81), but overall, the approach is much stricter than before. Previously, if the register was inaccurate, it was rare for it to be corrected, and those affected usually received compensation rather than having the title restored.

This increased obligation to correct errors can be concerning for those who acquire property rights based on the land register, especially for titles registered after the 2012 Act came into force. If a title can be changed due to a legal defect, is it safe to rely on it unless it has been supported by prescriptive possession? The 2012 Act addresses this concern with the concept of realignment, which, when applicable, aligns the legal rights with what is recorded in the land register, providing greater certainty for property owners.

If you are acting for a purchaser of a land register property, the relevant date to check is when the owner's title was registered. Section 86 explains that if a seller whose title is void dispones a registered plot, the buyer will acquire ownership if:

1. the plot has been possessed openly, peaceably and without judicial interruption for a period of a least a year from date of registration.
2. the keeper was not aware during that year that the register was inaccurate.
3. the purchaser was in good faith.
4. that the disposition would have conferred ownership on the purchaser if the seller had indeed been the legal proprietor when the land was disponed.
5. there was no caveat, qualification or restriction of warranty on the title.

If all the criteria are met the purchaser can acquire a title free from the threat of rectification. This is not to say that it is unsafe to transact with a property where the owner's title is less than a year old. It is simply to note that the benefits of realignment will not extend to the purchaser until the combined period of ownership (seller plus purchaser) reaches the year mark.

Realignment is considered extensively in the 2012 Act; see sections 86 to 95 for realignment in relation to leases, servitudes, encumbrances and compensation.

Off register events

The Land Register is a public record of rights in land, but there can be events outside the register that affect those rights. These off-register events might occur before or after the register is updated. For example, a property owner could become bankrupt or pass away, and such changes may not be apparent from the land register alone. Similarly, some entries in the securities section may refer to creditors that no longer exist, such as building societies that have merged or ceased to operate. Unlike the English and Welsh systems, the Scottish land register does not prioritise keeping all information up to date.

This issue is especially noticeable in the burdens section, which lists title conditions that appear to affect the property. Most title sheets will reveal a lengthy list of deeds and the conditions they contain that potentially affect the property. These only potentially affect because, on closer inspection some of these conditions will have been rendered obsolete through an off register event. Then there may be conditions on which the Lands Tribunal have opined in the context of one title sheet, but which have potential consequences for other titles (e.g. PMP Plus Limited).

It's also important to note that public rights of way are only included in the burdens section if the Keeper is aware of them. If not, they won't be listed, so the absence of a right of way in the register doesn't guarantee the property isn't affected by one. Scotways maintain a list of rights of way which a search can be provided over, however this is not exhaustive.

Similarly, important rights like a servitude of access may not appear on the title if acquired through long-term use (prescriptive possession), and may continue to exist even if not recorded. While it's preferable for such rights to be shown on the register, their absence doesn't mean they don't exist, though confirming their existence can sometimes be challenging.

Under the 1979 Act, there was more room for including non-title information, such as notes about occupancy rights or supporting affidavits, but these are no longer added to title sheets.

Other factors can also affect a property, depending on its type and location. For example, land may be subject to entries in other registers, like the crofting register, or affected by community right to buy legislation. Additionally, there is information relevant to the enjoyment of the property—such as road adoption, water access, planning applications, or statutory notices—that may not be on any public register. This is why property enquiry certificates (PECs) are important, as they gather a wide range of information that won't appear on the Land Register.

Duty of care

To conclude this section, one of the key features that sets the Land Register apart – not only from the sasine register but from all other registers managed by the Keeper – is the duty of care imposed by the 2012 Act. Section 111 requires solicitors and their clients to take reasonable care to ensure that any application or deed submitted does not cause the Keeper to make the register inaccurate. This responsibility applies to both the selling and purchasing solicitors during property transactions and is in addition to the solicitor's professional duty to their client.

According to the Keeper's guidance, a law firm would only be held liable if it failed to meet the standard of reasonable care. If this duty is breached, the Keeper is entitled to compensation.

Furthermore, Section 112 introduces a criminal offence for solicitors and their clients. It is an offence to make a materially false or misleading statement in an application, to be reckless as to whether a statement is false or misleading, or to deliberately or recklessly fail to disclose important information. This is a significant legal obligation.

Remortgage Transactions Triggering Registration

Tom Main

The Land Registration etc (Scotland) Act 2012, brought into force in December 2014, has significantly affected the process of conveyancing in Scotland. The purpose of the Act is to speed up the completion of the Land Register of Scotland ('Land Register'), ultimately resulting in the closure of the previous system, The General Register of Sasines ('Sasines').

Sasines is the world's oldest public property register, established in 1617 and made up of a record of individual title deeds. A Sasines registered property can be made up of hundreds of deeds including securities and discharges.

In contrast, the Land Register is an Ordnance Survey map–based public register of plots of land, established in 1979. When land is registered in the Land Register a Title Sheet is produced. The Title Sheet includes a description and boundary plan of the registered land. A copy may be downloaded online at a small cost. It is quick and easy to access and confirms ownership, the property description, and property burdens to name but a few.

Legal ownership of land is the same regardless of the Register the title is recorded in. Both Registers are maintained by the Keeper, a non-ministerial government department.

The Registers of Scotland (Voluntary Registration, Amendment of Fees etc.) Order (SSI 2015/265) ('the Order') officially closes the Sasines in Scotland to Standard Securities was made by the Scottish Ministers effective as of 1 April 2016. The Order being the means anyone looking to grant a security over title which is still in the Sasines Register will trigger a first registration of that title in the Land Register.

Remortgage transactions

Remortgages can be undertaken for a variety of different reasons, such as; to obtain a better interest rate, to remove a party from the title deeds or to release equity from a property. They can include various other nuances which require Solicitors to carry out additional work such as reviewing title and ordering additional reports.

Up until the 1st of April 2016 a property held in the Sasine Register required 'standard' remortgage conveyancing for a Security. However the closure of the Sasine Register to new Standard Securities changed this for remortgages.

In order to have a new Standard Security registered the entire title has to be moved to the Land Register. A solicitor will now have to undertake a full title check of the Sasine Deeds to ensure the clients had good title and submit these to be registered along with the new Standard Security in the Land Register.

Registration process

The registration process for First Registration remortgages can take one of two avenues dependent on the case circumstances.

If the parties currently hold title to the property and both are remaining on the mortgage then they will both be named on the new Standard Security. This will allow the solicitor to complete a Voluntary Registration of the current deeds and simply submit a new Standard Security. Voluntary Registration allows the owner of a property that is not on the Land Register to apply to register their title at any time. The other potential route would involve drafting a new Disposition possibly with a new plan, depending on the quality of the description contained within the Sasine Deeds, and registering this along with the new Standard Security and the relevant previous deeds. This would only be required where a party is being removed or added to the title.

The registration of both of these applications takes considerably longer than that of a registration in the Land Register ranging from 3 months to 9 months depending on the complexity of the title and Register of Scotland's capacity at the time of submission.

Implications

A concession is that registration in the Register of Sasines will be £60 – payable only on the registration of the Standard Security however the legal costs involved in preparing a title for first registration and outlays will remain.

This has a big impact on Mortgage Lenders who offer 'free legals' or 'reduced rates' with certain remortgage products. The remortgage products usually work on the basis the borrower is not legally represented and the solicitor will act for the lender completing the legal work to (1) redeem and discharge any security currently on the title and (2) register a first ranking security.

If the granting of a standard security induces first registration there will be an obligation on the solicitor to carry out a full examination of title ensuring the property will not contain any exclusion and/or limitation of warranty once registered in the Land Register. This is required to ensure the property is registered correctly with no possible implication for the enforcement of the security.

A Plans Report and possible Deed Plan may be required if the titles are not sufficient. The Plans Report shows the legal extent of the property. It is important to confirm the borrower occupies what they legally own in terms of the deeds. This is necessary, as without, the Keeper will not accept the property for registration.

How does this impact upon Lenders offering remortgages?

A remortgage of a property currently held in the Sasine Register will require additional steps for the solicitor and upon drawdown of the funds the registration of the title shall take far longer due to transfer between registers. The Lender will have to ensure the solicitor acting on their behalf carries out a full title examination to ensure the title is valid, marketable and able to be registered in the Land Register without limitation of Warranty. The solicitor will also have to obtain a Plans Report and potentially a plan if the existing one does not meet the Keeper's requirements.

All of the above are additional steps leading to a delay in completion of the new mortgage which the Lender should take into account but also they must consider who will be covering the costs of this. Many Lenders operate a 'free legals' policy for a standard remortgage however the additional requirements and work would require further outlays and fees to be incurred. Some Lenders have already taken the decision to cover the costs so as not to deter applicants from taking out a new mortgage with them.

The Lenders will also have to consider the additional timescales not only for customers but also with regard to Service Level Agreements they have with solicitors to allow additional time for these to be completed and to ensure any of their employees advising clients can make the clients aware of the additional time required to complete the process.

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Tenement Steadings

Carole Russell

Tenement steadings have been around since the Land Register began with the introduction of the Land Register (Scotland) Act 1979. The introduction of the new act in 2012 has, however, brought the tenement steading into prominence for flatted properties.

A tenement steading is the term we give to a reference (usually a red edge) on the title plan or cadastral unit to denote the extent of a tenement and will extend to include both the tenement building itself as well as all the exclusive and shared pertinents for all of the flats in that building. It was originally created for conveyancing that describes both the flat and its pertinents verbally with no reference to an extent or a plan. A red edge reference for the tenement extent along with a verbal description of the flat and pertinents in the property section of the title sheet referring to these as being 'part of' the tenement edged red was an acceptable way of registering a flatted property.

The difference between the 1979 Act and 2012 Act is that under 1979 Act legislation, if the extent of the flat and its pertinents could all be referenced on the title plan there was no need for a red edge and the flat itself was effectively a cadastral unit. The 2012 Act only allows for one cadastral unit for a single plot of land. Section 16 (1) states that the Keeper may, instead of representing each registered flat in the building as a separate cadastral unit, represent the tenement building and all the registered flats as a single cadastral unit. The Keeper's policy is to always represent the building and all of the registered flats as a single cadastral unit, this is the tenement steading.

How to identify if you need to supply a tenement steading

Prior to registering a flat for the first time it's important to check if an acceptable tenement steading already exists. This check must also establish if any existing tenement steading – if created under 1979 Act legislation – only extents to include the tenement your flat forms part of; it cannot include other tenements.

Next you need to ensure that the extent of the tenement steading includes the pertinents of your flat. A tenement steading can 'grow' as more flats in the tenement are registered. A tenement steading may exist already but only include pertinents the Keeper is already aware of. If your flat includes for example, garden ground that doesn't fall within the existing extent then the Keeper will need to alter /amend the extent of the existing steading extent to include that pertinent. Finally, if no tenement steading exists then a plan must be provided to reflect, as a minimum, the building the flat forms part of and must also extend to include any exclusive or shared areas that your flat enjoys. At this stage there is no requirement to identify the pertinents of any of the other flats, the tenement steading will expand, if necessary, every time another flat is registered.

An expansion of the tenement steading is not, in itself, a rectification because the tenement steading cadastral unit, although considered a cadastral unit, does not have a corresponding title sheet. Instead, each flat within the tenement will have its own title sheet, with this title sheet referring to the tenement steading cadastral unit for extent. The title sheet for each flat will state that the subjects in that title sheet are part of the tenement steading cadastral unit so, as the tenement steading grows or is amended, so long as it doesn't decrease or exclude any areas affecting your title, any amendment to the extent will have no effect to the individual flats already registered.

As the Tenement Steading Cadastral unit is for the plot of ground only, no references for individual flats or pertinents will be reflected on the Cadastral unit, instead, if a plans reference is provided it will be shown on supplementary data to the relevant title sheet. This data will be based on the current Ordnance map so will look similar to a title plan but it's important to recognise that it does not form part of the cadastral map.

Plan v verbal description

Another consideration is whether a plan is required for anything that's referred to verbally in the historic conveyancing. As the plot of ground for the tenement the flat forms part of is the cadastral unit, no references for any of the flats or their pertinents can be reflected on the Cadastral Map this is why verbal descriptions are acceptable.

The Keeper will reject an application if the flat itself is not suitably described. A suitable description is one that uniquely identifies the flat from any other flat in the building. A postal address is not sufficient as this can change. A floor level and a description of where, on that floor, the flat lies is needed, usually a compass direction. e.g. the northmost flat on the first floor. For any pertinents to the flat, the Keeper implements the same rule but, instead of rejecting, if it is felt that a pertinent isn't sufficiently described the Keeper will treat it as pro non scripto and exclude it from the title sheet. For example if the conveyancing includes a phrase such as "*…together with the cellar pertaining thereto…*" and doesn't identify where the cellar is, the Keeper will simply omit this from the title sheet as the description is insufficient on the basis that there will be other cellars for other flats and it's not possible to identify which cellar pertains to the flat. If the conveyancing includes a right in common with the other flats in the tenement to the drying green, this will be included as it is clear there is only one drying green so it can't be confused with any other drying green. It's worth noting that it's often difficult to verbally describe exclusive garden ground in a way that'll be acceptable for registration purposes so, even if all other pertinents are suitable described verbally, its often the case that a plan will be required for exclusive garden ground, if doesn't already exist.

Summary

To summarise, a tenement steading cadastral unit will always be created upon registration if one doesn't already exist, this steading must extend to include, as a minimum, the building and all pertinents pertaining to the flat being registered. Verbal descriptions of the flat and any pertinents are acceptable but the description must be such that it identifies the pertinent uniquely from any other pertinent in the tenement. If the flat description is not suitable, the application will be rejected, if the description of any pertinents are not suitable, the pertinent will be omitted from the title sheet.

Correcting the Register – Data Amendment

Eric Willis

The Data Amendment (DA) process is a mechanism introduced by RoS for the Private Searching community to allow prompt corrections to the Sasine and Land Registers to be undertaken in order to complete reports which have been requested by clients. There are three types of Data Amendment or DA requests available:

- DA1 – Land Register Title Enquiry
- DA2 – Sasine Register Enquiry
- DA3 – Land Register Application Enquiry

A DA is appropriate where a Private Searcher has a live enquiry from a solicitor and uncovers an error or inaccuracy in the Sasine Search Sheet or Land Register title sheet, title plan or application record. RoS will seek to resolve DA requests within 24 hours but will on occasion deem the error or inaccuracy highlighted to require greater evidential requirements and scrutiny and request that a Title Inaccuracy Enquiry is activated.

Correcting the register – Title inaccuracy enquiries

In 2023 the Keeper introduced the Title Inaccuracy Enquiries (TIE) service for professional customers. This service replaced the previous Post Registration enquiry process introduced after the introduction of the 2012 Act. TIE is accessed via RoS eservices and is the process for Private Searchers and/or solicitors submitting Post Registration enquiries where their investigations establish that there is or may be a Manifest Inaccuracy in the register that can only be resolved by Rectification.

TIE enquires can range from the straightforward to the complex and will require supporting statements and documentation to be lodged in support of the TIE. Evidential documentation may take the form of Sasine Search Sheets, Land Register title sheets/title plans, application record details, title deeds, Affidavits, photographic evidence, etc. - basically anything that supports the TIE. If there is an urgency in the TIE being considered, e.g. because of a settlement date, the Keeper will expedite urgent enquiries. Whilst the keeper will look to process TIE requests in a matter of weeks, because of their complex nature, TIE requests can take many months for the Keeper to process.

Correcting the register – Compensation

Section 84 of the land Registration etc. (Scotland) Act 2012 deals with the concept of compensation for certain expenses and losses incurred as a result of Rectification of the Register. There are five distinct heads of claim under which the Keeper will consider compensation:

1. Breach of warranty
2. Rectification
3. Realignment of rights
4. Loss suffered under Section 106 of the 2012 Act
5. Claims as a result of inaccuracies in titles registered under the 1979 Act

Under Section 84(1) – Keeper must pay compensation for:

(a) Reimbursement of reasonable extra-judicial legal expenses incurred by a person in securing rectification of the register

(b) any loss sustained by the person in consequence of the inaccuracy rectified

Dealing with Rectification, specifically, under Section 84(1)(a) a successful compensation claim will generally flow from a successful TIE submission where the Keeper establishes that the Register is deficient and requires Rectification. Under Section 84(1)(b) any compensation claim can follow notification of a successful Rectification application against the client's title.

Correcting the register – Compensation claims

Compensation payments are not automatic on completion of a successful TIE or Rectification ruling against a title, but require the solicitor to compile their extra-judicial legal expenses and submit a claim to the Keeper, the following information was taken from the Registers of Scotland website:

Making a claim

Claims for compensation should be directed to:

The Compensation Manager
Legal Services
Meadowbank House
153 London Road
Edinburgh
EH7 8AU

Correcting the register – Unsuccessful compensation claims

There is no equivalent in the 2012 Act to section 13(1) of the Land Registration (Scotland) Act 1979 which allowed a person to seek reimbursement from the Keeper of any expenditure reasonably and properly incurred in pursuing a claim whether successful or not. In their report on Land Registration, the Scottish Law Commission was of the opinion that the Keeper should not be liable for the payment of expenses to those who make unsuccessful claims. Given this, careful consideration of the time and costs involved in preparing a TIE before presenting a TIE to the Keeper are required.

Compliance

Mitigating the risk of money laundering in conveyancing transactions

Gemma Turnbull, Head of Anti-Money Laundering, The Law Society of Scotland

Backdrop

Criminals will attempt to disguise the origins of illicit funds to reduce the risk of prosecution and enable what they believe to be 'safer access' to the proceeds of their crimes.

The latest estimate from HM Treasury, taken from the 2025 National Risk Assessment, indicates that over £100 billion is laundered within or through the UK annually.

This staggering figure underscores the scale of criminality and reinforces the need for robust preventative measures.

Conveyancing transactions to launder money

Criminals favour conveyancing transactions to launder money given the key advantages attributable to the buying and selling of property. These include, but are by no means limited to:

- the legitimisation of large sums in a single transaction
- the preservation and growth of wealth - property values typically appreciate, unlike other laundering methods that often erode funds
- the generation of additional income through rental and other uses of the property

Within its 2025 National Risk Assessment, HM Treasury classified conveyancing as one of the key legal services most at risk of misuse and exploitation from those looking to launder the proceeds of crime. It concluded the conveyancing process was at high risk of money laundering, with no significant change in vulnerabilities since its last risk assessment in 2020.

The role of the legal profession

Conveyancing transactions offer criminals a powerful mechanism to disguise illicit funds. Given their role facilitating the transactions, legal professionals and estate agents sit at the frontline of defence.

Legal professionals carry defined responsibilities under UK law to prevent money laundering – principally within the Proceeds of Crime Act 2002 (POCA) and, when undertaking specified work such as conveyancing, the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLRs).

POCA requires law firms, like all individuals and businesses, to take active steps to prevent, detect, and report money laundering. Although POCA does not prescribe structural measures such as appointing a Money Laundering Reporting Officer (MLRO), it defines three key offences that apply to all individuals, including regulated professionals:

- **Section 327:** Concealing, disguising, converting, transferring, or removing criminal property
- **Section 328:** Entering into or facilitating arrangements that enable someone to acquire, retain, use, or control criminal property
- **Section 329:** Acquiring, using, or possessing criminal property

POCA also criminalises failures to report suspicious activity to the National Crime Agency (NCA) and prohibits 'tipping off,' which is the action of informing individuals that they are the subject of a suspicious activity report and potentially prejudicing an ongoing investigation.

Under the MLRs 2017, legal firms must implement a range of measures to prevent money laundering through their services. These include:

- appointing a nominated officer, commonly known as a Money Laundering Reporting Officer (MLRO) to oversee anti-money laundering (AML) compliance and report concerns / suspicions to the authorities
- assessing and documenting the firm's exposure to money laundering risks via an overarching risk assessment of the practice
- establishing and maintaining AML policies / procedures and risk mitigating controls
- providing targeted AML training to relevant staff and having a robust record keeping system in place
- conducting risk assessments and applying due diligence to clients and transactions

A risk-based approach

There is no absolute duty placed on legal professionals to guarantee that money laundering is not taking place. Instead, legal professionals are expected to take reasonable steps to prevent money laundering.

Customer due diligence is a fundamental preventative measure that enables legal professionals to:

- verify the client's identity using reliable, independent sources
- where applicable, identify and verify the beneficial owners of legal entities or complex structures, including those with ultimate control
- clarify the purpose and nature of the business relationship or transaction from the outset
- establish the underlying source of funds and source of wealth, particularly in high-risk scenarios, to ensure transparency and legitimacy

There is no one-size-fits-all approach when it comes to undertaking client due diligence. Instead, the extent of the information and supporting documentation required is determined on the sliding scale of a risk-based approach – as the risk increases so too does the level of due diligence required.

The MLRs 2017, specifically regulations 28(12) and 28(13), mandate that legal professionals must actively assess the risks associated with each client and matter. Client risk assessments are mandatory at the outset of the client relationship and are used to establish the respective risks associated with the client. For example, is the client a politically exposed person or does the company operate in an industry known to be high risk for money laundering, such as Money Service Businesses?

Legal professionals are also obliged to complete and record a holistic matter risk assessment as early as possible. This should focus on the unique risk factors presented by the matter itself (e.g. geographic risk), which differ from or go beyond those identified in the client risk assessment.

The core aim of both assessments is to determine the appropriate level of customer due diligence required for the transaction.

Customer due diligence is much more than a regulatory requirement under the MLRs 2017 – it is a practical defence against criminal exploitation. By asking the right questions and verifying key details, legal professionals can spot red flags early and take appropriate action.

Indicative warning signs

The vast majority of individuals and businesses are law abiding and have legitimate needs that require the input of a legal professional. Despite this, legal professionals must stay alert to red flags that signal potential money laundering.

These warning signs in isolation (whether subtle or overt) are not definitive proof of money laundering. However, they should never be ignored and, as the number of red flags grows, so should the risk attributable to the transaction.

Examples of red flags within the conveyancing transaction include:

- **questionable sources of funds:** funds paid from unusual sources should raise concern - such as large sums of cash with no supporting documentation, funds originating from undisclosed or unidentified 3rd parties or higher risk jurisdictions
- **inconsistent or evasive behaviour:** if a buyer frequently changes key details, delays signing documents, or avoids answering questions, it may suggest an effort to deflect scrutiny and should prompt closer examination
- **use of third parties:** criminals often distance themselves from property purchases by instructing a nominee to act on their behalf. This tactic helps them avoid appearing in official records
- **suspicious pricing:** a sale price that's significantly above or below market value without a clear explanation is a point to question. Overpaying can help launder larger sums, while under-pricing may allow illicit funds to change hands off the books

Reporting suspicions

All legal firms and persons are subject to the money laundering offences under the POCA irrespective of the services they offer. However, the POCA imposes supplementary obligations specifically on organisations falling under the MLRs.

A 'regulated entity' is defined by the MLRs as any business or individual operating in sectors considered to be at higher risk of money laundering or terrorist financing. This includes financial institutions (banks, building societies, credit unions), accountants and auditors, tax advisers and legal professionals (such as solicitors).

Entities that are considered regulated under the MLRs have additional obligations beyond those required by the POCA.

These include appointing a nominated officer, who is responsible for receiving internal disclosures and determining whether a Suspicious Activity Report (SAR) should be disclosed to the UK Financial Intelligence Unit, a specialist division of the National Crime Agency.

The effective reporting of SARs by regulated entities is of paramount importance and is central to the effectiveness of the AML system.

Conclusion

Legal professionals occupy a critical position in the fight against money laundering within the conveyancing process. Their duty extends beyond regulatory compliance, it demands vigilance, sound judgment, and a commitment to ethical practice.

By applying robust customer due diligence, assessing risk at both client and matter level, and escalating concerns appropriately, legal professionals help safeguard the integrity of the property market and uphold public trust in the legal profession.

Ultimately, preventing money laundering is not about achieving certainty, but about taking reasonable, informed steps to identify and mitigate risk. When legal professionals engage thoughtfully and consistently with their AML obligations, they not only protect their firms and clients, but they also contribute to a wider culture of transparency and accountability across the sector.

Cyber Survival – From Crisis to Resilience: How One Law Firm Survived a Devastating Cyber Attack and What You Can Learn

Nicholas Scullion

In February 2024, our firm faced a crisis that no business ever wants to experience: a full-scale ransomware attack.

Within hours, our systems were encrypted, our data was held hostage, and we were thrust into a high stakes battle to protect our firm, our, our people, and our future.

This is the story of what happened, how we responded, and most importantly, what you can learn from our experience.

The first signs of trouble

It began subtly, one Thursday afternoon, our systems started to slow down. Just a little…

Thinking it maybe a system update, we flagged it to our IT support. They couldn't see anything and the next day, things seemed better.

So, we headed into the weekend blissfully unaware of the storm brewing beneath the surface.

On Monday morning, things felt back to normal, so we were shocked to receive a call from the police. They told us that they had intelligence suggesting our network had been compromised. The information was vague, and we thought it was a hoax call.

But it wasn't a hoax. It was the police. Although they couldn't tell us what had happened, where their information was coming from, or what to look for, they were deadly serious.

We were left in the dark, scared and confused.

We immediately contacted our IT support. They checked our systems, ran tests, pushed updates, changed passwords and told us that we were good.

We finished for the night feeling reassured and grateful. Tuesday passed without incident and we thought that we had avoided the attack. But we were wrong.

The ransom note

By early Wednesday morning, the full extent of the attack became clear.

Our systems were encrypted. A ransom note appeared referencing a known ransomware group – the Black Bastas…

The group threatened to release sensitive data on the dark web. They threatened to contact our clients directly, to let them know that they had their data and telling them to sue us for negligence. They signed off with a countdown timer creating a very real sense of urgency… We had one week.

They told us that our reputation would be destroyed, and that even if we recovered our data, our clients would lose all confidence, and we'd be finished.

They warned that if we contacted the police or authorities, bad things would happen.

They sent screenshots of stolen data to prove they were serious, and the psychological pressure was immense. What should we do?

We decided to work with the police, who then confirmed that they had suspected the group's involvement from the beginning. These criminals use a similar attack patten every time, we could read it online...

Had we known it was the Black Basta's on the Monday, we could have taken additional steps to protect our data — a frustratingly awful realisation. By Wednesday it was too late…

Initial response: Contain and communicate

In our firm, our priority is our people. Our people are our firm. They and their families depend on us. Without them, we have little to offer our clients, and we can't fulfil our firm's purpose – to change lives and make a difference.

By this point, our teams were starting work, realising that they could not access our systems. So, we had to find ways to keep them calm and enable them to continue doing great work while we figured things out.

They were working without any phones, IT systems or idea of what was happening. Luckily, they still had their mobile phones and email. We immediately implemented our containment strategy.

We told them that there was a system issue which we were working on. We didn't want to scare them until we knew more.

By Wednesday afternoon, out IT support had confirmed our worst fears... Everything was gone. We knew that we would not be getting our systems or data soon, so we prioritised reassuring our staff, communicating clearly, and asking them to be creative. We empowered them to find fast solutions which would allow them to work around the issue until we found a longer-term solution. We stuck to facts and positive news.

The show must go on! We kept our internal and external message simple: our systems were down, they would be down for a long time, and we'd work through it together.

Behind the scenes, we activated our Incident Response Plan (IRP) which had previously been created by Shanna, our Director of Operations and Performance. The plan had clear steps for each team member and included notifying the Information Commissioner's Office (ICO) and that we were following best practice.

My job was to liaise with the Law Society of Scotland (LSS) who were frustratingly unhelpful.

I desperately wanted to speak to someone who had been in a similar situation to learn what to do. The Law Society told me that although they knew that other firms had suffered cyber-attacks, they could not tell me their names or even contact them and ask them to call me. They had no practical advice, and it seemed that they didn't care if we survived or went bust. Their concern seemed to be limited to protecting client money.

It would have been helpful had I been able to speak to someone else who had been in my position – and survived!

I made a promise then and there that when this was over, I would share our experience to help others.

The first 28 days

The first month was a rollercoaster. We worked closely with the Cyber and Fraud Centre, Scotland who were supportive, informative and reassuring. They provided us with practical advice, useful contacts and most importantly, hope. We worked closely with them and the organisations they recommended to us.

Sadly, it quickly became apparent that our existing IT supplier was not going to be able to help us and we had to let them go. Miraculously, despite being told it was near impossible, Consider IT – based in Leith, recovered our data. We were given brilliant support by LawWare who provided us with a new version of their case management system which meant that within one month, we could be back up and running.

Our team did a remarkable job of designing and building a temporary system which we used to great success while the new systems were built. Happily, very few clients were impacted.

Clear communication was key - every day we had a morning and evening team call where we shared and solved problems together as a team. Every little achievement was celebrated, and we encouraged each other when times were tough. RBS, our bank was also very supportive and slowly, our confidence grew.

We had to deal with complications when details of our attack were published on the dark web, and then we were thrown off all mortgage lender panels and from the secure email systems which we use for court. The ICO were particularly unforgiving in their questioning and at times made us feel like the attack had been our fault.

The press also got involved and asked very challenging questions. There was a clear conflict between wanting to be open and retaining the trust and confidence of suppliers and clients.

But over time, our confidence grew, and we took pride from the fact that we were building build back better. The hardest part was when we had to personally contact all the people whose personal details had been shared on the dark web. I will never forget their responses.

Cybercrime can be a deeply personal crime and its impact on both the people in the affected organisation and those whose data has been compromised should never be underestimated.

Happily, around two months from the date of the attack, we knew that we had done enough to survive, and from that point, our focus was om how we could use our experience to help other victims of cyber-attacks.

Who let us down

Unfortunately, not everyone rose to the occasion:

- The Law Society of Scotland first offered little in the way of practical support or resources when we contacted them. Happily, they have since improved, now offering much more help and support and we have shared our story at their CPD
- Our previous IT provider reacted with panic, including suggesting we send our storage drives to a data recovery firm they found via online reviews
- The ICO applied pressure without offering support, focusing on regulatory compliance at the expense of business survival
- One mortgage lender disclosed the attack to their client, causing unnecessary panic to their client when we had things under control
- A Scottish government agency removed us from their communication systems after they read about our attack. This was weeks after the attack by which time we were back up and running, causing a lot of unnecessary problems
- Some law firms, encouraging people to sue us for data breach, when we are the victims of crime

The positives: Resilience and reinvention

Despite the chaos, there were silver linings:

- **Team spirit** – Our management team used group chats to stay connected, unified and make decisions quickly
- **Rapid innovation** – We implemented a new CRM system in a single day and transitioned to a better IT infrastructure
- **Business continuity** – Our operations continued, and our clients kept moving
- **Cultural shift** – We now have a stronger, more security-conscious culture. The experience has created stronger bonds between us
- **Helping others** – We're using our experience to support other firms and advocate for better industry-wide preparedness and actions

What we would do differently

While we had an Incident Response Plan, we had entrusted a lot of the deployment to our IT provider - and that proved to be a critical vulnerability. In hindsight, we would have:

- Ensured our IT provider had a robust, tested Incident Response Plan of their own
- Taken additional off-site backups
- Immediately changed all passwords, including those used by third-party providers
- Restricted upload speeds to slow down data exfiltration
- Deleted and encrypted more of our own data so that it could not be accessed by cyber criminals

Lessons for other organisations

1. **Have a tested IRP** – Don't just write it. Test it. Practice it. Make sure everyone knows their role.
2. **Vet your IT provider** – Ensure they have their own IRP and can act decisively in a crisis.
3. **Backups are not enough** – Test your recovery process regularly.
4. **Communicate clearly** – Internally and externally. Reassure your team and clients, being careful to keep focus on the positive and the facts.
5. **Seek help early** – Contact cyber support organisations immediately.
6. **Learn from survivors** – Speak to others who've been through it. Their insights are more valuable than any policy document.
7. **Push for legal reform** – Victims of cybercrime should not be treated as negligent. We need better legal protections and fewer punitive responses

Final thoughts

We survived a ransomware attack not because we were perfectly prepared, but because we acted quickly, communicated clearly, and had the right people around us. The experience was harrowing, but it made us stronger, more united, and more resilient. If our story helps even one organisation avoid the same fate - or recover more quickly - then sharing it will have been worth it.

As part of my promise to share our experience, we created a cyber survival service, which we offer to others affected by cyber-attacks… it's something that I really wish had been available to us when we were during the attack. *https://scullionlaw.com/cyber-survival-service/*

Ownership

Liferents

Helen Burns and Hazel Clark

Introduction

Liferent is a longstanding concept in Scottish law and continues to hold significance for professionals working in conveyancing. For newly qualified solicitors and law students beginning their careers, a solid grasp of liferents is essential – not only for drafting and interpreting legal documents accurately, but also for offering clear, practical guidance to clients. This article seeks to clarify the concept of liferent by examining its definition, identification, various forms, and practical implications, while also considering its role in modern legal practice and potential alternatives

What is a liferent?

Definition and legal context

A liferent is a real right in Scots law which allows a person (the 'liferenter') to use and enjoy property – most commonly land or a house – for the duration of their life. Importantly, the liferenter does not own the property outright; instead, ownership is vested in another individual, known as the Proprietor or Fiar. The Proprietor's rights are subject to the liferent and become enforceable in full only upon the liferenter's death or the termination of the liferent.

Historical background

Liferents have long been a feature of the Scottish legal landscape, arising from feudal traditions where land was the primary source of wealth and security. Historically, liferents provided a means for landowners to ensure the welfare of family members, such as widows or children, after their death, while still controlling the ultimate destination of the property. Despite its archaic roots, the liferent remains a robust and flexible tool for estate planning and asset management.

Creation of a liferent

Liferents are expressly created by deed, will, or contract. The terms of a liferent can be tailored to the wishes of the parties, specifying the property, the duration (usually for life but sometimes for a fixed period), and any conditions or restrictions.

Forms and examples

- **Liferent of heritable property:** The right to use and enjoy land or buildings, such as a house or farm, for life
- **Liferent of moveables:** Less common, but possible—this involves the right to use moveable property (e.g. investments, furniture) for life

Each type of liferent is governed by the terms of its creation and the underlying principles of Scots property law.

A proper and improper liferent?

Liferents can fall into one of two categories, a proper liferent, and an improper liferent

- **Proper liferent:** The liferenter is directly vested with an interest in the property and the liferent is registered against the subjects
- **Improper or trust liferent:** The property is held by trustees, who manage the trust property on behalf of the liferenter and allow them to use the subjects or otherwise pay an income to them from the trust property. This is distinct from a proper liferent as the improper liferent is not registrable

How would a liferent be identified?

Title sheets and the Land Register

In practice, the existence of a liferent, or more specifically a proper liferent, is most commonly identified through the examination of the property's title sheet in the Land Register. The title sheet records all real rights, burdens, and restrictions affecting the property. Before the 2012 Act came into force it was Registers of Scotland policy to show any current liferents within the 'Proprietorship section', however since the designated day (being the 8th December 2014), these are now being disclosed within the D section.

For properties not yet registered in the Land Register, the Sasine Register may be consulted. Here, liferents will be documented in the minute of a disposition or other deeds constituting the title.

Legal reports

Legal reports, are routinely obtained during conveyancing transactions to reveal any subsisting rights, including liferents. These reports will highlight the existence of a liferent within the prescriptive progress, detail its terms, and indicate the parties involved. This is crucial for both buyers and lenders, as a property subject to a liferent cannot be freely occupied or dealt with by the Proprietor until the liferent ends either by death of the liferenter or by express discharge.

Practical examples

For instance, if a client inherits a house but there is a liferent interest to the deceased's spouse, the title sheet will reflect the spouse's right to live in and use the property for life, with the client's unencumbered ownership deferred until that right terminates. Similarly, a legal report prepared before a sale will alert the solicitor to investigate the terms and implications of any active liferents affecting the property.

How does a liferent differ from a right to occupy a property?

Key legal differences

While a liferent and a right to occupy may appear similar – both allow an individual to live in or use property – they are fundamentally distinct in law and practice.

- **Nature of the right:** A liferent is a real right, meaning it is enforceable against the world and binds third parties. In contrast, a right to occupy is typically a personal right, enforceable only between the parties to the agreement and not against successors in title

- **Registration:** Liferents are usually registered or recorded against the title, as the Land and Sasine Registers are public registers this gives public notice of their existence. Personal rights to occupy do not generally appear on the Register and may be harder to detect although there would be a duty upon a proprietor to disclose the existence of a licence to occupy when transacting with their Property.

- **Scope and security:** A liferent gives broader powers, including the right to possess, use, and (in some cases) draw income from the property. A right to occupy is usually limited to residence and may be subject to more restrictions.

Practical implications

Most commonly, a liferenter may be able to let out the property and collect rent (unless the right to derive rental income is explicitly prohibited in the deed creating the liferent), whereas a holder of only a right to occupy cannot do so unless the agreement provides otherwise. For conveyancers, understanding this distinction is essential to advising clients about their rights and obligations. A licence to occupy can be a contractual agreement serving the parties for a limited period, a liferent by distinction is usually intended to be effective for the duration of the liferenter's life and would not be a suitable legal instrument for an agreement that is only temporary.

How are liferents terminated?

Legal mechanisms

Liferents are not perpetual and will eventually come to an end, usually in one of the following ways:

1. **Death of the liferenter:** The most common method of termination; the right ceases automatically on the liferenter's death, and full unencumbered ownership vests in the Proprietor.

2. **Renunciation:** The liferenter may voluntarily give up their right, usually by executing a formal deed of renunciation, which is then registered.

3. **Expiry of a fixed term:** If the liferent was created for a specific period rather than life, it ends when that period expires.

4. **Merger:** If the liferenter acquires the property (for example, by inheriting it), the liferent and Proprietor interest merge, and the liferent is extinguished.

5. **Destruction of the subject:** If the property ceases to exist (e.g. is destroyed beyond repair), the liferent terminates.

Voluntary and involuntary termination

Termination can be voluntary, as in the case of renunciation, or involuntary, as with death or destruction of the property. In all cases, the termination must be properly documented and, where applicable, registered to ensure clarity and certainty for all parties.

Case study

Consider the scenario where a liferenter decides to relocate and agrees with the Proprietor to renounce their liferent. The solicitor would prepare a deed of renunciation, have it executed, and submit it for registration. Alternatively, if the property is sold during the liferenter's lifetime (with their consent), the proceeds are typically divided according to the respective interests of the liferenter and Proprietor.

Are liferents still relevant and used today, or are there alternatives?

Current practice

Liferents remain a relevant and frequently used tool in Scottish estate planning, particularly for ensuring the financial security and housing needs of spouses, partners, or vulnerable relatives. They are also encountered in charitable trusts and in managing succession where direct transfer of property ownership is not desirable or appropriate.

Statutory changes and trends

Recent statutory reforms, such as introduction of new succession rules, have not diminished the utility of liferents. However, the trend towards simpler and more flexible arrangements has prompted some clients to opt for alternatives, depending on their needs and circumstances.

Alternatives to liferents

- **Right of occupation:** As discussed, this is a personal right and may be suitable where registration is not required and occupation of the property is only required temporarily.

- **Trusts:** Property may be held in trust for beneficiaries, with terms tailored to provide occupation, income, or other benefits for specified periods.

- **Joint ownership:** Creating joint ownership with a survivorship destination can provide security for a surviving spouse, allowing property to pass automatically to the survivor on death.

Each alternative has its advantages and disadvantages, and the choice will depend on factors such as asset type, family circumstances, tax, and the client's wishes.

Conclusion

For newly qualified solicitors and students, a thorough understanding of liferents is indispensable. Liferents provide a flexible means of balancing competing interests in property, safeguarding the needs of liferenters while preserving the interest of the Proprietor. Identifying and interpreting liferents on title sheets and legal reports is a core skill in conveyancing practice. While alternatives exist, the liferent's unique combination of security, flexibility, and legal certainty ensures its continuing relevance in modern Scottish law.

In advising clients, practitioners should always consider the suitability of a liferent in light of the client's goals and the practical implications for all parties involved. Clear communication, careful drafting, and diligent investigation of title remain the hallmarks of good conveyancing practice.

Boundaries

Carole Russell

There isn't a legal definition for the term boundary, but it's generally considered that a boundary is something that separates one area from another. In most cases this will mean the feature on the ground that separates one property from another but, for registration it's the legal boundary that's being reflected.

Physical boundaries

These are the features on the ground that separate one plot of ground from another. This is what will be seen when a potential purchaser views a property and carries with it an expectation that this is what's being purchased. But is this what's contained in the legal titles, do the granters have title to sell what's on the ground?

Legal boundaries

The legal boundaries are what is specified in the description in the disposition of the property, and which is then submitted for registration. The legal boundary is what will be reflected on the Cadastral Map.

The boundaries in the conveyancing often contain much more information than the Ordnance Map can allow for. The description can refer to specific ownership of part of the feature shown, for example a description that the legal boundary is only to the centre line of the feature. This information used to be included in the title sheet for a property under the older, now superseded, Land Registration (Scotland) Act 1979 legislation, but is no longer a requirement under the current 2012 Act.

The description can refer to a plan that's significantly more detailed than the Ordnance Map can depict. In these instances, some of the detail or information on the deed plan may not be reflected on the cadastral unit that's produced. There is further information on this in the section below.

The information on the plan or description is not necessarily lost as the deed(s) used to register the property will form part of the archive record held by the Keeper of the Land Register, with the archive register now designated as forming part of the Land Register as per section 2 of the 2012 Act.

The Ordnance Map

The Cadastral Map is based on the Ordnance Map and, more specifically, the OS MasterMap™ produced at specific large scales of mapping. This map is used as a base or underlying layer of the cadastral map as it's currently the best map that covers the whole of Scotland at the large and consistent scales the map allows for. It allows us to see all registered titles in Scotland and make a bit more sense of where the legal title sits in relation to its surrounding neighbours.

There are 3 scales of mapping used on this product and the scale being used is important when reconciling the legal boundaries onto the Ordnance Map.

The scales used are as follows:

- 1:1250 – Used for cities and large towns
- 1:2500 – small villages and towns and outlying rural areas
- 1:10,000 – mountain and moorland areas

When a legal title is being reconciled with the Ordnance Map the tolerances and specifications permissable for the survey scale of the map will be taken into account. Furthermore, it is important to remember that it's the overlying Cadastral Map that reflects the legal boundaries of a property; these do not have to agree or follow the features depicted on the Ordnance Map.

The Ordnance Map reflects all features by a single solid or broken black line. This line is always the same width on the map so a 1-metre-wide hedge is shown by the same black line as a wire fence. The purpose of the Ordnance Map is to depict the features on the ground. The map is produced to concise specifications and can only be drawn to a particular accuracy. For example, a 'jut' in a boundary of 0.2m will typically not be reflected on the Ordnance Map at any scale even though it exists on the ground. Indeed, depending on the scale the map was drawn at, the jut can be larger and will still not be shown. Similarly, boundaries that are typically less than 0.3m in height won't be reflected on the Ordnance Map so, for a lot of residential properties there's little or no boundaries shown at the front of houses even if a demarcation exists on site.

How to check if your plan or description is suitable

In all cases a plan report is advisable. The Keeper must be able to reconcile the boundaries in a deed to the Ordnance Map.

It's very difficult to do this without carrying out a comparison between the two within the constraints of both legal/registration knowledge and understanding of the Ordnance Map. A plans report will be prepared by an experienced officer who can use their knowledge and experience to provide the information you need.

There are two types of report available:

1. Basic report
2. Standard report

Both reports will report on the suitability of the plan or description and, if it is suitable, whether there are any conflicts with existing registered extents. Both of these are reasons for the Keeper to reject an application and any issues identified must be resolved prior to submission for registration and most likely prior to any transaction taking place.

The standard report goes further and is the preferred option for most transactions. The Standard report will also report on how the legal boundaries compare with the boundaries on the Ordnance Map. It will identify and provide information on whether the legal title is greater or less that the extent shown on the Map i.e. does it agree with the occupied extent as suggested on the map. Generally, this will identify whether the legal title includes more than the property occupies or less, but care must be taken to consider what the legal boundaries and the boundaries on the map are representing before considering this as a potential issue.

The Keeper, under the old 1979 Act, could restrict or exclude indemnity for any areas of ground being registered that she wasn't satisfied was being occupied as part of the property. However, with the 2012 Act, the Keeper will rely on the applicant to have taken due diligence to ensure that what's being submitted for registration reflects the legal title regardless of occupation. As a result, she will always register the legal title regardless of occupation.

What to do when the plans report identifies an issue

As mentioned earlier, when a plans report identifies that the plan or description isn't suitable, submitting it for registration will result in rejection. Similarly, if a report identifies a conflict with a registered title, if this isn't resolved then, again, the application will be rejected. This includes conflicts with shared areas as well as exclusive ownership.

A plan or description needs to be able to allow the boundaries to be reconciled with the Ordnance Map. This means that the deed should include measurements, if it's a verbal description or the plan should be to an acceptable scale if the deed refers to a plan.

If this isn't the case, then a new deed plan is required. Preparation of a new plan will use the limited information in the deed to assist in establishing extent. This will include consideration of any description of boundaries, including the consideration of some legal presumptions.

The most common of these are natural water boundaries and road boundaries. A Natural water boundary. e.g. bounded on the south by the river XXX is termed as a 'tied' boundary. It moves with shifting of the river or sea over time. As such, the boundary can be in a different position from where it was when the deed was first drafted. The position of the river today is the legal boundary. If the description doesn't state where on the river the boundary is, the presumption is generally the centre line of the river.

The other common boundary is roads. If the verbal description refers to being bounded by a road then consideration needs to be given to whether the verge is included and whether there's a presumption that title should extend to the centre line of that road. Much of that consideration will be based on whether the road is public or private and whether it's adopted by the local Authority. Unlike natural water boundaries, the position of the road at the time of conveyancing is the legal boundary. If the road or verge has moved, this will be a man made event and the legal boundary will remain at the position it was when the conveyancing was first created.

Rights

Servitude Rights

Frances Rooney

Introduction

There is a presumption at common law that landowners are free to use their own property as they wish, and that it is unencumbered by third party rights. In reality, that is rarely the case. Planning requirements, health and safety, nuisance laws, occupiers' liability and environmental controls all place obligations on landowners. These obligations apply to all land, but any one piece of land can also have specific conditions attached to it. These are usually found within the title deeds, and are known as title conditions.

Title conditions can be very useful for allowing one owner to use a neighbour's property, for example to take access over a road owned by the neighbour, or to restrict the neighbour from doing something which, as owner, he would otherwise be allowed to do.

A lot of the law surrounding title conditions has been codified by the Title Conditions (Scotland) Act 2003 (the '2003 Act'), but much still rests on common law. This is a complex area of law but one which is critical to any dealing with property.

Having adequate servitudes in place to allow your client to do what they need to do with their property is crucial, because without access and rights to electricity cables etc, their land could be drastically devalued and in the worst case scenario, effectively useless.

Types

Until the 2003 Act came into force on 28 November 2004 (the 'Appointed Day'), there were two categories of servitudes – positive and negative.

Positive servitudes

Positive servitudes allow the owner of one property (Property A) to use another property (Property B) for the benefit of Property A. Until the 2003 Act came into force, there was a list of generally recognised types of positive servitude, including for instance a right of access, a right to lead pipes or cables, and a right to take water.

The list was never really 'closed' as such, but the 2003 Act has put the matter beyond doubt by specifically saying that new types can be recognised in the future. Thus a servitude right to park, which had previously been a matter of debate, is now accepted as a valid type of positive servitude.

Even so, there are grey areas for rights which have not yet been tried before a Court, and not every type of use can be a valid servitude. For example a right to occupy land would have to be constituted in some other way, because it probably goes too far into taking full control of the land away from the owner. Servitudes may constrain the owner in some way, for example by forcing them to allow access over their land, but do not remove their possession of the land as such.

Negative servitudes

Negative servitudes allow the owner of Property A to prevent the owner of Property B from using Property B in a specific way. There are only three types of negative servitude: a right to prevent building (either wholly or above a certain height); a right to prevent obstruction of light or a valuable view; and a right to prevent overlooking windows (largely for privacy reasons).

From the Appointed Day, no new negative servitudes can be created (except as real burdens). All existing negative servitudes were converted to real burdens on the Appointed Day, but only for ten years. As of 28 November 2014, they only survived if preserved by notice before then, or if they were already registered against the burdened property before the Appointed Day.

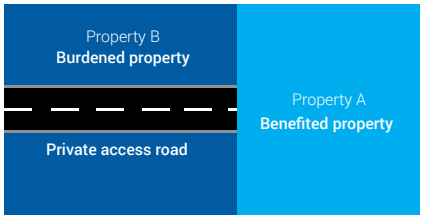
The rest of this section will focus solely on positive servitudes, since they are of the most continuing importance in practice.

Benefited and burdened properties

It has always been critical to servitudes that there is a benefited property and a burdened property. This has not changed by virtue of the 2003 Act.

The property that can use the right is the 'benefited property', and the property over which it can be exercised is the 'burdened property'.

So, if Property A is accessed via a road which is on Property B, then Property A is the benefited property and Property B is the burdened property.



As it is property itself which is benefited and burdened, and not anyone personally, the rights will continue regardless of who happens to own the land at any particular time. So, if X grants a servitude to Y and then sells his land on to Z, the purchaser Z takes the land subject to the right of Y. Equally if Y sells his land, his successor is able to exercise the right.

Creation

Servitudes can be created in a few ways.

Created by written deed

Written servitudes are usually created either in a Disposition (as part of a sale of land) or in a separate Deed of Servitude. If written, the deed will include a plan showing the exact route or area over which the servitude can be used, and usually various conditions regulating its use.

The 2003 Act has also imposed a new requirement for creation of a written servitude, in that it must now be registered against both the benefited and the burdened property in the Land Register and/or Sasine Register as appropriate. This is known as 'dual registration'. This is to ensure that all owners are aware of their respective rights and obligations. There is an exception to this rule for certain pipelines, but in practice very few servitudes escape the requirement because the deeds creating them will usually also have real burdens, which always require dual registration.

Created by prescription

Unwritten rights can also be obtained by prescriptive use. This means that there has been over 20 years' continuous, open, peaceable use of the right without challenge or judicial interruption. In other words, the burdened property owner has allowed it to happen.

Although unwritten rights are just as valid and binding as written ones, in practice they can cause more issues when selling land on, because a purchaser will want evidence that the rights have in fact been created. A prudent purchaser will ask the seller to provide sworn affidavits to detail what use has been made of the burdened property and for how long.

The Land Registration etc (Scotland) Act 2012 provides new opportunities for noting such unwritten rights on the Register. The Keeper will allow applicants registering their land for the first time to confirm that an unwritten servitude benefits the land, and to show that on the cadastral map. Solicitors will however still require at least affidavit evidence before any such confirmation can be made.

After a title has been registered in the Land Register, unwritten servitudes can still be added later but it can potentially be more difficult. This is because it would involve rectification of the Land Register, for which the Keeper must be satisfied as to the legal basis for the claim that the Register is inaccurate if the servitude is excluded.

Of course if there is less than 20 years' use, or if the seller has only owned the property for a few years, an affidavit will be of limited use. In that case, it's becoming not uncommon to obtain insurance to cover the risk of a challenge to the right by providing a financial fallback.

Created by operation of law

Servitudes can also be created by operation of the common law or statute.

Under the common law, the grant of a servitude can imply that another one is also created. In one landmark case, a servitude right of access was granted to a property at the top of a steep hill. It was found that the access right included a right to park. This case turned on the circumstances, because there was nowhere else to park, so the access right would have been meaningless without a related right to park. However it is a good example of the law implying an ancillary right. Another example might be where a right to maintain a pipeline is granted; in order to maintain it, access must necessarily be taken over the land above it and so that may well be implied by law if the deed is silent.

Servitudes can also be created by implication where a property owner sells part of his land. Even without saying so in the deed, that sale can create servitudes over the retained land for existing access routes, pipes, cables and so on.

The test is whether the right claimed is necessary for the comfortable enjoyment of the land sold.

In some limited scenarios, legislation can also allow certain authorities, such as electricity companies, to compulsorily acquire servitude rights where necessary.

Conditions

Burdened owners will usually want to impose conditions on the use of any servitude right they grant. For example if they allow their neighbour to install a pipeline, they may want to regulate how the works will be carried out, and who will be responsible for maintenance going forward.

In addition to any written conditions, the common law implies some conditions to all servitudes unless the written title conditions say otherwise. First, the right can only be used in a reasonable way so as to cause the minimum disturbance or inconvenience to the burdened property as possible.

Secondly, the benefited property owner cannot later increase the burden to the burdened property. So if an access right is granted for the use of a single dwellinghouse, a development of flats on the benefited property would probably cause a lot more traffic. This might not be allowed, though it is always to some extent fact and circumstances dependant as to what would be an unacceptable increase.

Thirdly, if the deed is silent the benefited property owner is allowed to maintain the servitude route to the extent necessary to allow the servitude to be exercised.

There is no responsibility on the burdened property owner to do any maintenance unless the parties vary the common law position by agreement. In practice the parties usually set out the maintenance responsibility, and rights, and related costs, when a new servitude is entered into.

Variation and termination

Rights can be varied or terminated by agreement, as long as all of the relevant benefited and burdened owners document their agreement. This would then be dual registered in the normal way.

However the 2003 Act also allows either owner to ask the Lands Tribunal to vary or discharge a servitude. The Tribunal will take various factors into account, ultimately with a view to balancing the interests of the parties. Their decision will always turn on the facts and circumstances.

Servitudes can also be lost by negative prescription, that is, over 20 years' non use of the right. Abandonment and/or acquiescence can also occur in a shorter timeframe, if it is evident that the benefited property owner essentially intended to give up their right. For instance, if a burdened property owner builds a wall across an access route, and the benefited property owner allows that to happen, it may well be taken as agreement that their servitude of access over that route has been lost.

Registering a Prescriptive Servitude

Gary Donaldson

Introduction

As we have seen in other articles in this publication, servitudes play an essential role in Scottish property law, providing legal rights for one property owner to make specific use of another's land. These rights, akin to what is known as easements in other jurisdictions, are fundamental in facilitating access, provision of utilities, and other necessary activities that support the enjoyment and utility of land. The focus of this article is on prescriptive servitudes, those acquired through long-term use rather than express grant and offers an overview of the process for registering a prescriptive servitude in the Land Register, detailing the essential requirements, practical steps, and the broader implications for practitioners and property owners alike.

What is a prescriptive servitude?

A prescriptive servitude is a real right that arises over time due to continuous and open use of another's land, without the need for a formal written agreement. Prescriptive servitudes most commonly relate to rights of access. For example, if an owner of a landlocked property has openly used a track over a neighbour's land to reach a public road for a sufficient period, a servitude right of access may be established by prescription.

The significance of registering a prescriptive servitude lies in their ability to formalise long-standing arrangements, thereby providing certainty and enforceability for both dominant and servient proprietors.

Legal framework

The acquisition and registration of prescriptive servitudes in Scotland are governed by a statutory framework. The principal statutes are the Prescription and Limitation (Scotland) Act 1973 and the Land Registration etc. (Scotland) Act 2012.

- **Prescription and Limitation (Scotland) Act 1973:** This Act establishes the principle of positive prescription, whereby certain real rights, including servitudes, can be acquired through possession and use over a specified period (typically 20 years).
- **Land Registration etc. (Scotland) Act 2012:** This Act modernised land registration and introduced new ways to record unwritten rights in the Register. When property is being registered for the first time, the Keeper permits applicants to indicate that a prescriptive servitude benefits the property and to display this on the cadastral map. However, solicitors will still need to satisfy themselves that a servitude has been established by prescription and provide appropriate detail to allow the servitude to be included in a title sheet.

Requirements for prescription

To establish a prescriptive servitude under Scottish law, several key criteria must be satisfied:

1. **Open use:** The use must be open and not concealed. There must be no attempt to hide the use from the servient proprietor.
2. **Peaceable Use:** The use must be exercised without force or violence. Any ongoing disputes or use under threat would undermine the claim.
3. **Uninterrupted Use:** The use must be continuous and without substantial interruption for the prescriptive period, which is generally 20 years.
4. **Acquiescence:** The servient proprietor must have acquiesced in the use, either expressly or by implication, by not objecting or taking steps to prevent it.

Importantly, the prescriptive period must be fully completed before the right is considered vested. Any interruption or material dispute during the period may reset the clock or invalidate the claim.

The registration process

Once a prescriptive servitude has been established, its registration in the Land Register is highly advisable to ensure legal certainty and facilitate future conveyancing. The following steps outline the process for including a prescriptive servitude as part of a first registration for a transfer of title.

1. **Evidence gathering:** Collect all relevant evidence demonstrating the use of the servitude over the prescriptive period. This may include affidavits from witnesses, historical maps, photographs, and correspondence. Detailed records of use and any interactions with the servient proprietor are invaluable. This evidence is essential to satisfy yourself that a servitude has been established by prescription, however it is unlikely that you will need to supply this evidence to support your registration.
2. **Mapping and plans:** Prepare precise deed plans showing the route and extent of the servitude. These plans must meet the technical deed plan criteria of the Registers of Scotland, including scale, clarity, and delineation of boundaries.
3. **Application preparation:** Complete the relevant application forms ensuring that appropriate plans are attached.
4. **Submission to Registers of Scotland:** Lodge the application with Registers of Scotland, together with the prescribed fee. The application should clearly state that the servitude has been acquired by prescription and provide enough information for the servitude to be identified sufficiently to be included in the title sheet.
5. **Examination and objections:** The Keeper of the Registers will examine the application and may seek further information or clarification. If the servient proprietor objects, the application may be suspended pending resolution of the dispute.
6. **Registration and notification:** Upon acceptance, the servitude will be registered against both the dominant and servient titles in the Land Register, and a notification will be sent to the interested parties.

Specific advice from Registers of Scotland includes:

"Where an applicant wishes the existence of a servitude right that has been created by prescription to be disclosed on the Land Register the particulars of the servitude right must be set out in the 'Further Information' field of the application form. Where the servitude right created by prescription will require a reference on the cadastral map, such as a servitude right of way, the application must include a plan that shows the extent of the servitude. The plan must be of a sufficient standard to allow the Registers to delineate the extent of the servitude on the cadastral map. The plan should be annexed to the form that accompanies the application for registration.

When applying for a prescriptive servitude to be included in the title as part of an application to register a transfer of the land there is no requirement for additional evidence, such as an affidavit or court decree to be exhibited with the application. The Keeper relies on the certification of the solicitor who signs the application form that the servitude has been properly constituted. The applicant and their solicitors have a duty to ensure that the Keeper does not inadvertently make the Land Register inaccurate as a result of an application in terms of LRE(S)A 2012, s 111. The solicitor submitting the application form will need to be satisfied that the servitude right has been made unchallengeable under the terms of the PL(S)A 1973. This will normally include obtaining affidavit evidence that the right has been exercised openly, peaceably and without judicial interruption for 20 years."

Once a title has undergone first registration into the Land Register, it remains possible to add prescriptive servitudes at a later stage. However, this process may prove more challenging, as it requires rectification of the Land Register. Registers of Scotland must be convinced that the Register is inaccurate if the servitude has not been included.

If an owner wishes to have a prescriptive servitude recorded in a registered title, independently of a property transfer, an application for rectification of the Land Register must be submitted. To meet the requirement of demonstrating a manifest inaccuracy, the applicant must provide clear evidence that the servitude right exists without question. This will necessitate producing a declaratory decree from the court as proof of the servitude right's existence.

Practical considerations

Gathering robust evidence is often the most challenging aspect of confirming a prescriptive servitude. Witness statements from individuals who have observed the use of the servitude over the years are particularly persuasive. Where appropriate, contemporary documents such as invoices, maintenance records, or historic photographs should be collated.

Mapping is also a crucial consideration. The plan must accurately reflect the physical reality on the ground and comply with the technical specifications set by the Registers of Scotland. Millar & Bryce have significant experience of this and can assist with the deed plan preparation.

Common challenges and solutions

Conveyancers frequently encounter challenges when seeking to register prescriptive servitudes, including:

- **Disputed use:** If the servient proprietor contests the existence or extent of the servitude, documentary evidence and witness statements become crucial. In some cases, mediation or litigation may be necessary to resolve the dispute
- **Insufficient evidence:** Where documentary evidence is lacking, corroborative witness statements and expert reports (such as from surveyors) can bolster the confirmation of existence
- **Interruptions in use:** Any significant interruption may invalidate the prescriptive period. Detailed timelines and explanations should be collated to clarify any gaps
- **Ambiguous boundaries:** Vague or poorly defined plans can stall registration. Engaging Millar & Bryce to prepare compliant plans is advisable

Proactive record-keeping, early engagement with affected parties, and thorough preparation can help overcome these hurdles.

Implications for property owners

The registration of a prescriptive servitude has significant implications for both dominant and servient proprietors. For the dominant proprietor, registration confers legal certainty, making the right enforceable against successors and facilitating property transactions. For the servient proprietor, registration clarifies the existence and extent of the burden, reducing the risk of future disputes.

It is important for property owners to understand their rights and obligations. The dominant proprietor must exercise the servitude reasonably and not extend its use beyond what has been prescribed. The servient proprietor, while subject to the burden, retains ownership and general use of the land, subject only to the terms of the servitude.

Registration also impacts future conveyancing. A registered servitude will appear in the title sheet, alerting prospective purchasers and lenders to the existence of the right. This transparency can streamline transactions but may also affect property value or development potential.

Conclusion

The process of registering a prescriptive servitude in the Scottish Land Register can be complex but beneficial. A clear understanding of the legal framework, rigorous evidence gathering, and meticulous preparation of plans and documentation are essential for success. Practitioners should be mindful of common challenges and seek to address them proactively. Ultimately, registration provides certainty and clarity for all parties, underpinning the integrity and functionality of property law. Best practice dictates early engagement, thorough investigation, and professional advice to ensure a smooth and effective registration process.

Occupancy Rights

Frances Rooney

Scots property law recognises one primary real right (ownership) and a few types of subordinate real rights (including leases, securities, title conditions and liferents). In most cases, the only way in which someone can obtain a property right is through grant from the owner, whether that grant is express or implied.

This means that under the common law alone, there can be a problem for spouses with no legal interest in the family home. It may well be that a house is owned by only one spouse (the 'entitled spouse'). The other spouse (the 'non-entitled spouse') in such a scenario has no right to the property at all under the common law. So, in the event of separation, the non-entitled spouse could essentially be homeless, no matter how long the couple have lived together.

For obvious reasons, it was decided that this legal position was untenable from a public policy point of view, and the Matrimonial Homes (Family Protection) (Scotland) Act 1981 was brought into force to ensure that the non-entitled spouse has occupancy rights over the matrimonial home. The basic premise is that these rights will not be trumped by a sale or other 'dealing' with the property: in other words, a purchaser takes the property subject to the existing occupancy rights. The statutory rights have since been extended to civil partners and their 'family homes' through the Civil Partnership Act 2004. For the sake of brevity, only spouses will be mentioned below but it should be remembered that the rights extend to civil partners, too. It is also worth noting that although this section focuses on owners, the provisions also apply to leases where the entitled spouse's right in the house is that of a tenant.

Basic requirements

The statutory rights will only apply where all of the following four requirements are met:

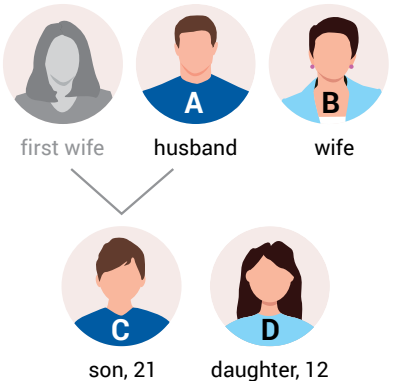
1. **The property is residential.** The legislation covers houses, caravans, houseboats and other structures used as a family residence (this extends to gardens and other ancillary ground and buildings). So if part of a garden is being sold separately to the house, the Act will apply.
2. **There is a married couple (or civil partners) involved.** This obviously means that if the property is owned by a company, the statutory rights will not apply. As an aside, there is some limited protection for cohabitants who are not married or civil partners: the Court can grant up to 6 months' occupancy at a time as long as the couple is deemed to be a 'cohabiting couple', taking the circumstances into account. Their rights are not automatic though.
3. **The home is for the use of the couple as a couple.** A house only to be used by one spouse is not a matrimonial home. There is no requirement that the home is the sole or main residence of the spouses, though; and a couple can have more than one matrimonial home.

4. **The property is owned by one spouse, and not by both.** If it is owned by both, the common law rules surrounding common (or, more rarely, joint) ownership will apply. Since each would be an owner, there is no need for statute to apply, because as owners they each have rights to use the property anyway.

Meet the family

For the purpose of this section, it is useful to imagine a fictitious family. Let's assume that Mr A and Mrs B are married.

A has a grown up son from his first marriage (C). Unfortunately B and C do not see eye to eye, so C does not live with the couple. A and B also have a young daughter, D.



When they married, A was already living in a house in Glasgow which he owned. The house was perfect for the new family so B simply moved in with him.

The couple were fortunate in their careers, and decided to buy a second home in the Highlands (they enjoyed rural life and liked to get away at the weekends). A and B purchased the house together, and the title was put into both of their names.

After a few more years, B was offered a promotion at work. It involved working part of the week in Aberdeen, so B purchased a 'crash pad' flat in Aberdeen, so that she did not have to travel back to Glasgow every time she worked late. A did not like Aberdeen so never visited.

Sadly in spite of their financial prosperity, the couple were less successful in their marriage. After an argument, B stormed out of the Glasgow house. That was a year ago, and she has been living ever since in her Aberdeen flat.

To take the example of the family mentioned above, the Glasgow house fits the requirements for a family home since it is the house where both spouses lived together after they were married. This means that B has statutory occupancy rights.

The Highlands house is not a matrimonial home, because it is owned by both A and B together. The general rules of common property apply, but the matrimonial homes legislation does provide for two specific protections. First, the statute restricts the normally absolute right of either owner to demand a division and sale of the property. Instead, because spouses are involved, the Court has discretion to refuse the action. Second, if one of the spouses sells their share to a third party, then that third party is not permitted to occupy the house without the remaining spouse's consent. As such, both A and B can continue to use the house and either can sell on their pro indiviso share in it, but they may not be able to demand that the whole property is sold and the proceeds split.

Even if A sells his share to a third party, the fact that the third party will not be able to occupy without B's consent effectively renders A's share as unmarketable, since very few purchasers will want to pay full value for a share in a property that they cannot use and cannot charge the occupier (B) for. The same applies if A wants to sell her share. Thus in practice, both spouses would be best advised to agree amicably what to do with the Highlands house.

The Aberdeen flat is not a matrimonial home either, because it was only for B's use. This is the case regardless of whether the couple's child, D, used the property along with her mother. The fact that it was never intended for use by A, nor actually used by him, means that he cannot claim it as a matrimonial home. B will be able to continue to use it free from any occupancy claim.

Therefore, the only property which qualifies as a matrimonial home is the Glasgow house.

The non-entitled spouse's rights

Having established that there is a matrimonial home, the next step is to consider what rights there are for the non-entitled spouse, and how long they last.

The nature of the rights

The non-entitled spouse's rights do not fall neatly within the common law concept of real rights, because they are not enforceable against the entire world. They are not purely personal rights either, because they are enforceable against certain third parties (for example, purchasers). They are a statutory creation and sit somewhere in between a personal and real right. They benefit only the non-entitled spouse and, by extension, the children of the family.

The rights cannot be assigned to a third party, as contractual rights can; nor can they be sold or otherwise transferred away like true real rights.

The statutory rights arise automatically by virtue of the marriage, and generally last until the end of the marriage – in other words, until one of the spouses dies or they are divorced. Of course, the non-entitled spouse can always surrender the rights before then, and there are protections for good faith purchasers, which are explained further below. The only other way in which the rights can end is where the couple have not been cohabiting together for a continuous two year period, and during that two years the non-entitled spouse has not occupied the matrimonial home. So, even although B has only been living in her Aberdeen flat for a year, she still has rights to occupy the Glasgow house because the two year period has not passed.

As the statutory rights are automatic, there is no need for any deed to be granted or registered in favour of the non-entitled spouse. For conveyancers, this means that it will not necessarily be evident from a title examination as to whether there are any such subsisting rights.

Until 8 December 2014, registrations in the Land Register required the applicant to confirm to the Keeper either that the property was not a matrimonial home, or that the appropriate documentation (see below) displacing the right had been acquired. The Keeper did not need to see the documentation, as she relied on the applicant's confirmation. The Keeper then included a note on the Land Certificate confirming that there are no subsisting occupancy rights under the legislation.

Her indemnity did cover that note, so if she included it wrongly (and it was her fault) then there could be a claim for compensation under the state guarantee of Land Registered titles. However the occupancy rights were unaffected regardless of a mistake in the Land Register, because they were categorised as 'overriding interests'. This means that even if they were not mentioned in the Land Register, they were still enforceable.

Under the Land Registration etc (Scotland) Act 2012, the position as to registration has changed for new registrations. The Keeper will no longer include any such note on a title sheet. The 2012 Act does not refer to overriding interests any more, because the emphasis of the Land Register has changed, but the effect of the rights will ultimately be the same as before (see Land Registration etc. (Scotland) Act 2012 section). Even though the Keeper does not ask anything about matrimonial homes any more, solicitors of course still need to check the legal position.

The Court can regulate the spouses' statutory rights by, for example, restricting them or even issuing an exclusion order to prevent one spouse from occupying the home. Various circumstances will be taken into account in the Court's determination.

The primary right

The main right under the legislation is a right for the non-entitled spouse to occupy the property along with any child of the family. So, B can occupy the Glasgow home and C, the couple's daughter, can live with her (assuming there are no family law issues as to custody).

The ancillary rights

Although occupancy is an important right, it alone would only be of limited benefit. On a practical level, living in a house inevitably involves being able to carry out certain actions on a day to day basis, and again the common law does not provide for spouses to do that.

For example, if B exercises her right to occupy the Glasgow house and the roof then starts leaking, under the common law she would have no right to fix it since she is neither a tenant nor holder of any other real right in the property. The legislation therefore allows her to exercise certain other rights, as ancillary to the main occupancy right. Broadly speaking, the ancillary rights are as follows:

- rights to pay rent and other outgoings and to perform any of the entitled spouse's obligations in relation to the property (excluding non-essential repairs or improvements)
- rights to enforce obligations on another party, and to take steps to protect the occupancy right
- right to carry out essential repairs - non-essential repairs and improvements can be carried out only with Court approval, which will depend on whether they are appropriate for the reasonable enjoyment of the occupancy rights

In effect, it is as though the non-entitled spouse is stepping into the shoes of the entitled spouse when these ancillary rights are exercised.

Each right is therefore only permitted if the entitled spouse already had the right. Suppose for instance that B wants to enforce an obligation on a neighbour to carry out some repair to a mutual driveway. If A's title to the house specifies that A is solely liable for that driveway, A could not demand that the neighbour do so. Similarly nor could B, because she can have no greater right than A already had.

What is a dealing?

Crucially, the rights subsist notwithstanding any 'dealing' in the property, such as a sale to a third party, unless the non-entitled spouse renounces her right or consents to the dealing. Even then, the occupancy rights do not invalidate the dealing; rather, the purchaser takes the property subject to the occupancy of the non-entitled spouse.

Colloquially, the word 'dealing' is generally considered to be fairly wide and so would include all transfers of ownership and grants of subordinate real rights (such as leases, liferents, securities and servitudes). However the legislation itself does not fully settle whether that is in fact the case, for the purpose of these statutory occupancy rights.

It is clear that the legislation does cover grants of standard securities and creation of trusts. It is fairly evident that transfers for value are also included, but it is more of a grey area as to whether gratuitous or undervalue transfers are caught – for example, a gift to a son. Nor has it been judicially decided whether leases, real burdens and servitudes are 'dealings' for this purpose.

Having said that, it is not uncommon for legislation to leave gaps in interpretation and it would be a brave conveyancer who would assume that there can be no statutory occupancy rights for these situations.

Indeed, it would be surprising if a Court decided that the grant of a lease (especially a long lease, which can be all but tantamount to ownership for decades at a time) does not constitute a dealing. Equally it would be illogical for some transfers of ownership to be subject to the occupancy rights but not others, based solely on the value of the transfer. For if that were the case, an entitled spouse could easily get around the occupancy right. Suppose that A wants to subvert B's occupancy right in the Glasgow house. All A would have to do is gift the property away – perhaps to his son C, or to a company set up with A as the director – and B would have no occupancy rights. That presumably cannot be correct, as it would entirely defeat the public policy purpose behind the legislation.

As such, the safest course of action is to assume that any grant or transfer of a real right in the property could potentially be a 'dealing' and therefore subject to any existing matrimonial home rights.

Protecting good faith purchasers

Naturally, the legislation had to take account of the commercial reality in that purchasers would never buy properties with such rights attaching, without some way to bring the rights to an end. Thus the legislation provides that the statutory occupancy rights can be defeated if the grantee is in good faith and one of the three documents has been obtained: a consent, a renunciation, or a statutory declaration. We will briefly look at each of these in turn.

Consent

If there is a non-entitled spouse, it is important to obtain their consent to the dealing. There is statutory style wording for such consent. It is preferable to include the consent in the deed itself instead of as a separate document. This is because, since the deed will be registered, it will be public and obvious to future parties dealing with the property and will not be in danger of being misplaced (as a letter of consent could be).

Although the non-entitled spouse's consent is to the specific dealing, it also protects all parties deriving right from that grantee. To make sense of this, consider the hierarchy of real rights. Ownership is the primary real right. All other real rights (leases, securities and so on) are secondary and subordinate to ownership. Secondary real rights can only be granted by an owner, with the sole exception of standard securities, which can also be granted by a tenant over their interest in a long lease.

Imagine that A wishes to sell the Glasgow house to F, and B agrees to consent to that dealing. If F as new owner then grants a standard security to G, B's consent will also cover that. Equally if F sells to H, the consent protects H as well. This is because both G and H's rights derive from F's right.

However it is different if A is not selling, but only granting a standard security over the Glasgow house to a lender. B's consent to that dealing will protect the lender. However if A then sells the house, the purchaser would require another consent from B to that specific dealing. The reason being, the purchaser's right is not derivative of the lender's right, so the purchaser would not be protected by B's consent to the security.

Renunciation (surrender)

An alternative to consent is a full surrender of the non-entitled spouse's rights. A surrender would cover not just the dealing envisaged, but all future dealings too. It has to be signed before a Notary Public and, for registration purposes, a witness as well. It is less common in practice to obtain a full surrender than a consent to the specific dealing though it is normal to obtain a renunciation in the case of couples entering into a formal separation agreement where property is being divided between them and they wish to deal with these particular issues for once and for all.

Statutory declaration

If the property is only owned by one party but according to the seller, there is no non-entitled spouse (for example, if the seller says he is not married), it can be tempting to simply assume that no further action is needed. However that would be dangerous, because the seller may not be telling the truth, or may not even realise that an estranged spouse still has rights. As such, if dealing with a residential property owned by one natural person (as opposed to a company or other entity), it is important that there be written confirmation that the property is not in fact a matrimonial home to which a non-entitled spouse has occupancy rights. Again, there is statutory wording and again, it is best to include it in the deed itself.

This confirmation acts not just as comfort for the grantee: if the grantee is in good faith and the statutory wording for the declaration is used, then even if it turns out that there was a non-entitled spouse, their occupancy rights are defeated.

Conclusion

Nowadays, most couples purchase their family home together and title is put into both parties' names. There will always be situations where houses are owned by one person though, and in such cases solicitors need to obtain a consent, renunciation or (if it is believed that there is no spouse) a statutory declaration in order to protect their client.

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Conveyancing

From Lecture Halls to Law Firms: Navigating the Transition to Becoming a Trainee

Scott Brymer

You have finished your law degree, were lucky to have secured a training contract with a law firm in Scotland and have completed your Diploma in Professional Legal Practice – now what?

Before we look ahead to your first steps into the legal profession, how did the Diploma seek to ready you for entry into employment as a trainee solicitor? It sits as a mandatory phase of training that you must complete in order to become a solicitor. In principle, it provides a bridge between the legal theory from your degree to the skills, ethics and knowledge required for practice. You will have had access to a range of tutors, a lot of whom are in private practice and are able to provide real world examples from their own experiences.

The Diploma seeks to leave you with some key competencies and foundations in advocacy, ethics, client care and drafting. However, there is no substitute for the real thing and leaving behind the lecture halls, casual dress and hours of free time – replacing that with a full time, formal working environment.

The first day and beyond

What should you expect as a First-Year Trainee? Depending on the type and size of Firm that you have joined, you will likely have been able to give some input to which seats you would like to be in for the next two years as you rotate around the firm every 6 months. While the degree and diploma have hopefully given you some insight into what will suit you, these 6-month seats will really serve to help you work out what area you would like to specialise in. A worthwhile caveat of course, is that a specialism is not necessarily for life.

While hindsight is 20/20, one thing that should be obvious without the benefit of hindsight is the value and importance of the support staff that surrounds you in the departments that you work in. The quicker you can develop a good rapport and relationship with the secretaries, paralegals and other support staff, the easier that you will navigate yourself through your traineeship. In many cases, they will have been in the departments for years and know the processes and procedures inside and out. Part of the learning you do in a traineeship is understanding how to build relationships and this starts with your colleagues.

If you go in with the assumption that you do not know more than the next person, you will be in a better position to learn.

It is perfectly fine to be confident and assured in your position, but balance that with humility. The adage of treating others how you would like to be treated applies internally and externally as a solicitor. You will also quickly discover that the Scottish legal community is a small one. There is little value in burning bridges one day in a transaction when you might need that person's help in the future.

What to do – day to day

While the transition from paper to paperless has been extremely valuable and worthwhile, there was something incredibly useful about being able to just open a file, turn to the 'File Opening Form' and get a bit of a feel to the nature and scope of the transaction. Admittedly, this is probably harder to do in a digital file but, if the person who has given you a task has not had the time to set the background, take the time to do this.

It is difficult to overstate the advantages that can be gained from taking a bit of time to review a file or to ask a question about the matter you are working on. Good lawyers understand the link between what they are working on, what it means to the client and the value of what they are doing. This is one of these soft skills that have to be honed during your traineeship and beyond in your career.

Work closely with those around and who are responsible for you. You need to build and nurture your professional relationships with your colleagues so that you can all rely on one another. It might sound silly but also engage with your fellow trainees or other junior staff. If you have a question you don't want to ask your trainee manager, they will likely have already thought of it. In the end of the day, it is reasonable to say that the only stupid question is one not asked.

The final point is an important one – own up to and do not hide your mistakes. This will likely be reinforced by your colleagues and managers right through your traineeship but it is essential in practice. In most cases, mistakes can be fixed given time and awareness of the problem. However, a file that is hidden away or an email that is ignored is much more difficult to fix. It might result in some short term pain or embarrassment but that is better than the alternative.

Connecting what you do to the client and instruction

As a trainee, it can be challenging to relate the time that you spend working on matters for clients with the actual property or task. Add on top the pressures of time recording and it is easy to get lost in the 'doing' of the task or to simply take an instruction from a partner, action it and miss out the why. Why am I being asked to do this? Why does it need to be done? Why does it matter to the client?

In property transactions, solicitors are more of a purchase out of necessity because the aim is to get title to a property and be able use the property how they want to. Even the simplest deal on paper can have wrinkles that appear out of nowhere and solicitors are there to help the client navigate any issues and assess any risks that might arise.

Therefore, take the time to research the property that is being bought, sold or leased. Search for pictures, review the property listing or Google Maps of the property. Look at the Title Sheet and ScotLIS and familiarise yourself with the property, its location and the boundaries.

It is so important to not only connect the what you are doing to the why you are doing it, but also to who you are doing it for. Unfortunately, there will be times in your traineeship where you will not be able to have as much direct exposure to clients as either you or the Firm would like. Client contact, relationship building and establishing the connection to the work that you are doing is a cornerstone of what you will do in your career. Ensure that you take any opportunity to sit in on these meetings to observe how to work with, manage and build relationships with clients.

Managing workloads

Time management differs greatly person to person. It is a skill which will improve and evolve with you as a solicitor and managing your workloads is important for a variety of reasons:

1. It gives the partners or associates working with you the confidence to trust you with tasks.
2. It will make things less stressful for you by knowing that you have cleared your desk and inbox daily/weekly.
3. It helps you to understand the value that you can add to a matter/deal.
4. It makes you feel like you are adding more value and contributing to the matters that you are working on.

Working with other firms and Millar & Bryce

A lot of what has been written before regarding working with your colleagues and clients applies just as equally to other solicitors and professional service companies.

Before instructing a company like Millar & Bryce, ask yourself why you are being asked to do something. That helps both you and the Millar & Bryce staff member that you are engaging.

Let's take the instruction of a Legal Report as a short case study:

- A partner might ask you to carry out searches over a property in order to satisfy a requirement under the missives or contract. This would include a Legal Report.
- The partner might send you a copy of the concluded Missives and a short email of instruction but not much else.
- The easy answer is to look only at the content of the email, the address of the property and the required searches and nothing else.
- If you do that, you might miss details that the Millar & Bryce team will need. This will prompt an extra exchange of emails or a discussion between you and the Millar & Bryce team.
- Go that step further, have a quick read of the Missives, confirm to yourself what is contractually required and then instruct your reports.
- Use MB Online as a checklist of the details that are required in order to instruct a search from Millar & Bryce.

Summary and some practical tips

Shifting from University life to a traineeship is quite a change and one that will come with its rewards and challenges. The advantage of working with other solicitors is that they have all gone through the same so can relate to you.

Whether you choose to continue in a career in residential, rural or commercial conveyancing, the skills that you will learn in that seat can carry you a long way in other disciplines. It requires a lot of attention to detail and care in what you do.

Final useful tips:

- Build close relationships with support staff and Millar & Bryce.
- Develop strong communication and organisational skills.
- Embrace continuous learning and ask questions.
- Build relationships within the firm and the wider profession.
- Manage stress and maintain well-being.
- Don't hide or ignore mistakes.
- If in doubt, ask. Don't be afraid to ask for help.

The Modern Day Dread of Sasine Titles

Amir M Ismail

I can remember the first day I was given a set of Sasine Titles in my traineeship. I was 3 months into my first ever full-time job, and the smell and dust from the box alone would have sent many of a less determined mindset back home!

Having tutored at Glasgow University for over a decade now, I have yet to find a student or a trainee that goes looking for Sasine titles to challenge themselves. I live in hope! Having put several dozen of the more challenging Sasine titles into the Land Register for first registration, some of which have been declined / turned away by many far more experienced solicitors along the way, I would like to think I am well placed to try and de-mystify and, to some degree, eradicate, the well-known fear of Sasine titles amongst the future generations of commercial and residential conveyancers.

I think a good starting point would be to summarise the differences between the Sasine Register and the Land Register. The Sasine Register is a register of deeds, and it is left for each solicitor to verify the validity, competency, and effect of the deed that is duly recorded. Positive prescription has a large part to play in Sasine titles, where, with the passage of 10 years, a grantee is deemed to have a good and valid title, as long as their recorded deed is followed by 10 years of possession on an 'open, peaceable and without judicial interruption' basis. The extent of the title, the location of the subjects, and indeed what title conditions affect that title, are also left to the purchasing solicitor to bottom out.

Compare and contrast this with the Land Register, which is a register of interests, and is firmly based around the Ordnance Survey Map. Each and every single title number in Scotland has the extent shown on the Ordnance Survey Map, and, within each title sheet, you can conclusively determine the owner, the extent and nature of ownership, any charges, and the title conditions affecting same (subject, always, to prescriptive servitudes created with 20 years of continuous use).

As such, it is easy to see why first registration applications are far more challenging than purchasing an existing land registered title. Trying to take a lengthy description of land in words alone and place it on the Ordnance Survey Map often creates its own challenges, but the purpose of this article is to try and summarise a process of ensuring that all such issues are ironed out prior to the application being submitted to the Land Register of Scotland.

As such, here is my step by step guide to purchasing a Sasine Title in Scotland.

Gather and identify the necessary deeds

Students should start by locating the deed(s) that is most recent, namely the deed that is in favour of the present Seller. There may, of course, be more than one, but each of these is important to ensure the Seller's legal extent is established. From the deed in favour of the Seller, we can identify (a) the full description of the subjects (and if there is reference to a full description in an external deed, commonly referred to as a descriptive deed, then that deed should be obtained as well). If there is reference to a plan then a colour plan, if available, would be very helpful to try and piece together the extent. However, don't fall off your chair if you learn that the plan was not recorded / was not recorded in colour / shows a 'floating shape' (could be anywhere due to the lack of surrounding features). Next, the deed(s) in favour the Seller should also identify the deeds that contain title conditions, again the conditions may only be narrated in the deed in favour of the Seller, but it is most likely they will be enshrined in separate recorded deeds. These deeds will also need to be obtained and reviewed / reported on to the Purchaser, but if the deed in question is imposed on more than one title then it is always worth looking at a neighbouring land registered title to see if the deed is narrated as a burden writ in Section D (as obtaining a title sheet is less than £4 whereas a copy deed is significantly north of this – and it saves you straining your eyes trying to often decipher hand-written deeds).

Instruct a legal report

A Legal Report should always be instructed for each of the sasine deeds in favour of the Seller. The purpose of the Legal Report is not only to confirm the Seller is the last recorded proprietor of this land, but it will also let you know if any part of the Seller's title has been transferred out, and if there are any further deeds affecting the subjects that are not with the principal titles. Often a Seller may have granted a servitude or varied a title condition etc, and it is important that all of this is factored into a first registration application. If not, there is a danger of the whole application being rejected at a later date, often when you least expect it!

Instruct a standard plans report

A Standard Plans Report is an essential component of converting a sasine title into a Land Registered Title. Its purpose is to convert the description, often based on words alone, within the descriptive deed of the sasine title(s) and identify the legal extent of ownership on the Ordnance Survey Map, which is at the very core of land registration. If there are gaps or the extent of the title is not as expected then the Plans Report will be the easiest way for the Purchaser to identify any issues prior to parting with a significant sum of money and then finding out as part of the registration process, long after the Seller has received payment of the price. The other great benefit of a Standard Plans Report is it will identify 'cadastral conflicts'. It is well known that the same area of land cannot be exclusively owned by more than one proprietor in more than one title sheet, so if there is a title sheet that already includes part of the sasine title then, unfortunately, the Purchaser cannot include that same area in its own application due to the overlap / conflict, and remedial conveyancing, title indemnity policies, or a price chip will often be explored, depending on the circumstances.

The first registration disposition will require a full narrative for the Seller, the Purchaser, the sasine description(s), the attachment of any plan (if recommended by the Standard Plans Report) and, of course, the burden writs affecting the submission. It is often one of the more challenging tasks undertaken by a trainee in practice, but if the correct steps are adopted, and any issues addressed, there is a lot of satisfaction in seeing a land registered title issued many weeks and months further down the line. You will also have played your part in history, as the land registered title, once issued, will outlive all of us and beyond!

Securities Over Land

Debra Clapham

Standard Securities

The Standard Security was introduced in Scotland by the Conveyancing and Feudal Reform (Scotland) Act 1970, Part II.

All Standard Securities contain 'standard conditions'. The purpose of the Standard Security, as opposed to the previous forms of heritable securities which existed prior to 1970, was to provide a deed that is clearly a heritable security, and which is readily understood by debtors. In short, every debtor should know where he stands vis-a-vis a sale by the heritable creditor or in respect of foreclosure.

Although it was envisaged by the framers of the 1970 Act that these standard conditions would not be changed (and, indeed, some of them cannot be changed, particularly those in relation to repossession), it is very common for lending institutions to effect changes to them. These changes are usually set down by the lenders in a separate deed, which is itself referred to in the Standard Security and which has been registered in the Books of Council and Session.

There are two elements to every Standard Security; the security element and the personal obligation.

1. The real security

The creditor requires a real right in security where the Standard Security is registered in the Land Register. The debtor, however, is not divested of his ownership and cannot, accordingly, deal with the property by way of sale or second security and, on his death or sequestration, the security subjects will transmit to his personal representatives or trustees. However, any dealing with the debtor's proprietary rights is subject to and cannot affect the preference created on behalf of the creditor.

2. The personal obligation

There are two different forms of Standard Security provided by the 1970 Act and which are to be found in Schedule II. These are Form A, in which the personal obligation appears on the face of the deed, and Form B, in which the security is granted by the debtor for the purpose of securing a separate obligation contained in a collateral agreement which is referred to and detailed in Form B. Form A is used in the vast bulk of residential transactions and Form B, because of its flexibility, is largely used in commercial transactions. In both cases though, the personal obligations subsist until the debtor fully implements his obligation, regardless of whether he disposes with the subjects or not.

Over the years, the relationship between lenders and solicitors, particularly in relation to domestic conveyancing transactions, has been fraught. This is largely because solicitors represent not only the lenders but the 'purchasing client'. For example, there have been questions as to the types of matters that should be reported by solicitors to the lenders and, at times, the dividing line between giving commercial advice and legal advice is sometimes not always clear. A case worth quoting is the case of Midland Bank plc v Cameron, Thom, Peterkins and Duncan 1988 SLT 611.

This case looked at the 'conflict' between solicitor and lender. Although it is not a recent case it is authority for the proposition that a simple instruction to prepare a Standard Security does not import a duty to verify the value of the security subjects. It was held in that case that at the stage when a lender instructs the preparation of Standard Securities, it is reasonable to assume that the lender has agreed to make a loan and has satisfied itself as to the sufficiency of security therefore. Indeed, Professor Rennie has stated in the past that it is asking far too much for a solicitor to undertake independent verification of the value of the security subjects. However, Professor Rennie has also stated that a solicitor must report matters to the lenders which come to his/her attention that are inaccurate. So, for instance, if there is an incorrect price stated in the instructions, it is the duty of the solicitor to report this matter to the lender.

It is also worth stating that, in general terms, the standard of care owed by a solicitor to his/her client is both contractual and delictual. The standard of care and skill is that to be expected of a reasonably competent and careful practitioner, which is, in effect, the Hunter v Hanley test- 1955 S.C. 200; 1955 S.L.T.213. A solicitor does not fall below that standard if he/she makes an error of judgement in an individual case. It has to be shown that any error or omission was such that an ordinary competent solicitor, exercising due diligence, would not have adopted such an action.

A solicitor is under a clear duty to prepare the Security with a reasonable degree of expedition.

An intimation to a bank that a Security has been signed would normally lead the bank to assume that the Security will go to the Register immediately thereafter. Furthermore, where a solicitor is instructed to obtain a first-ranking Security, then the solicitor must check for any prior ranking securities that are not being discharged. Further, a solicitor employed to draw up or prepare a deed is generally expected to get it properly executed, and there is a duty to draw up the deed in a proper manner so as to render it effectual. Solicitors have been found liable over the years in damages for failing to register deeds, and a solicitor acting for a purchaser or a lender in heritable securities is strictly bound to carry out proper searches in the records and to communicate to his client any encumbrances that may thus be discovered. He is also liable for any loss that may be occasioned by an omission to do so.

The duties imposed on solicitors by Security providers are onerous. These duties have been imposed for a good number of years by the Council for Mortgage Lenders (CML). All conveyancers must be aware of the relevant parts of the Lenders' Handbook. As an aside, from 1 July 2017 the Council of Mortgage Lenders was reintegrated into a new trade association called UK Finance. UK Finance represents around 300 firms in the UK providing credit, banking, markets and payment related services. The new organisation takes on most of the activities previously carried out by the Asset Based Finance Association, the British Bankers Association, the Council of Mortgage Lenders, Financial Fraud Action UK, Payments UK and the UK Cards Association.

The Handbook was renamed The UK Finance Mortgage Lenders Handbook and the Handbook itself was updated to reflect the following: (i) the closure of the Register of Sasines to new Standard Securities; (ii) removing reference to obsolete Law Society Guidance in relation to coal mining; (iii) aligning the Handbook instruction with England and Wales in respect of warranties for new build properties; (iv) updating the Handbook to reflect the use of digital discharges; and (v) a minor amendment due to the fact that the SASI and MASI professional qualifications are no longer offered.

All conveyancers must update themselves with the Handbook on a regular basis and the Handbook itself is still available on https://lendershandbook.ukfinance.org.uk/lenders-handbook/

One area which surprisingly amounts to professional misconduct is a failure to register discharges of standard securities. On first sight, it is not clear exactly who is being prejudiced by the non-registration of a discharge of a standard security but, when we take into account the problems surrounding 'cautioners' wives', the matter becomes clearer.

A leading case in connection with cautioners' wives is the case of Smith v Bank of Scotland 1997 Session Cases House of Lords Page 111. The cautioners' wives and I am not being politically incorrect here since they all involved the actions of husbands relative to their wives in respect of business dealings of one sort or another) involve a wife incurring liability for the debts of her husband's business. There is a potential conflict and usually a conflict among the parties, being the husband, the husband's company and the wife.

The Smith case cited above then gave rise to a stream of case law and to what academics termed 'the Smith doctrine'. Before Smith, if a principal obligant induced a cautioner to sign by undue influence or misrepresentation, that did not constitute a defence for the cautioner against the creditor, assuming of course that the creditor was in good faith. But, in Smith, the House of Lords said that in certain circumstances the creditor would cease to be in good faith unless it was positively shown that the cautioner's signature had been fairly obtained. Lord Clyde stated that these circumstances were "*such as to lead a reasonable man to believe that owing to the personal relationship between the debtor and the proposed cautioner, the latter's consent may not be fully informed or freely given*". The question then was, how might the creditor be positively satisfied that the consent was a genuine one? In other words, how could the bank be satisfied that the wife had consented to being a cautioner in respect of the husband's borrowings for his business? Lord Clyde stated that "*all that is required of him (the creditor) is that he should take reasonable steps to secure that in relation to the proposed contract, he acts throughout in good faith. So far as the substance of these steps is concerned, it seems to me that it would be sufficient for the creditor to warn the potential cautioner of the consequences of entering into the proposed cautionary obligation and to advise him/her to take independent advice*". The judgement lead to a whole raft of further cases based on the interpretation of Lord Clyde's remarks.

One question that arose was whether the wife, and invariably it was the wife in these cases, seeking to escape, needs to prove that her consent was unfairly obtained or whether it was sufficient to show merely that the creditor had not taken the steps

contemplated by Lord Clyde. As the case law developed, it seemed clear that the wife had to show that her consent was unfairly obtained rather than requiring to show some omission on the part of the creditor. The second area of dispute was whether the creditor's good faith is protected if the wife had legal advice (or even if the creditor reasonably believes that she had legal advice). The case law, as it developed, indicated that as long as the lender had a reasonable belief that the guarantor cautioner had received legal advice regarding the transaction, a plea of absence of good faith would be dismissed. In fact, as the case law regarding cautionary wives has developed further, there has been a distinct move to distinguish between the practice in England and the practice in Scotland.

In Scotland, cautionary wives are less likely to succeed since it has to be shown that there is in some sense a double wrong. In the first place, it must be shown that the party seeking the reduction was not aware of the risks to the share in the heritable property. In the second place, it must be shown that there was some misrepresentation as to the situation generally on the part of the spouse or partner who has an interest in the business receiving the funds or additional funds to be covered by the Security. It is also worth pointing out that in Gretton & Reid 'Conveyancing 2014: Avizandum' there is a distinction between the wife acting as a guarantor and quasi guarantor.

As a guarantor there is a specially designed guarantee document, making the wife personally liable, for instance, for business debts whilst, as a quasi guarantor, she becomes liable for business debts indirectly because there is a Standard Security over the property in which she is an equal proprietor. In this latter position, her liability is not unlimited but, rather, is limited to the security over the property, so that she may lose her share in the house but, beyond that, she would not be personally liable unless, of course, the wording in the Standard Security is such as to draw her into a more onerous situation.

The distinction between quasi cautionary obligations and cautionary obligations is significant for two reasons. Firstly, because it is in these quasi cautionary obligations that a wife or partner may not realise that she has become liable for debts and, against this background, this makes the discharging of standard securities significant. It is worth quoting the recent case of Cooper v Bank of Scotland plc 2014 CSOH Page 16, 2014 GWD Page 6–126. In that particular case, to cut a long story short, the wife did not realise that providing a Standard Security over a house effectively meant that she was also guaranteeing her husband's company's debts since the bank that was providing the secured house purchase loan was also providing substantial sums to the husband's company, for which the husband had granted a personal guarantee. An important point was though that the security, as well as securing the house, also secured debts owed by the company to the bank. In this case, and unlike the other Scottish cases that went before, the wife was successful in having the Standard Security reduced quoad her one-half share of the property.

The arguments are quite convoluted and the case in itself complex (but it is still worthy of being read), but in short it was held that the wife had not understood the nature and effect of the Security and she had signed because of misrepresentations by her husband. It was also held that the bank took no steps, far less reasonable steps, to warn her as a potential cautioner, of the possible consequences of executing the Standard Security or to advise her to take independent advice. The moral, therefore, of this story is that the Smith doctrine is not dead and to be very careful when preparing Securities and in ascertaining exactly what liabilities the parties may be responsible for.

Finally, it is worth drawing attention to a relatively recent case which looked at the issue when there is a conflict between the Offer of Loan which is made to the Borrower and the standard conditions referred to above. The case is that of Alexander -v- West Bromwich Mortgage Co Limited [2016] EWCA Civ496. In that particular case there was a conflicting provision in relation to the ability of the lender to vary the interest rate.

Put briefly, the lenders sought not only to vary the interest rate but the term of the loan. The lender relied on a condition in the standard conditions, which in England are termed 'The Mortgage Conditions', which stated that "*interest is payable by you … at the rate or rates specified in your Offer of Loan letter which, except during any period in which interest is expressed to be at a fixed rate, may be varied by the Company at any time …*"

The upshot of the case is that the Mortgage Conditions were deemed to be incompatible with the terms agreed by the parties at the outset in the Offer of Loan and the bank was bound by the terms originally agreed but there is no doubt that this case highlights the importance of clients checking their Offers of Loan carefully and for solicitors to be fully conversant with the terms of their Handbook.

Leases

Debra Clapham

A lease can be defined as "*a contract by which a person, known as a tenant, is allowed to occupy someone else's heritable property for a finite period. In return for this he pays to the person granting this right (i.e. his landlord) a periodical payment known as rent. Rent usually takes the form of money, but may also (though not commonly) be paid in goods*". Accordingly there are three aspects to a lease; these being the subject matter, exclusive possession and finite occupation. In terms of subject matter the property let must be properly identified but as well as involving the lease of land and buildings (heritable property) there can also be leases of shooting rights, salmon fishings and the right to extract minerals (such as coal).

There should also be exclusive possession. In short some aspect of the property must be capable of being used exclusively by the tenant although this is not an absolute requirement unlike the situation in England. For instance, it would be rare to have an exclusive lease in connection with salmon fishing. Finally, there must be finite occupation. In other words, there must be what is termed an 'ish' but there are three points which must be stated in this regard. The first is that at the expiry of the ish the property reverts to the owner i.e. the landlord-ownership per se never changes hands. Secondly even though the lease may reach its natural end it can be extended by what is referred to as tacit relocation. Tacit relocation simply means 'silent renewal' and effectively operates in circumstances when neither the landlord nor the tenant issues a notice to quit. If neither sends such a notice to the other the lease will automatically continue notwithstanding the fact that the lease purports to have come to an end. If the original lease was for less than one year for instance six months, then the lease will continue for a further six months but if the lease was for more than a year for instance three years, the lease will be extended for a period of one year only. The lease will continue on such a basis until either party serves a notice to quit in appropriate terms and subject to the time periods set out in the appropriate legislation depending on whether the property is commercial or residential. Finally, it should also be noted that leases entered on or after 9 June 2000 have a maximum of 175 years in terms of the Abolition of Feudal Tenure etc (Scotland) Act 2000.

The main issue in defining a lease arises where parties argue that what exists is not a lease at all but a licence. A licence can be defined as "*a contract falling short of a lease whereby not the heritage itself but a right to use a particular part of it or to put a particular part of it to some use is granted*". (Paton and Cameron). It is significant to identify the difference between a licence and lease. If it is a licence the tenant will not acquire a real right valid against the landlord's singular successors. The landlord on the other hand will not have the remedies open to him of hypothec or irritancy if it is a licence. Finally, the tenant may grant a standard security over a lease but he may not do so over a licence.

Angus McAlister in his book the Scottish Law of Leases (now in its 4th Edition) refers to the criteria for identifying a licence. A licence he notes may include a situation where the landlord retains some kind of possession rights, and where the contract lacks an essential element such as rent. Neither however can be taken as strict criteria since very often landlords may grant to a tenant a rent free period particularly at the beginning of a lease to allow 'fit out' of the premises. Clearly the lack of rent in this case cannot be taken simply as an indication that the contract is a licence.

It is also important when studying leases to understand that the common law is still relevant. It remains relevant partly because it fills the gaps which have been left by statute. There is indeed very little legislation in relation to commercial leases in Scotland. This is in stark contrast to the position regarding residential property where a significant amount of legislation has been passed and indeed can also be contrasted with the position in England where much more legislation exists. When it comes to commercial property however the view is that negotiation between the parties is the order of the day. Very often the nature of the contract will depend upon the effective negotiating powers of the parties and commercial expediency.

The common law is also important because of the common law remedies such as irritancy and hypothec and because there are some common law requirements that are so fundamental that there would be no lease at all and what is likely to exist is a licence. But as I said above the position is not black and white.

In terms of the common law it is possible to list the obligations of the tenant as being (1) to enter into possession, to occupy and use the subjects (2) to use the property only for the purpose for which it was let (3) to take reasonable care of the property (4) to pay the rent when it becomes due and (5) in terms of the landlord's right of hypothec to plenish the subjects.

In terms of the landlord he is obliged to place the tenant in full possession of the subjects let, (2) not to derogate from the grant by for instance sub-leasing or selling a part of the property; (3) to provide subjects that are reasonably fit for the purpose for which they are let and (4) to carry out repairs. Of course it is common for the landlord to try and contract out of some of these provisions and as I stated previously whether or not this happens comes down particularly in relation to commercial leases, to the respective negotiating power of the parties.

It is also important to know that leases for a year or less do not, in terms of the Requirements of Writing (Scotland) Act require to be in writing. Nevertheless a tenant will still acquire a real right in terms of the Leases Act 1449. There are specific criteria which apply in considering whether or not a tenant has acquired such a real right under the Act and I would refer you to Angus McAlister's book Scottish Law of Leases in this regard. Leases which are more than a year must be in writing. For leases which exceed 20 years a real right can only be obtained when they are registered in the Land Register of Scotland.

In terms of the common law a landlord has three remedies available to him. I will deal with these briefly in turn.

The first remedy is irritancy

Irritancy means 'forfeiture' and refers to the landlord's right to terminate a lease prematurely because of the tenant's breach of contract. The effect of irritancy is to bring to an end not only the lease but also all rights deriving from it such as those of a sub-tenant, whose tenancy would also be ended or those of a heritable creditor. In short, there may be circumstances where a tenant has sub-let the property. The sub-tenant may be occupying the property without any problem and be paying his rent timeously. The head tenant however may have breached one of the terms of the lease. Notwithstanding the fact that the sub-tenant is the innocent party, if the landlord chooses to irritate the lease then not only is the lease brought to an end but so too is the sub-lease.

There are two types of irritancy. The first is legal irritancy. Legal irritancy arises as of right without the necessity of having anything placed in the contract and it occurs where there has been non payment of rent for two years. Legal Irritancies form the basis of excellent exam questions but beyond that their value is limited since it would be extremely unlikely that any landlord would wait patiently for a tenant to pay two years of outstanding rent before taking action.

The second type of irritancy is what is termed conventional irritancy. Conventional irritancy arises not through the operation of law but arises as a result of what is contracted between the parties. It is exactly 'what it says on the tin' so to speak and because of that courts have in the past been extremely reluctant to intervene against the rights of a landlord to irritate in these circumstances. Conventional irritancy can arise not only as a result of non payment of rent (usually a much shorter period than 2 years), but also failure to maintain the subjects, unauthorised subletting or assignation, failure to pay common charges or service charges...the list is unending and as long as the Landlord's imagination.

There is a defence against irritancy. The only defence is oppression. Oppression infers that there has been an impropriety of conduct on the part of the landlord. In short that the landlord has somehow used his position to procure an unfair consequence to the tenant. The definition of oppression was set out by Lord Guthrie in the case of Lucas Executors –v- Demarco 1968 SLT 84 at page 94. As a result of the famous case however of Dorchester Studios (Glasgow) Ltd –v- Stone 1975 SC (HL) 56, 1975 SLT 153 two pieces of legislation were enacted. These take the form of Section 4 of the Law Reform (Miscellaneous Provisions) Scotland Act 1985 which deals with the case of monetary irritancy and Section 5 of the same Act which deals with non- monetary irritancy and the fair and reasonable test. Essentially in terms of Section 4 the landlord must, after the payment has become due, give the tenant at least 14 days written notice to pay the arrears. Only on the lapse of that further period without payment may he proceed to enforce irritancy. In short if an irritancy clause has a period of grace of say 21 days for late payment, the landlord may serve his notice before the end of the period. However, in such a case the tenant has to be given the full period of grace i.e. the 14 days' notice or the expiry of the period of grace, whichever is the greater period. That notice has to be sent by recorded delivery.

The section deals with all monetary irritancies so for instance it can apply to a failure to pay common charges, the service charge or any other monetary requirements as set out in the lease.

In terms of section 5 the court can only enforce an irritancy in cases where it feels that in all of the circumstances a fair and reasonable landlord would do so. For instance where there has been a breach of a repairs clause then it may be reasonable for the landlords to carry out the repairs and recover the money from the tenant rather than for the tenant to have to carry out repairs within what may be an unrealistic timescale.

Sometimes there are issues where a notice of irritancy has been served but the landlord accepts rental payments after that said notice. Reference should be made to the case of HMV Fields Properties Limited –v- Braden Self Selection Fabrics 1991 SLT 31 where the landlords accepted such rental payments. In that case however it was held that as the landlords had returned all of the payments bar one they could not have been said to have given up their rights to irritate the lease.

In fact, legal irritancies can be purged or cured at any time. The position however is not so clear about conventional irritancies particularly after a case has reached court. The courts however seem to suggest that there must be a stage at which irritancy cannot be purged by the tenant and the suggestion appears to be that it cannot be purged at the time when the court action is actually raised. (Mavis v Banchory Squash Racquets Club LTD (2007) CSIH 30) (There is an excellent commentary on the case in Conveyancing 2007, Gretton and Reid, Avizandum 2008).

The landlord also enjoys at common law the right of hypothec. This is a right of security which previously covered all moveable items not only in the ownership of the tenant but also brought on to the premises by the tenant. It was the most effective remedy for pursing rent but it has been dramatically curtailed over the years particularly in relation to domestic property. It was further affected by the Bankruptcy and Diligence etc (Scotland) Act 2007 which reformed its scope. Accordingly, it no longer arises in relation to any property kept in a dwellinghouse, in relation to agricultural property or on a croft, and it also no longer secures property owned by a person other than a tenant or by property acquired by a third party from the tenant in good faith.

As a result of the Bankruptcy and Diligence etc (Scotland) Act 2007 the landlord's hypothec continues as a right of security. That security ranks in an insolvency situation which means that the only point at which the security can be enforced is when the tenant becomes formally insolvent. The good news for the landlord however is that on insolvency, the preference of a landlord will be that he will be entitled to be paid out of the proceeds of sale of the goods subject to the hypothec, in preference to other creditors of the insolvent tenant and in addition the hypothec simply covers unpaid rent rather than a previous restriction which applied to one year's rent only.

The third and final right which the landlord enjoys at common law is in relation to summary diligence. It is important to recognise that in leases a clause should be inserted in which both the landlord and tenant consent not simply to preservation of the document in the Books of Council and Session but also to preservation and execution. By so consenting to such a clause the landlord may in instances of non-payment of rent instruct Sheriff Officers to serve a charge on the tenant demanding payment within fourteen days. This means that the debt can be enforced in much the same way as a court decree.

Residential Tenancies – A New Direction

Amir M Ismail

Introduction

Scotland has the smallest private rental sector in Western Europe at circa 10%, when compared with Germany (45%), France (just over 20%), and Greece, Belgium, Sweden, Norway, Denmark and Finland (ranging between 10-20%). Notwithstanding this, residential leases are a common source of dispute between Landlords and Tenants. Property law has seen sweeping changes over the last 10 years and, in particular, various forms of legislation have been introduced in order to carefully regulate the contractual relationship. In the context of private residential leases, an attempt has been made to strike a balance between a Landlord seeking to make money from renting his / her property and a Tenant seeking to live in residential premises that are fit for human habitation.

The existing legislative framework

There are a number of requirements that should be addressed before a Lease of a residential property should be granted in Scotland. These can be summarised as follows:

a. **Obtain the consent of any mortgage lender** – an ordinary residential security in Scotland prohibits the borrower from granting a Lease unless the lender grants its consent. Sometimes, a lender will insist upon a mortgage being a specific buy-to-let format in these circumstances.

b. **Advise your buildings insurance company of the tenancy being granted** – a failure to do so may allow the insurers to withhold funds in the event of a claim as a result of the key facts of the policy being incorrect. The insurers' argument is that the property is at greater risk when occupied by a third party tenant and the failure to disclose the lease is a material breach of the duty of good faith.

c. **Complete private landlord registration** – the Antisocial Behaviour etc (Scotland) Act 2004 requires a Landlord to register with the relevant local authority and pass the test of being considered a 'fit and proper' person. The application requires to be renewed every 3 years and a failure to register can be punished with a fine of up to £50,000.00.

d. **Prepare a Tenant Information Pack** – under the Private Rented Housing (Scotland) Act 2011 the Landlord must provide the Tenant with a standardised document (available on the Scottish Government Website) which sets out contact information and, amongst other things, highlights the duty on the Landlord to ensure the premises continue to meet the minimum legal standard of repair and condition (see further comment below).

e. **Ensure gas appliances are safe for use** – under the Health and Safety at Work Act 1974 and the Gas Safety (Installation and Use) Regulations 1998 a Landlord must implement a system of annual checks and maintenance for gas appliances and flues, with safety certificates being obtained and made available to the Tenant within the Tenant Information Pack.

f. **Ensure any electrical equipment within the property is safe for use** – under the Electrical Equipment (Safety) Regulations 1994 and the Plugs & Sockets etc (Safety) Regulations 1994. There is no prescribed time limit for periodic inspection but somewhere between 2 and 3 yearly inspections appears to be the most common time frame.

g. **Obtain an Energy Performance Certificate** – under the Energy Performance of Buildings (Scotland) Regulations 2008 a Landlord must exhibit to a Tenant a Certificate grading the energy retention within the premises, on a scale from A to G, for any Lease granted after 4th January 2009.

h. **Ensure that the property meets the repairing standard imposed by law** – under the Housing (Scotland) Act 2006 a Landlord must ensure that any residential premises must be wind and watertight, and reasonably fit for human habitation, with water, gas and electricity installations being in a reasonable state of repair and in proper working order. This obligation applies both at the start of the Lease and throughout the term.

Please note that a Landlord may impose the repairing obligation on the Tenant if the term of the tenancy is at least 3 years or more.

i. **Lodge any rent deposit with a third party administrator** – under the Tenancy Deposit Schemes (Scotland) Regulations 2011 any deposit payable by the Tenant, in security of its obligations under the Lease, must now be lodged with one of the tenancy deposit providers. The underpinning principle behind this was to remove the discretion previously enjoyed by Landlords in determining whether any deductions were to be made in light of any purported breaches of the Lease by the Tenant. The substantial cost of litigation proceedings essentially left Tenants with no solution in the event of a dispute regarding the Landlord's entitlement to withhold all or part of the deposit.

The prior framework for a residential lease

The two most common types of private tenancy in Scotland used to be assured tenancies and short assured tenancies. A short assured tenancy was a special type of assured tenancy and was always been favoured by Landlords due to the Landlord's automatic right to repossess the premises at the date of natural expiry of the Lease. The term needed to be for at least 6 months and a form AT5 needed to be provided to the Tenant before possession was granted, failing which the Lease, by default, was treated in law as an assured tenancy.

Grounds for repossession

Excluding the Landlord's automatic right of possession at the end of the term under a short assured tenancy, The Housing Scotland Act 1988 had set out a total of 17 grounds for repossession of the property. The grounds were split between those where a Sheriff had to grant an order for possession following a failure to vacate the premises timeously by the Tenant (mandatory grounds) and those where a Sheriff had discretion to decide whether or not to grant such an order (discretionary grounds). The period of notice that was to be provided to the Tenant was dependent on the specific ground that the Landlord relied upon in the proceedings. The most common mandatory ground was where there were at least 3 months of rent arrears, at both the service of the Notice to Quit and the date of the court hearing. The most common discretionary grounds were persistent late payments of rent (irrespective of whether there were arrears on the date of the court hearing), rent arrears (less than 3 months), breach of the Lease (other than rent payments) and use of premises for illegal, immoral or anti-social behaviour. The test to be applied where the Sheriff had discretion was one of reasonableness.

From 1st December 2017 onwards – The private housing (tenancies) (Scotland) act 2016

In 2014 the Scottish Government launched a consultation paper on the reform of the Private Rental sector. The Minister for Housing and Welfare, Margaret, Burgess, stated that the proposed changes were *"designed to improve security for tenants and provide safeguards for landlords, investors and lenders. Our vision is for a private rented sector that provides good quality homes and high management standards, inspires consumer confidence, and encourages growth through attracting increased investment. By creating a new and simplified system we will have better property management, while tenants and landlords will be provided with more clarity and a better understanding of what the tenancy agreement means for them".*

After an extended period of consultation, a Bill was introduced into the Scottish Parliament by Alex Neil MSP on 7th October 2015, it was passed on 17th March 2016 and Royal Assent was given to the Private Housing (Tenancies) (Scotland) Act 2016 on 22nd April 2016. The Act came into force on 1st December 2017.

The 2016 Act seeks to simplify the regulation of the private rented sector with one form of tenancy and to improve security of tenure for tenants. The new Act can be summarised briefly as follows:

- The Landlord's right to automatic possession at the end of a short assured tenancy, commonly referred to as the 'no-fault ground', has been removed and there is no longer a fixed date of termination
- A Landlord is now under a legal obligation to issue a tenancy agreement under S10 of the Act (and there are powers under Part 3 of the Act allowing a Tenant to apply to a Tribunal if the Landlord fails to do so). The Tribunal also has power to determine the terms and conditions of the let
- The rent under a Lease cannot be reviewed more than once in any 12 month period. The Act enables a Tenant to refer the increase under a Notice from the Landlord to a rent officer in the event that it wishes to challenge it
- The Scottish Ministers may, upon request from a local authority, designate an area as a 'Rent Pressure Zone'. Such a designation would essentially limit potential rent increases for existing Tenants in the local authority's area for a maximum period of 5 years
- The period of notice for a Notice to Quit has been amended. A Tenant requires to provide at least 28 days of notice prior to the natural expiry date in the event that it wishes to terminate the Lease (in the absence of any other break option or a different period of notice in the Lease itself). A Landlord will require to give either 28 days of notice or 84 days of notice, depending firstly on the period of time the Tenant has possessed the property and secondly the precise ground (or grounds) the Landlord is using to end the agreement. There are also grounds for the Tenant to subsequently exercise against the Landlord under 'wrongful termination' if the Tenant subsequently learns that the Landlord's grounds for recovering possession were not in fact genuine
- Schedule 2 of the 2016 Act prescribes that a Landlord receiving rent payment in cash must provide a written receipt to the Tenant in order to enable Tenants to establish evidence of rent payment

A full list of the new grounds for Eviction are listed at Schedule 3 of the 2016 Act. There are a total of 18 grounds, 8 of which are mandatory grounds. Of the remaining 10 grounds, 8 are discretionary and the remaining 2 are a hybrid of mandatory and discretionary (the determination of which is dependent on the precise circumstances of the Landlord and Tenant).

The number of grounds for possession increased as the Act moved through the Scottish Parliament, albeit the original 8 were all classed as mandatory grounds, so it would be fair to summarise that whilst there are now more grounds there was also a subsequent shift towards the creation of additional discretionary grounds. Under the Housing (Scotland) Act 1988, rent arrears were only a mandatory ground if, at the date of the hearing, there were equal to or more than 3 months of arrears. Under the 2016 Act the mandatory ground only requires there to have been 3 or more months of rent outstanding at some point during the tenancy.

Whilst various Tenants, government bodies and charities have welcomed the Act, the reforms have been met with concerns and anger by Landlords and residential agencies, particularly in respect of the removal of the automatic right to possession in a short assured tenancy. It is argued that the latest reforms will scare away proposed Landlords from entering the housing market due to perceived 'over-regulation' and may even lead to reduced levels of housing stock at a time when first-time buyers still require substantial sums of money to climb onto the ownership ladder and are reliant on temporary rented accommodation. It is too early at this stage to determine whether this will indeed be the case or not. The Scottish Government has created a guide to the new Act for both Landlords and Tenants as well as a model tenancy and these can all be accessed at https://www.gov.scot/policies/private-renting/private-tenancy-reform/

Fixtures and Fittings

Alistair Rushworth

In conveyancing, fixtures are items which have acceded to the property and have therefore become part of it and heritable themselves. A conveyance of the property will therefore carry the fixtures without express mention. Notwithstanding that fairly simple principle of law, disputes do arise in property transactions in relation to fixtures and their antithetical partner, fittings.

Fittings are items which have not acceded to the property, remain moveable and are not carried with a conveyance of the property. You may remember the law of accession from degree-level property law courses and it need not be rehearsed here (see Stair Memorial Encyclopaedia Vol 18 at paras 570 to 587 for a reminder). It suffices to say that muddy waters must be navigated by conveyancers here.

From the purchasing solicitor's point of view, the drafting of the offer is the key moment to ensure that anything which is or might be a fitting and which the purchaser wishes to own is expressly included, since the transfer of ownership of fittings is governed by the Sale of Goods Act 1979, not the Disposition to follow on the missives. For example, the purchaser will no doubt expect the fitted carpets to be left in situ but they in fact are moveable and will not be included without express provision.

In practice (for example in the Scottish Standard Clauses), the offer will often specifically list a number of common items which may or may not be fittings or fixtures but which are included in the typical transaction. Clear instructions should nonetheless be taken and it may be suitable to refer in the offer also to the sales particulars, for any further fittings or more obvious moveables they state to be included (for example chandeliers and free-standing fridge-freezers). Purchasers' solicitors should bear in mind the risk that the seller may not in fact own some of the fittings or moveables (for example those subject to hire purchase contracts) – the offer should include protection against this.

From the selling solicitor's point of view, the missives must also be clear as to any items which may be either fittings or fixtures and which the seller wishes to remove from the property when they leave – again, asking for instructions on this is essential. A helpful list of items typically involved in a residential property transaction which may be either fixtures or fittings can be found in Halliday, Conveyancing Law and Practice Vol 2 at paras 30-40 and 30-41. More thorough provision still may be necessary in missives for the sale and purchase of commercial and agricultural properties, where the potential values of fittings such as machinery may warrant separate valuation.

In the Disposition itself, for the reasons mentioned above it is in fact unnecessary to refer to either fixtures or fittings. However, conveyancers tend to be creatures of habit and a Disposition drafted today, at least in respect of a property not yet on the Land Register, will typically still expressly provide for the conveyance of the property 'together with the fixtures and fittings therein and thereon'.

The identification of the fixtures and fittings in a transaction is not just of importance in ensuring all the desired items are either conveyed to the purchaser or retained by the seller, but also in calculating the amount of Land and Buildings Transaction Tax (LBTT) payable on the purchase, which is assessed by reference to the heritable property included in the transaction only. Notably, Revenue Scotland's LBTT Legislation Guidance refers to 'fixtures and fittings' as forming part of the land, but 'moveable assets' as being excluded, for the purposes of identifying the chargeable consideration for LBTT purposes. This fails to recognise that in law fittings are moveables and, as the LBTT (Scotland) Act 2013 does not change the law in that regard, it is submitted that fittings are not subject to LBTT.

Practitioners should be alert to the possibility that fittings may be subject to a registered statutory pledge and/or (where the fittings are owned by a company or limited liability partnership) a floating charge, and should ensure that any such security is identified and properly dealt with before completion. In practice, this is likely to arise only occasionally – for example where the fittings include plant, machinery or other assets of a business – rather than in routine residential conveyancing.

Lastly, fixtures can also be a peculiar feature of certain types of Lease (including of commercial and agricultural properties), where, notwithstanding the operation of accession, tenants may have a right of severance at the termination of the tenancy in respect of items affixed to the property by them for the purposes of their trade, whereby they may remove and recover ownership in them. If there is doubt as to whether a right of severance will arise in law, it may be expressly provided for in the Lease. This is commonly done in windfarm Leases to protect the developer's rights to the wind turbines, though a contractual right of severance such as this might not be binding on the landlord's successors in title.

Scottish Standard Clauses

Scottish Conveyancers Forum

The purpose of Scottish standard clauses

The purchase of a house is the most important single financial transaction most clients undertake. It can be a stressful process for both buyer and seller (and sometimes for their Solicitors too!). The advice and assistance of a Solicitor experienced in house purchase and sale and conveyancing is absolutely essential.

An offer for heritable property in Scotland requires to be in writing and there is no binding or enforceable contract until an offer or a qualified acceptance of an offer is met with by a straight acceptance in writing.

Up to the 1970s, Missives comprised around five clauses. However, cases and other developments in the law made the process more complicated. Offers expanded greatly in size and complexity. It was rarely possible or wise to give an unconditional acceptance of an offer. In addition most individual firm's offers tended to be based on a 'wish list' of best possible outcomes for the purchaser. The reality however was that qualified acceptances cut the offer down to size and there then emerged a wording that most Solicitors would 'settle for'. The Scottish Standard Clauses have been based on the 'settled for' position of what most practitioners usually accepted. The aim is that neither Solicitors nor their clients should have to go through the existing painful process of offer and numerous qualified acceptances.

The offer, any qualified acceptances and the final acceptance together are called 'the Missives'. When final agreement is reached the Missives are said to be concluded and there then exists a legally binding contract. Until that point both the Seller and the Purchaser can back out or withdraw from negotiations, without warning, reason or penalty. When Missives are concluded, either party can sue the other in the event of a breach by one or the parties to carry out their part of the bargain.

One of the greatest advantages of the Scottish system in the past was the speed with which Missives were concluded. The system, where each Solicitor had an own style of offer that became longer and longer and more technical, slowed this process. A single style has now been adopted called the Scottish Standard Clauses. The offer appears in Section 2 and defines the Purchaser, Property, Price, Date of Entry (when you obtain your keys) and details of any moveable items included in the sale. Some moveable items are already covered by Clause 1 of the Standard Clauses under the heading 'Fixtures, Fittings and Contents'. The offer refers to the Scottish Standard Clauses (Edition 6) and incorporates them as conditions of the offer.

Guidelines issued to Solicitors request that changes should be made for valid reasons of substance e.g. making the offer subject to survey and not for the reasons of style.

The aim is to conclude the Missives with either a straight acceptance of the offer or hopefully not more than one qualified acceptance before a final acceptance. An offer in the Standard style could in theory receive a straight acceptance. Accordingly purchasing clients have to be completely 'upfront' with the seller and need to state whether their offer is subject to survey or a loan or conclusion of Missives for the sale of their own property. Complete frankness is required as a Purchaser may find themself bound to a contract thinking the old method would allow them more time. From a Seller's point of view there is now greater transparency regarding the Purchaser's position.

The purpose of this Guide is to explain the various clauses so that both house Purchasers and Sellers understand their rights and obligations. It is however only a guide. If a dispute arises as to the meaning of the Missives your Solicitor is the expert to whom to turn. This form of offer and the standard clauses are designed for use with dwelling houses.

Scottish Standard Clauses are a tool to assist more straightforward conclusion of Missives. Speed and ease of conclusion of Missives and clauses with which a Solicitor and their client can become familiar are enormous benefits.

A Scottish Missives chain

One of the main aims of the Scottish Standard Clauses is to conclude the Missives (contract for sale and purchase) as soon as is possible with either a straight acceptance of the offer or hopefully not more than one qualified acceptance before a final acceptance.

Due to matters that are outwith the control of the legal profession that aim is now only an aim and not realistic at present. One of the main problems with early conclusion of the Missives is that lending decisions are very slow and loan instructions are not being processed with speed by lenders. Buyers and their Solicitors are wary of concluding Missives until they know the buyer has an offer of loan or at least an offer of loan in principle. Prior to the recession buyers would often act on the strength of a 'nod' from the lender but when the recession came some 'nods' were withdrawn because of new lending criteria, creating uncertainty and lack of confidence by buyers to predict if they will be granted a loan. Solicitors now find it necessary to urge caution on buyers to obtain a definite offer of loan or an offer of loan in principle before concluding Missives.

Another cause of delay is that before the recession purchasers were 'purchase driven' to buy the property they wanted and then to sell their own house knowing it would very likely sell without a problem. Now, most buyers will not wish to take that chance and will not conclude Missives for a purchase until they have sold their own house ('sale driven').

These factors have led to a Scottish Missive Chain. Here is how such a chain works.

A purchaser (P1) cannot conclude Missives with the Seller (S1) because P1 has no offer of loan. S1 cannot enter Missives for purchase with Seller 2 till their sale to P1 is concluded and S1's offer of loan issued and so on up the chain.

Standard Clauses are still helpful as if an offer is submitted in the Scottish Standard Clause style it is now possible that you could receive a straight acceptance. This has forced buyers to be more 'upfront' with a seller as the buyer needs to add clauses to their Offer to state whether their offer is subject to (1) survey (2) a loan or (3) conclusion of Missives for the sale of their own property. These clauses being non standard are easy to spot in the Offer.

They ensure frankness by a Purchaser who cannot risk concluding Missives without inserting these additional and conditional clauses. From a Seller's point of view there is now much greater transparency regarding the Purchaser's position and what the problem is.

Scottish Standard Clauses assist more straightforward conclusion of Missives with few of the delays caused under the old system by non-standard missives. Speed and ease of conclusion of Missives can follow if and when a buyer has their offer of loan and a sale of their own house tied up. Standard clauses with which both the Solicitor and client are familiar remain enormous benefits.

For current version of the Scottish Standard Clauses and supporting documentation, visit the Scottish Conveyancers Forum at *www.scottishconveyancersforum.co.uk*

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An Introduction to Land and Buildings Transaction Tax (LBTT)

Nick Dobbs

1. Introduction

1.1. Land and Buildings Transaction Tax (LBTT) is a tax on land transactions in Scotland, having replaced Stamp Duty Land Tax (SDLT) from 1 April 2015.

1.2. LBTT is fully devolved to the Scottish Parliament and is collected and managed by Revenue Scotland. The governing legislation is the Land and Buildings Transaction Tax (Scotland) Act 2013 ('the Act') and subsequent amendments.

1.3. The LBTT rules can be highly technical. This chapter aims to describe how LBTT works generally including the Additional Dwelling Supplement, as well as looking at some of the main reliefs and compliance matters.

2. Chargeable transactions and consideration

2.1. LBTT is charged on land transactions. A land transaction refers to the acquisition of a chargeable interest, such as a real right in land. The most common examples of acquiring a chargeable interest are where an individual (or other entity) acquires ownership of land/buildings or perhaps acquires an interest in a commercial lease of the same.

2.2. LBTT is charged on the chargeable consideration given for the transaction in question. In a simple case, this would be the price paid to purchase the land. The Act is quite prescriptive as to what does and does not constitute chargeable consideration – it can include, for instance, the assumption of a debt among other things, most of which are set out in Schedule 2 of the Act.

2.3. It is vital to note that where there is no chargeable consideration, usually no LBTT can be due. Thus, most gifts of land are not subject to LBTT. But watch where there is a transfer to a connected company – a market value charge applies!

2.4. Certain land transactions are specifically exempted, and these are set out in Schedule 1 of the Act.

2.5. LBTT is paid by the purchaser. This involves completing an LBTT return, self-assessing the tax, and making the payment by electronic transfer to Revenue Scotland. This is typically organised by the solicitor acting on behalf of the purchaser in the land transaction.

3. LBTT rates and bands

3.1. LBTT uses a progressive system, where different slices of the consideration are taxed at different rates. The rates and bands differ for residential and non-residential property.

The rates are as follows:

Residential:	
Purchase price 'slice'	**LBTT rate**
Up to £145,000	0%
£145,001 to £250,000	2%
£250,001 to £325,000	5%
£325,001 to £750,000	10%
Over £750,000	12%

For example, if a residential property (say a flat) was purchased for £500,000, the standard LBTT payable by the purchaser would be £23,350.

In some cases, the 8% Additional Dwelling Supplement (ADS) is also payable on residential property purchases *(see further below)*.

Non-Residential:	
Purchase price 'slice'	LBTT rate
Up to £150,000	0%
£150,001 to £250,000	1%
Over £250,000	5%

For example, if a commercial property (say a shop) was purchased for £500,000, the standard LBTT payable by the purchaser would be £13,500. You will note the non-residential rates of LBTT are significantly lower.

4. First-time buyer relief

4.1. First time buyers benefit from an increased nil-rate band, paying no LBTT on the first £175,000 of the purchase price rather than first £145,000. Thereafter, LBTT is paid on the slice of the purchase price above this threshold using the standard rates and bands. This relief can result in a tax saving of up to £600 for first time buyers.

4.2. This relief is only available for purchases intended as the buyer's only or main residence and must be claimed in the LBTT return.

5. Additional Dwelling Supplement (ADS)

5.1. The Additional Dwelling Supplement (ADS) is a significant feature of LBTT as it relates to land transactions of residential property. It does not apply to non-residential transactions.

5.2. In the case of individuals, ADS imposes a surcharge on the purchase of additional residential properties, most commonly second homes and buy-to-let properties. Where ADS applies, it is charged at 8% of the full purchase price. There are no other rates or bands involved.

5.3. This can dramatically increase the amount of tax paid. Taking the example above of a residential flat purchase of £500,000, the ADS would be £40,000 which, in addition to standard LBTT of £23,350, gives an overall liability of £63,350. At the current level of 8%, ADS acts as a serious disincentive in practice to would be purchasers of second homes and property investors.

5.4. ADS may appear relatively straightforward in principle. However, in practice it can be very difficult for the untrained eye to identify whether or not it applies.

5.5. The basic rule is that ADS applies where:

5.5.1. Ownership of a dwelling is being acquired;

5.5.2. The consideration is £40,000 or more;

5.5.3. At the end of the day that is the effective date of the transaction (e.g. at completion), the buyer owns more than one dwelling; and

5.5.4. The buyer is not replacing their main residence, or is doing so but purchasing additional dwellings at the same time.

5.6. Replacing one's main residence here means that the former main residence has been sold in the period up to 36 months prior to the replacement main residence purchase settling. If it has not been sold at the settlement date then, in line with the above criteria, ADS will be due. In this case the individual does have a 36-month window after purchasing the replacement in which to sell their former main residence and recover the ADS paid from Revenue Scotland. This goes to show how ADS can be in play and cause cashflow issues where there is no intention of purchasing a buy-to-let or second home.

5.7. It is worth mentioning the following additional key points about ADS:

5.7.1. ADS does not apply if the consideration is under £40,000 so small dwellings are not caught.

5.7.2. If an individual buys a residential property in Scotland and they own an existing property anywhere in the world, ADS will apply.

5.7.3. If an individual owns an existing property by virtue of having inherited it, ADS will apply to a purchase of an additional property.

5.7.4. If a couple purchase a property jointly, and only one of them owns an existing property, ADS applies to the whole of the new property.

5.7.5. ADS also applies to almost all purchases by limited companies and most trusts and partnerships.

6. Multiple Dwellings Relief (MDR)

6.1. Multiple Dwellings Relief (MDR) is available where two or more dwellings are purchased in a single transaction or a series of linked transactions. MDR is designed to reduce the overall LBTT liability when buying multiple residential properties together.

6.2. MDR works by allowing LBTT rates to be applied to the average value of the properties collectively, instead of the total purchase price. It should be noted that, in applying this, the final LBTT figure cannot be less than 25% of the tax without relief.

6.3. By way of example:

6.3.1. A property investor purchased 3 flats from a developer in one transaction for £1.5million. The non-relieved LBTT (excluding ADS) would be £138,350.

6.3.2. If an MDR claim was made, the average value of each property is taken and LBTT calculated on that. Here, the average value is £1.5million/3 = £500,000. The standard LBTT on consideration of £500,000 is £23,350. The total LBTT would therefore be £23,350 x 3 = £70,050.

6.3.3. Clearly in this case an MDR claim would result in an enormous saving.

6.3.4. As this is an investor, ADS would apply to the whole consideration at 8% so £120,000 of ADS would be payable in addition!

6.4. Where a purchaser is buying 6 or more properties in a single transaction, a claim can be made to use the non-residential rates of LBTT to the total consideration. As noted above, non-residential rates are lower and ADS does not apply.

6.5. For example, say the property investor above instead purchased 6 flats from the developer in one transaction for £3million. The LBTT payable using non-residential rates would be £138,500.

7. Leases

7.1. The acquisition of a new or existing non-residential lease will be chargeable to LBTT. Leases of residential property are not generally subject to LBTT.

7.2. LBTT is charged on the net present value (NPV) of the rents under the lease. Essentially this is an estimate of the current value of all future rents if converted into a single upfront payment. The NPV is calculated using a prescribed formula but in practice there is a calculator provided by Revenue Scotland to use.

7.3. The rates and bands of LBTT for NPV of rents are:

NPV of rent payable	LBTT rate
Up to £150,000	0%
£150,001 to £2,000,000	1%
Over £2,000,000	2%

7.4. When a lease is acquired, initially LBTT is paid on the NPV of rents as above. There is an obligation, however, for a lease review return to be submitted every three years. At this point, the estimated rents are then replaced with the actual rents paid in the period which will result in a balancing adjustment of either more LBTT to pay or a refund.

7.5. Where a premium has been paid to acquire an existing or new lease, this is also charged to LBTT at the usual non-residential rates noted above.

7.6. A return must also be made on the assignation, termination or certain amendments of a lease.

8. LBTT administration

8.1. A key concept in LBTT compliance is the notifiable transaction. This refers to any land transaction that is not specifically excluded from the definition. The exclusions being:

8.1.1. Exempt transactions;

8.1.2. Acquisition of land for less than £40,000;

8.1.3. Acquisition of a chargeable interest which is not a real right where the chargeable consideration does not exceed the nil rate tax band applicable to the transaction;

8.1.4. Certain lease transactions.

8.2. If a transaction is not notifiable, no LBTT return is required, and no tax will be due.

8.3. For all other land transactions which are notifiable, the buyer is under a duty to submit an LBTT return to Revenue Scotland even if no tax is payable – for example, as result of a relief. The return must be made within 30 days of the effective date of a transaction – usually the date of completion. Failure to submit a return for a notifiable transaction may result in penalties and interest.

8.4. If LBTT is due, this is paid by the buyer at the same time as the return is filed. Penalties and interest will apply where payments are made late.

8.5. It is important to note that in Scotland a property purchase can only be registered in the Land Register of Scotland following submission of the LBTT return and payment of the tax.

Property, Prescription and Prescriptive Claimants

Kirstin Nee

The acquisition and loss of legal rights through the passage of time is known as Prescription. Positive prescription is concerned with the acquisitions of legal rights over time whilst negative prescription is concerned with the loss of rights over time.

There is a general principle of property law in Scotland that two parties cannot both have full rights of ownership in one interest at the same time. However, there are sometimes situations where this will be the case e.g. someone has a paper title to the land but doesn't occupy it, someone else does. In this kind of situation, the law of prescription can neatly resolve the questions as to who is the 'true' owner. It can also be used to protect parties who have used accesses and services for long periods of time in the absence of any formal rights from having those rights extinguished.

Dispossession

Section 1 of the Prescription and Limitation (Scotland) Act 1973 (the 'Act') states that where land has been possessed openly, peaceably and without judicial interruption for a continued period of ten years following the recording of a title or ten years after registration of a piece of land in the Land Register which is subject to an exclusion of indemnity/limitation on the Keeper's warranty then you can establish a real right to that land and it is exempt from challenge. If there is no title recorded in the Register of Sasines or registered in the Land Register, prescription cannot operate to cure the title as simply occupying the land is not sufficient. Historically, a non-domino dispositions used to be a useful deed from which to found prescription. A non-domino literally means 'from one who is not the owner'. Therefore, party A could dispone title to Land to party B even where there is no paper title prior to this to found prescription. Following the Land Registration etc. (Scotland) Act 2012, this practice was repealed and now a Prescriptive Claimant Application is required to the Registers of Scotland to establish a real right.

Let us see this in action; Kirstin is about to sell her house. You are her solicitor and order a Plans Report which shows that the occupational and legal extents of the property are not the same. It is apparent that part of her garden ground is not contained within her paper title even though it has been fenced as part of her garden ground and occupied by her for years. What do you do?

There are numerous options available to you.

1. Take a view and do nothing. There may never be a challenge but if there is, then the purchaser could face loss or damage if their right to use the land is challenged. Even if the purchaser is willing to accept this risk, if they have a lender, they are unlikely to accept this.
2. You may wish to consider undertaking remedial conveyancing to correct this issue. Therefore, you may order a search from Millar & Bryce to try and establish who has title to this area and approach that party for a disposition of the land. However, what do you do if an owner cannot be identified? If they can be identified the owner could hold your client to ransom to perfect the defect.
3. You may consider a Prescriptive Claimant Application. The implementation of the Land Registration etc. (Scotland) Act 2012 has provided the statutory framework for what is required to satisfy the Keeper to allow registration of land and is found in sections 43 to 45 of the Act (known as the Prescriptive Claimants provisions). If the Keeper is satisfied that the necessary steps have been taken she will register title to the area (albeit with a limitation on her warranty). One thing to note with this process is that steps must be taken to identify and notify parties who may have an interest in the land and there is a 60 day notification period (which could delay a settlement). Furthermore the Keeper of the Registers of Scotland will only issue a provisional title for a 10-year period and place a limitation on her warranty (as such the title is open to challenge during this period). After 10 years, an application (confirming that for the last 10 years the land has been occupied openly, peaceably and without judicial interruption) can be made to have the limitation removed. Where you have historic exclusions of indemnity/limitations on warranty you may wish to consider the use of Title Indemnity Insurance to provide cover to the purchaser should their title be challenged during the 10-year period.
4. Alternatively you can rely on a Dispossession Title Insurance Policy to protect against any challenges to the occupation and use of the land.

Servitudes

It is not only title to heritable property that can be acquired using Prescription. Section 3(2) of the Act provides that in the case of positive servitude over land, if the servitude has been possessed for a continued period of 20 years openly, peaceably and without any judicial interruption then the servitude will be valid at the expiry of that period. The 20-year period also applies to public rights of way.

Prescriptive rights like this can exist in the absence of registering them however prescriptive servitudes can be registered with Registers of Scotland. The right will need to noted on both benefiting and burdened titles. You may wish to do this to fortify the rights or protect the purchaser from challenges with title insurance if you are concerned that the noting of the prescriptive servitude could prompt a claim from the owner of the land rights are exercised over.

Negative prescription

Section 8 of the Act states that if a right in property has been unexercised or unenforced for a continued period of 20 years without any relevant claim having been made then on the expiry of that period then the right shall be extinguished. This is referred to as 'negative prescription'. This includes servitude rights, public rights of way, claims under the law of nuisance, to name a few.

Separate Tenements

Ross Simpson

It is presumed that land is owned a coelo ad centrum - from the heavens to the centre of the earth - so that everything above and everything under the land, and all rights and interest associated with the land, belong to the landowner. Only under the doctrine of 'separate tenements' is it possible for strata of land and other heritable property to be owned independently of land itself.

Separate tenements fall into two categories:

Legal: Those which by legal implication are separate from land and will not transfer in the absence of an express conveyance.

Conventional: Those which are severed from the land by grant or reservation.

Some examples of separate tenements recognised in Scots law are as follows:

a. Salmon fishing

Originally vested in the Crown, the right to fish for salmon is distinct from ownership of the river, loch, etc. and is an example of a legal separate tenement. This does not apply in Orkney and Shetland where the underlying tenure is udal.

b. Other sporting rights

Whilst, historically, sporting and fishing rights (other than salmon fishing) were considered pertinent of ownership and not capable of being separately owned, some modern exceptions exist: (i) sporting rights reserved by superiors before 28 November 2004 by appropriate registered notice under section 65A of the Abolition of Feudal Tenure etc. (Scotland) Act 2000 and (ii) sporting rights reserved by landlords before 28 November 2015 under a long lease by appropriate registered notice under section 8 of the Long Leases (Scotland) Act 2012.

c. Minerals

Minerals under the surface of the land are also capable of being owned separately from the land. For example, rights to unworked coal (vested in the Coal Authority) and other minerals such as gold and silver are separate legal tenements excluded from private ownership by virtue of statute or the historic rights of the Crown. In other cases, a party may sell the land but retain the mineral rights.

d. Flatted dwelling houses

Buildings of more than one storey may also be divided into separate tenements so that different units and levels are owned separately.

Title Indemnity Insurance in Action

Sarah Gateaud-Manase

Title indemnity insurance ('TII') is widely used in practise and has become a crucial tool in real estate and share transactions globally. It is a method for solicitors to manage legal and financial risk, avoid delays, and protect their clients' interests.

A solicitor acting for a prospective purchaser, developer or lender will seek to establish, as part of their due diligence, if the property they are acquiring or financing is subject to title defects. Title defects can adversely affect a client's use of a property, interest and value. Title defects can be both known and unknown and TII's offering mirrors that concept. TII policies can cover a range of defects from known ownership issues, boundary discrepancies, errors in deeds, title conditions, through to missing writs. TII also offers comfort for unknown adverse entries on outdated property searches, unknown matters in portfolios, and even where limited warrandice is being given by a seller and an extra layer of comfort against any unknown title defects is sought by the purchaser.

Whilst TII does not remove a defect, it enables a transaction to proceed, pausing the corrective conveyancing process and providing a protective layer for those with an interest in the property. It is the transfer of legal and financial losses a client could suffer in the event a third party becomes aware of a title defect and seeks to enforce the defect against the client. An example of this could be a local authority taking enforcement action for works that do not have planning permission, a neighbour becoming aware that your client is occupying land belong to the neighbour, or a third party seeking to exercise mineral rights. A TII policy meets a claim when the insured title defect arises organically; in other words, when no approach or disclosure (other than to prospective successors) is made and the claimant becomes aware of the defect themselves.

TII is a pragmatic alternative to remedying title defects identified in due diligence and limits the costs and time spent during a transaction. In some cases, TII is a facilitator to a transaction that would otherwise not happen e.g. a lender refusing to release funds unless a defect is removed. Unlike other insurance policies on the market, TII is a legal insurance offering (generally in perpetuity), with a one-off premium and is non-renewable, protecting those with an interest in the property- owners, successors, tenants and heritable creditors. In development cases, insurers are often able to extend the insured to also protect the interest of service providers and statutory undertakers.

Whilst the textbook approach to remedying identified defects involves approaching a potential third party claimant and asking them to grant the necessary servitude, waiver the reservations, retrospectively grant planning etc, over the last decade solicitors have become aware of the impracticalities of doing so. The outcomes of these approaches can be unsuccessful and complex, regularly becoming a hindrance to transactions, especially when housing and renewable targets are on the rise and turnaround times are swifter.

Let's consider this in action; there is a gap between the title and the publicly adopted road. The gap sits in the sasine register and following the results of searchers, the solicitor writes to the potential owners of the said gap, asking for the necessary grant of servitude. After several weeks, the owners reply and agree to grant a servitude, but for a substantial financial sum. If the owner had not been approached and the risk transferred to a TII policy, there would have been little cost to the client and no delay in drafting deeds. The insurer would have carried the risk of the true owner becoming aware of the absence of servitude organically and all necessary settlement and legal costs with the owner of the gap.

Some identified defects are purely theoretical and substantially low risk, with some solicitors and clients deciding to take a view. This approach however has its loopholes, as heritable creditors will not accept being subject to risk in the view that if they take possession, the asset should have good title and their interest protected. Without comfort in this regard, a heritable creditor will not release funds. A common example of this is a transaction where there is a gifted deposit or a transfer at undervalue. No heritable creditor will release funds without comfort that the party transferring at an undervalue or gifting the deposit is solvent and not trying to evade paying their creditors.

Loss or damage under TII's policies will differ slightly according to the TII provider but the aim of insurers is always to settle the claim as swiftly as possible for all parties and thus most claims are often resolved out of court.

It is important to review the terms and consider whether the client has adequate coverage or whether the client could benefit from additional consequential losses such as loss of profits, dismantling of equipment and business interruption. Loss and damage clauses in TII policies generally include:

- Settlement costs
- Legal defence costs and ancillary professional fees
- Interest due under the terms of a mortgage due to delay
- Demolition, alteration and reinstatement costs
- The difference in market value before and after the claim
- Inflation (this is beneficial with house prices increasing), and
- Tenants' rental liability

A fundamental consideration for a solicitor is whether the limit of indemnity will be eroded by the legal defence costs. Cover can be sought for property whether it is continued use or development (both prior to planning permission being obtained or after). The limit under a policy is usually reflective of the use and loss in market value that could be suffered by the client in the event of a claim i.e. a continued use property would usually use the market value, the loan amount if the interest under the TII policy is limited to a lender and where there is a development, it is often the anticipated gross development value.

When considering TII the first step is to set out a transaction summary to the insurer, with details of the defect of concern and what protection the client is seeking.

This will allow the insurer to assess the legal defect, any defences and the risk exposure, so that a suitable policy can be produced and a premium quoted. It is important to disclose any material information such as contact or disputes with third parties, to avoid misrepresentation, which can lead to complications in the event of a claim. Many insurers now have online platforms, allowing for more common defects such as breach of title conditions and lack of building warrants to be insured almost instantaneously, without assessment by the insurer and subject to a few confirmations by the solicitor.

TII has become a practical tool for commercially minded solicitors to resolve title defects quickly and cost effectively. Offering a peace of mind to purchasers against future legal disputes and allowing the seller to have a clean exit without a reduction of sale price, TII remains an essential first port of call when a title defect has been identified, allowing a solicitor to weigh up the options available to their client.

Commercial

Natural Capital

Alan Gibson

1. Background

1.1. Natural capital as a distinct practice area is still relatively new to the Scottish legal profession, although it's been steadily growing for the past few years as business becomes increasingly interested in environmental and ecosystem services, biodiversity net gain and carbon credits. Although it remains fairly infant as a distinct practice, natural capital is simply about recognising and improving the value in our natural assets – and in many cases looking to make some income along the way.

2. Biodiversity Projects

2.1. Businesses, developers and investors are becoming increasingly interested in biodiversity projects, whether for environmental and/or net zero reasons, or in order to meet planning obligations imposed on them by local authorities, or as means to generate and trade in this newly recognised asset class. These projects can range from large-scale woodland creation or peatland restoration to smaller scale interventions such as riparian revegetation around streams and burns.

The nature of the project will depend on a number of factors, including the scale and nature of the available land, the investment available, the intended term of the improvement, and the purpose of the project (e.g. whether it's purely intended to improve the land for environmental reasons, or whether it's being implemented to meet a planning condition for an energy project).

2.2. Depending on the term of a given project, there can be some challenge in properly constituting and documenting the land rights which are required to deliver it in a way which also protects the investment of the businesses, developers and investors who are funding it. As with any project relating to land, the most important initial step is to ensure that the necessary land rights have been secured, which can result in multiparty agreements being required among the landowner, the project delivery agent and the investors. Alternatively, multiple layers of contracts may be used to separately document the land rights from the project implementation terms and conditions.

3. Land rights

3.1. As well as securing the land rights for the project, any agreement with an affected landowner will also need to protect the funder's investment in the project by imposing obligations on the landowner to prevent them disrupting or removing the project from the land before the agreed term, which may vary quite considerably depending on the project type and purpose – it's not uncommon for projects to have a term of anywhere between 5 – 100 years. For this reason, the project delivery agent and funders will typically want to consider options for the long-term imposition of land obligations, including:

3.2. Real burdens

3.2.1. Real burdens could be imposed on the landowner's title obliging them to use the land only in accordance with the agreed uses, and not to do anything to prejudice the ecosystem interventions for the duration of the project. However, this is not usually a realistic option because real burdens require a benefited property and a burdened property, and in this scenario there is often only a burdened property.

3.3. Conservation burden

3.3.1. These are a specific type of statutory real burdens which do not require a benefited property to be identified. In some instances, this could be a potential option, but in order to constitute a conservation burden, the project delivery agent (or other interested party) would need to be a registered conservation body (which requires the approval of the Scottish Ministers).

3.3.2. Additionally, Conservation Burdens can only be created for the purpose of preserving, or protecting, for the benefit of the public a special characteristic of the land (including a characteristic derived from the flora, fauna or general appearance of the land). While in some specific instances these could be useful, in the majority of cases these are too prescriptive and will not meet the needs of the parties.

3.4. Management agreement

3.4.1. The project delivery agent could enter into a land management agreement with the landowner to set out the rights and obligations required in connection with the delivery and management of the project for the agreed period. Since these types of agreements are personal contracts between the parties, one of the key issues (particularly where a project is intended to be in place for a longer period) is how to enforce the terms of the agreement (including obligations not to reverse any ecosystem interventions carried out by the project delivery agent) against any successors in title. There are a few ways in which the project delivery agent might look to bind successor landowners by the terms of the agreement:

a. The agreement could be registered against the landowner's title deeds as a minute of agreement, with an explicit 'successors bound' provision. The agreement would then appear on the titles to the property unless or until a discharge was granted, and so it would become a matter of public record. While this approach would provide notice to successors and potential purchasers of the land, it doesn't guarantee that any successor wouldn't try to challenge the enforceability of the management agreement on the basis that it is a personal contract and not a 'real burden'. The project delivery agent would be reliant on the costs of challenge to be dissuasive for any future challenge to the validity.

b. The landowner could secure their obligations in the agreement to their title, by granting an ad factum praestandum standard security, which is a standard security in relation to non-monetary obligations. The terms of the agreement would not be disclosed in the standard security, but since it would be registered against their title this would act as a flag on the title to any third-party who obtained a legal report over it. The agreement would remain a personal contract between the parties, but if the landowner wished to sell or convey the land, then they would require to give notice of their intention to sell or convey the land to the project delivery agent, who would typically be obliged to act reasonably and consent to the sale or conveyance, and to deliver a discharge of the standard security, but only in exchange for a replacement management agreement and standard security signed by the incoming party. This would ensure continuity of the project rights even if a new landowner was introduced.

c. If the landowner didn't want the agreement to be registered against their title in any way, it could be registered in the Books of Council and Session for preservation and execution. This would also result in the agreement becoming a matter of public record, but would allow it to be enforced in court, if necessary. However, the agreement would remain a personal agreement between the original parties, with no direct means to enforce the terms against any successor landowner, if the land was ever sold without the original landowner complying with the 'successors bound' provisions.

3.5. Leases

3.5.1. The landowner could grant a lease of the project land to the project delivery agent, but this is likely to lack appeal on the basis that a lease requires exclusive possession and a landowner is unlikely to be willing to surrender exclusive possession for a long period. This becomes increasingly complicated if the land is already subject to other third-party rights or leases.

3.5.2. If the landowner was comfortable with the principle of granting a lease, but wished to retain possession of the bulk of the land, then alternatives such as a licence to occupy or a 'postage stamp' lease (which is a lease of a very small (usually insignificant) area of land nearby the affected area together with ancillary rights over the necessary area) could be investigated.

4. Carbon Credits

4.1. There are two carbon credit schemes operating in the UK, the Woodland Carbon Code, which administers the validation and verification of Woodland Carbon Units ('WCUs'), and the International Union for Conservation of Nature (IUCN) UK, which administers the validation and verification of Peatland Carbon Units ('PCUs'). Each WCU or PCU (together referred to as 'CUs') is a verified credit representing one tonne of carbon dioxide equivalent removed from the atmosphere by a UK woodland creation project or peatland restoration project, respectively.

4.2. The intention behind CUs is to create a tradeable asset which can be purchased by parties looking to offset their own carbon emissions. However, the level of trade-ability is largely determined by the account type which the project developer holds with the UK Land Carbon Registry, and true trader status cannot be achieved by non-FCA regulated bodies. The system is designed to permit landowners develop carbon projects on their own land, or to allow them to enter into agreements with third-party developers to deliver carbon projects on their land.

4.3. In order to have CUs verified, project developers must first register their project, which involves meeting the additionality test of proving that the proposed project will truly result in the removal or sequestration of 'additional' carbon from the atmosphere, which would not otherwise have been removed. For example, commercial forestry fails this test because the tree crop is planted for commercial purposes, and not simply for the purpose of sequestering carbon. Following registration, the project developer must complete the work required to deliver it (e.g. tree planting or peatland restoration). Once the work is completed, it must be independently inspected to become validated, following which Pending Issuance Units (PIUs) will be issued for each CU which is expected to be delivered. The works must be independently inspected five years after validation, and assuming all goes well the CUs will be issued. The project is then subject to regular inspections every five or ten years to ensure that the project is continuing to develop and sequester carbon from the atmosphere at the expected rate, and adjustments to the number of issued CUs can be made if performance falls low.

4.4. Of the PIUs and CUs issued, 20% will be automatically transferred to a 'buffer' account, which acts as an insurance policy for purchasers of the CUs in the event of damage, destruction or other failure of the relevant carbon credit project. The buffer can be called upon by project developers to top up any shortfall between the number of CUs issued and the number of CUs sold so that purchasers' emissions are still being offset, but this may be subject to the project developer agreeing to replenish the buffer with the number of CUs drawn.

4.5. In circumstances where a third-party is being appointed by a landowner to create and manage a carbon credit project on their behalf, the parties need to consider whether the third-party will be granted (1) proof of rights, or (2) a communications agreement ('Comms Agreement'):

4.5.1. Proof of rights – this effectively splits the carbon ownership from the land ownership in a way which results in legal separation of those rights. It's worth noting that a proof of rights agreement can cause difficultly for the carbon owner transferring that carbon ownership onto any party other than an end user, unless they have a trader account type.

4.5.2. Comms Agreement – this sets out the rights and responsibilities of the landowner and the project developer, including how the developer will manage the PIUs and/or CUs on behalf of the landowner. However, this does not have the effect of separating the land ownership from the carbon ownership, and so the landowner remains the owner of the carbon even if the project developer has taken on the full responsibility for and costs associated with the creation and management of the project.

4.6. Unlike minerals, carbon rights are not a separate tenement in Scotland, which means it's not possible for one party to hold a title to the land and another party to hold a title to the carbon. As a consequence, the grant of a proof of rights can cause some risk and uncertainty since it results in a personal right to the carbon ownership, but without constituting a real right or otherwise being publicly registered against the landowner's title.

Renewable Energy Developments in Scotland

Alan Gibson

1. Background

1.1. As a range of energy project developers seek to secure land, planning and other project rights for onshore and offshore renewable energy projects across Scotland, the National Grid and the network operators (e.g. Scottish Power and SSE) are left racing to map out and secure rights for the infrastructure which is required to support these projects.

1.2. There are three general ways that the land rights for energy developments and infrastructure projects can be acquired:

1.2.1. **Purchase** – the relevant land can be purchased from the landowner for the purposes of the project. This approach is fairly uncommon due to the semi-temporary nature of these projects, and so land is usually only purchased for large scale grid infrastructure, such as converter stations.

1.2.2. **Lease** – the relevant land can be leased from the landowner for a period which is sufficient to allow construction, operation and subsequent decommissioning of the project. This is the most common approach, and it is regularly taken by energy developers so that they can return the land to the landowner following decommissioning.

1.2.3. **Servitude** – the relevant land rights can be secured with servitudes. This approach is typically taken for access and cabling rights only.

2. Option agreements

2.1. In the majority of cases, renewable energy developers will initially secure their land rights with an option agreement, which is a contractual agreement entered into between and landowner and a developer giving the developer an option to purchase, lease or secure rights over the landowner's land, if certain conditions are met. The terms of any purchase, lease or servitude rights will be negotiated at the same time, and the draft lease, for example, will be annexed to the option agreement. This gives both parties certainty of the precise terms on which any rights will be granted if the developer exercises the option; and this approach is critical from the developer's perspective to ensure all necessary rights are secured and to ensure they can satisfy their funders. Importantly, this will include agreement of all commercial terms, such as levels of rent payable for the duration of the project.

2.2. The option agreement will stipulate that in exchange for a commercial payment, the developer will be granted exclusive rights for a period of time (usually 3 – 10 years depending on the nature of the project) (an 'option period') to complete site investigations, and to obtain planning consent and a grid connection offer for their development.

2.3. The option agreement will usually have extension provisions allowing the developer to extend the option period if they can demonstrate sufficient progress (e.g. submission of the planning application), but they are still awaiting a decision on their planning application (or a planning appeal) or their grid connection application, for example.

2.4. The option agreement will also impose conditions and obligations on the landowner for the duration of the option period, such as prohibitions on entering into discussions with other developers about developing similar projects on their land, or obligations to provide reasonable support to the developer's planning application. These conditions are designed to protect the proposed development and give the developer the best chance of successfully obtaining planning consent and a grid connection agreement for the project.

2.5. Since the option agreement is a personal contract between the landowner and the developer, the developer would hold no real rights in the land for the duration of the option period, and its existence wouldn't be publicly recorded (particularly given confidentiality provisions).

This creates a risk to the developer that the landowner could sell or convey their land to a third party once the option is granted, leaving the developer in contract with a party who no longer owns the land and who doesn't have the ability to grant the necessary rights. Therefore, the approach which is accepted as industry standard is for the landowner to secure their obligations in the option agreement to their title, by granting an ad factum praestandum standard security, which is a standard security in relation to non-monetary obligations. The terms of the option agreement will not be disclosed in the standard security, but since it will be registered against their title it will act as a flag on the title to any third party who obtains a legal report over it.

2.6. One of the most critical obligations imposed on a landowner in an option agreement is to take 'successors' bound' by their obligations in the option agreement if they decide to sell or otherwise convey their interest in the land (e.g. due to a business reorganisation or family succession planning). In this case, the landowner will require to give notice of their intention to sell or convey the land to the developer, and the developer will typically be obliged to act reasonably and consent to the sale or conveyance, and to deliver a discharge of the standard security, but only in exchange for a replacement option agreement and standard security signed by the incoming party. This ensures continuity of the developer's option rights (including their right to exercise the option) even if a new landowner is introduced.

2.7. It should be noted that an option agreement is simply an option, and so the developer has no obligation to exercise the option and develop their project at any time, even if they do obtain all necessary rights, and they are typically entitled to terminate the option agreement at any time upon giving limited prior notice (if any).

2.8. Following the exercise of the option by service of a written notice by the developer, the landowner will be obliged to grant the project rights (e.g. the project lease) within an agreed period which is usually around two – eight weeks.

3. Main site leases

3.1. The main site of a project will usually be developed on the basis of a main site project lease, which includes all of the necessary rights for constructing, operating and decommissioning the project following its operational lifespan. Due to the improved operational lifespan of the technologies involved, the duration of these leases are getting longer, with a typical windfarm lease now extending to around 50 years.

3.2. Early windfarms were developed with much shorter lifespan expectations (e.g. 25 years) and so it's fairly common for operational windfarm leases to be extended as developers manage to maintain the existing turbines for longer. Lease extension provisions are also regularly included in new leases, to give developers future flexibility if their project is still operationally efficient at it's proposed decommissioning date. However, as a condition of any such extension it's quite common for the rental structure to be reviewed at this point to ensure that the landowner is still being fairly recompensed given the long period (potentially 60+ years) since rent figures were originally agreed.

3.3. The leased area varies by project, but whereas traditionally the whole of the landowner's land would have been leased (known as an 'envelope lease') to ensure all potentially necessary areas were captured (even if large areas would be unaffected), it is now more common for the leased area to be heavily restricted to a much smaller area. This doesn't tend to affect the rent which is paid, but does mean developers need to know exactly which areas will be required. From the landowner's perspective, they are seeking to minimise the area over which the developer technically has exclusive rights of occupation, especially since the landowner will usually intend to continue farming or grazing livestock around a project, if possible.

3.4. In the context of windfarm leases, either an envelope lease, or a 'spots and stripes' lease (i.e. a lease of the spots and stripes on which the turbines and access tracks will be constructed) will be taken, with spots and stripes leases being far more common now. Some landowners also refuse to lease the access tracks and will instead agree only to grant ancillary lease rights over them so that they remain within the landowner's possession.

3.5. In addition to the leased areas, most projects require rights over ancillary areas (particularly if the leased areas have been heavily restricted) for a variety of reasons, including installing access tracks and cabling, constructing

construction compounds, opening borrow pits (i.e. small quarries used to mine stone for road construction), and creating habitat management areas. Although these areas won't be leased to the developer, they will be granted non-exclusive rights over them for purposes in connection with the development.

3.6. The delivery of habitat management is a common requirement for any renewable energy project, and it's imposed by the planning authority as a planning condition. The intention is to oblige the developer to undertake some form of habitat management or biodiversity project to offset the carbon emissions and environmental damage caused by their project. The scale of measures required will depend on the nature and scale of the project, and may be negotiated as part of the planning process, but a 1:10 ratio is quite a common starting position (e.g. if the project impacts 1 acre of land, 10 acres must be restored or bettered). Examples of habitat management would include peatland restoration, woodland planting, grassland meadow creation, etc although there can also be less common obligations imposed, such as obligations to control pests which prey on endangered birds or other wildlife. The nature of these works will be agreed during the planning process and will be informed by site investigations conducted by the developer during the option period. Although imposed as a condition of planning, the developer will need rights to undertake these works on the landowner's land, and so the project lease will include rights for them to do so.

3.7. At the end of the project, the developer will usually be obliged to remove all equipment installed by them during the lease period down to a depth of 0.8 – 1.3m below the surface (anything deeper can typically be left behind). They may be permitted to leave any access tracks which have been installed, unless the landowner or the planning authority require them to be removed. In order to guarantee these obligations and ensure that the landowner isn't left at the end of the term with the liability of a non-operational project on their land, the developer will usually be required to provide the landowner and/or the local authority with a restoration bond or other form of restoration security (e.g. cash deposit in a joint escrow account) for the full estimated cost of decommissioning the project and restoring the land, which sum will be reviewed at regular intervals throughout the lease. Where possible, developers will seek to postpone the provision of a restoration bond until after the project is fully operational (or later) due to the costs involved and to avoid cashflow difficulties during construction. The bond acts as an insurance policy, and if the developer goes bankrupt or otherwise fails to fully restore the land in accordance with the lease obligations, then the landowner and/or the local authority can make a claim on the bond to provide the necessary funds to instruct the restoration themselves.

4. Access and cabling rights

4.1. In addition to main site option agreements, developers may need to enter into option agreements with additional landowners to secure all necessary access and/or cabling rights to provide suitable connections from the development to the point of delivery and/or point of connection.

4.2. In the context of windfarms, this approach is commonly required for 'oversail' or 'overrun' rights whereby a developer requires to oversail or overrun a landowner's property with a wind turbine component in order to transport it around a corner, or across a bend in a public road. In this instance, the rights granted will be limited to those strictly required (e.g. rights to lower boundary walls, if necessary, and to oversail the component through the landowner's airspace).

4.3. These rights are usually constituted in one of two ways:

4.3.1. **Lease** – the developer may require the affected landowner to grant a lease of the affected area to them together with any ancillary rights.

4.3.2. **Servitude** – the developer may require the affected landowner to grant the necessary servitude rights over the affected land in favour of the main site landowner. The main site then becomes the benefited property, and the developer will be entitled to exercise these rights as a condition of the landowner's title by virtue of their main site lease.

4.4. It is common for access landowners to seek to maximise their commercial position by refusing to grant exclusive possession of the access and cabling areas to any developer, so that they can grant rights to multiple developers if the opportunity arises. This can be achieved by granting servitude rights so that the affected land becomes burdened by rights in favour of multiple benefited properties. Alternatively, the landowner may decide to grant 'postage stamp' lease to the developer, which is a lease of a very small (usually insignificant) area of land nearby the affected area together with ancillary rights over the access and cabling area(s).

Environmental factors

Environmental Law in Scotland: A 2026 Perspective for Land and Property Lawyers

Richard Hepburn

Environmental law in Scotland has undergone significant change in recent years, with a wave of new legislation and policy reforms that directly affect land and property practice. Whether you are advising on transactions, development projects, or ongoing land management, it is essential to be aware of these developments and their practical implications.

One of the most important recent changes is the introduction of the Natural Environment (Scotland) Bill, which is currently at an advanced stage in the Scottish Parliament. This Bill is set to introduce legally binding targets for nature restoration, requiring the Scottish Government to halt biodiversity loss by 2030 and achieve substantial restoration by 2045. For land and property lawyers, this means that future planning and development work will increasingly need to demonstrate positive contributions to biodiversity and nature recovery. The Bill also updates the frameworks for Environmental Impact Assessment (EIA) and Habitats Regulations, which are central to many property and infrastructure projects. In addition, it modernises the governance of National Parks and deer management, both of which can have direct implications for rural landholdings and estates.

The regulatory landscape has also been streamlined with the Environmental Authorisations (Scotland) Amendment Regulations 2025. These regulations consolidate the permitting system for activities such as waste management, water use, industrial processes, and radioactive substances. Instead of navigating a patchwork of different regimes, clients and their advisers now deal with a single, unified framework, with four levels of authorisation. This should make compliance more straightforward, but it also means that lawyers need to be alert to the new requirements and ensure that all relevant activities are properly authorised.

Climate change remains a central concern for Scottish policymakers, and the Climate Change (Emissions Reduction Targets) (Scotland) Act 2024 has updated the country's statutory targets for greenhouse gas emissions. This reinforces the need for land and property professionals to consider climate impacts in all aspects of their work, from due diligence and risk assessment to advising on sustainable development and renewable energy projects.

A particularly noteworthy development is the proposed Ecocide (Scotland) Bill, which, if enacted, would create a new criminal offence for acts causing severe, widespread, or long-term environmental harm. This could have significant implications for corporate clients, as company directors and senior managers may be held personally liable for offences committed by their organisations. As at December 2025 this Bill is still at the proposal stage, but it signals a clear direction of travel towards stricter enforcement and greater accountability.

Land management is also in the spotlight, with the Land Reform (Scotland) Bill awaiting Royal Assent. This Bill introduces new requirements for community engagement and mandates land management plans that include climate and biodiversity net gain planning. It also establishes the Land and Communities Commissioner and modernises the law on agricultural holdings. These changes are likely to affect a wide range of rural transactions and ongoing management arrangements, so it is important for practitioners to stay up to date.

Oversight and enforcement have been strengthened with the creation of Environmental Standards Scotland (ESS), an independent body established in 2021. ESS monitors and enforces the effectiveness of environmental law, scrutinises public authorities' compliance, and investigates concerns raised by the public. This provides an additional layer of scrutiny and accountability, particularly in the post-Brexit context where EU oversight no longer applies.

Finally, the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 gives Scottish Ministers the power to keep devolved law aligned with EU environmental standards. This 'keeping pace' policy means that Scottish law may continue to evolve in line with European developments, even as the UK diverges in other areas.

In summary, environmental law in Scotland is becoming more integrated, ambitious, and enforcement-driven. For land and property lawyers, this means a greater emphasis on compliance, risk management, and proactive engagement with environmental objectives. Whether you are a trainee drafting your first due diligence report or a Partner advising on a major development, staying informed about these changes is essential for effective practice.

Clearly, with a number of the areas above at advanced, but still pre-enactment stage, their final form may differ from the overview narrative presented here so maintaining a continued awareness of the implications of the impact of the resulting legislation is important. For further information and regular updates, resources such as those shown below contain the latest updates on key aspects of environmental law in Scotland and elsewhere in the UK.

Web resources – Environmental law

- Scottish Environment Protection Agency *(http://www.sepa.org.uk)*
- Law Society of Scotland *(www.lawscot.org.uk)*
- Scottish Government *(www.gov.scot/environment-and-climate-change/)*
- Environmental Standards Scotland *(https://environmentalstandards.scot/)*
- Environment Agency *(www.environment-agency.gov.uk)*
- UK Environmental Law Association *(www.ukela.org)*

Sustainability within Conveyancing: A Growing Imperative for Scottish Practitioners

Christopher Loaring

Introduction: Climate change and the legal landscape

Climate change is no longer a distant environmental concern – it is a present and pressing risk that increasingly intersects with legal practice, particularly in property transactions. As the effects of climate change intensify, so too does the responsibility of legal professionals to consider environmental risks in their due diligence processes.

In adjacent geographies (England and Wales), the Law Society has taken proactive steps to guide solicitors through this evolving landscape. Its 2023 guidance, Impact of Climate Change on Solicitors, laid the foundation by identifying three key categories of climate-related risks: physical, transition, and liability risks. This was followed in 2025 by a dedicated Climate Change and Property Practice Note, which offers practical advice for conveyancers on how to identify and address climate risks in property transactions. These developments reflect a broader shift in legal expectations and client demands.

What is the latest position in Scotland?

As Scotland moves towards its own net zero commitments, it is vital that Scottish conveyancers understand the implications of climate change on property law and align their practices with emerging standards of sustainability.

The Law Society of Scotland (LSS) recognises this and in September 2025 the Property Law Committee publicly confirmed that it is reviewing how climate risks should influence conveyancing advice in Scotland, acknowledging the 2025 practice note issued by the Law Society of England and Wales referred to above.

As it stands entering 2026, LSS conveyancing guidance remains unchanged but this is clearly a moving position which will require attention from Scottish conveyancers and in the sections which follow below we explore the England and Wales guidance and its' structure considering physical, transitional and legal and liability risks as an indicator of the areas which may be taken into account here in any future guidance.

How such guidance emerges in practice will likely be through a combination of changes to conveyancing guidance as well as further improvements to the existing Home Report format in Scotland (for residential transactions). Other regulatory reform such as new EPC legislation to come into effect at the end of 2026, a Heat in Buildings bill progressing through the Scottish Parliament and the wider implications of NPF4 (which had climate change and the nature crisis as a key element) are all likely to play into how new guidance emerges.

Why Net Zero matters for law firms

The legal profession is not immune to the global push for decarbonisation. Law firms, like all businesses, are under increasing pressure to reduce their carbon footprints and demonstrate environmental responsibility. This is not merely a matter of corporate social responsibility, it is a matter of regulatory compliance, reputational risk, and client expectation.

The Law Society of England and Wales encourages firms to adopt science-based targets for emissions reduction and to consider the climate impact of their legal advice – so-called 'advised emissions'. For conveyancers, this means recognising how the properties they help transact may contribute to or be affected by climate change, and advising clients accordingly.

Climate change risks in property due diligence

1. Physical risks

These are the most immediate and tangible risks. They include:

- Flooding: Properties in flood-prone areas face increased insurance costs, reduced mortgage availability, and potential future uninsurability.
- Coastal Erosion: Particularly relevant in parts of Scotland, erosion can undermine property stability and long-term value.
- Overheating and Subsidence: Rising temperatures and changing soil conditions can affect building integrity and habitability.

Solicitors must consider whether a property is located in a high-risk area and whether appropriate surveys and environmental searches have been conducted.

The Law Society's 2025 practice note recommends using climate risk screening tools and consulting flood risk maps as part of standard due diligence.

2. Transition risks

These arise from the societal shift towards a low-carbon economy. For property transactions, this includes:

- **Energy efficiency standards:** Properties with poor EPC ratings may become harder to sell or let as regulations tighten
- **Retrofitting costs:** Buyers may face significant costs to bring properties up to future energy standards
- **Planning restrictions:** Local authorities may impose sustainability requirements on new developments or renovations

3. Legal and liability risks

Solicitors who fail to advise clients on material climate risks may face professional negligence claims. The Law Society's guidance emphasises that while solicitors are not expected to be environmental experts, they are expected to identify when specialist advice may be needed.

For example, if a property is in a flood zone and subject to redevelopment proposals and the solicitor fails to recommend a flood risk assessment, they could be held liable if the client later suffers loss. Similarly, failing to advise a commercial client about the implications of energy performance regulations could result in reputational or financial harm.

Identifying and reviewing climate risks

To integrate climate risk into conveyancing practice, solicitors can now:

- **Use standardised checklists:** Incorporate climate risk prompts into client care letters and due diligence checklists.
- **Engage with environmental reports:** Understand the basics of flood risk, EPC ratings, and climate projections.
- **Collaborate with experts:** Know when to refer clients to surveyors, environmental consultants, or planning specialists.
- **Stay informed:** Keep up to date with evolving guidance from professional bodies and regulators.

In adjacent geographies (England and Wales) the Law Society's 2025 practice note provides a practical framework for doing this without overburdening practitioners. It reassures conveyancers that they are not expected to become climate scientists, but rather to be aware of the legal implications of climate risks and to act accordingly.

While climate searches are now widely available they vary widely, across areas such as:

- Representative Concentration Pathways (RCPs)

RCPs are assumptions about the economic, social and physical changes to our environment that will influence climate change. For example, how much energy we will use or how much populations will grow. RCPs are a method for measuring these assumptions. They are scenarios used to model possible futures based on different levels of greenhouse gasses in the atmosphere. RCP 2.6 is the most closely aligned with the global goals set by the Paris Agreement.

These goals aim to limit global temperature rise by no more than 2C by 2050. RCP 4.5 is considered the most likely trajectory based upon latest science. RCP 8.5 adopts a 'business as usual' scenario. This is the likely outcome if we make no concerted effort to curb greenhouse gasses. This scenario is considered to be unlikely.

- Timelines
  The period RCPs are examined can be anywhere between 5 to 100 years.
- Risk coverage
  The range of risks covered by the climate search could feature any combination of flood risk, ground stability, coastal erosion, energy performance, wildfires, heat stress, or drought.

Conclusion: the next generation is watching

Sustainability is no longer a niche concern, it is a mainstream expectation, particularly among younger homebuyers. This generation is more environmentally conscious, more informed, and more likely to ask difficult questions about flood risk, energy efficiency, and long-term resilience.

For Scottish conveyancers, this presents both a challenge and an opportunity. By embedding sustainability into due diligence processes, solicitors can not only protect their clients and their firms but also contribute to a more resilient and responsible property market.

As the Law Society of England and Wales has shown, the legal profession has a crucial role to play in the transition to a net zero future. Scottish practitioners will need to equally prepare for this impact and prepare for a future where evidencing understanding of climate risk is as fundamental to conveyancing as title checks and planning permissions.

Contaminated Land

Samuel Hackett, Chartered Environmentalist

Environmental liabilities: Contaminated land

During any property transaction, whether commercial or residential, a real estate lawyer must investigate and clarify a range of issues and risks. The aim is to ensure, as far as reasonably possible, that there are no hidden problems with the property that could affect the future owner's ability to use and enjoy it, or impact any future aspirations for the property. Ultimately, it's about equipping clients with the information they need to make informed decisions before completing on a transaction.

One issue that can be overlooked is the risk of contaminated land and the potential environmental liabilities that come with it. The term 'environmental liability' is broad and covers various areas of environmental law, including waste management, regulated activities, and water quality. However, when it comes to property transactions, the key legal framework for managing contamination risks is Part 2A of the Environmental Protection Act 1990 (EPA).

Contaminated land: What is the issue?

The issue stems from the UK's industrial past. A mix of heavy industry, poor environmental practice, and limited understanding of the impacts of contaminants on human health and the environment has led to widespread land contamination in some areas.

This problem has been exacerbated by weak historic planning policies and inadequate investigation into potential contamination during the redevelopment of former industrial sites.

As a result, there are parts of the Scotland where contamination poses a serious risk to both human health and the environment. In Scotland, it's estimated that around 67,000 properties, covering approximately 82,000 hectares, could be affected.

Since the introduction of the Contaminated Land Regime under Part 2A of the EPA 1990 on 1 April 2000, local authorities have been legally required to assess, prioritise, and investigate land for contamination. If necessary, they can formally designate land as 'Contaminated Land' and issue a remediation notice.

Part 2A is based on the 'Polluter Pays Principle'. This means the person(s) or organisation(s) responsible for causing or knowingly allowing contamination is expected to pay for remediation. However, identifying the original polluter isn't always possible. In such cases, the current freeholder or leaseholder may be held liable.

This can have serious consequences, including the cost and disruption of remediation work (e.g., installing a retrospective gas membrane). Even after the property has been cleaned and verified, it may remain on the Scottish Environmental Protection Agency's (SEPA) list of designated 'Contaminated Land' sites.

This can reduce the property's value and make it harder to sell in the future.

What is expected of a solicitor?

The Law Society of Scotland issued guidance on contaminated land liabilities April 2003, which was later updated in December 2010. The guidance advises that 'Solicitors should be aware that environmental liabilities may arise and consider what further enquiries and specialist assistance (both legal and technical) the client should be advised to obtain'. It also outlines specific considerations for both commercial and residential conveyancing. In practice, this means that land contamination should be treated as a material issue in all property transactions.

This approach is supported by the Property Standardisation Group (PSG). Its Due Diligence Questionnaire (DDQ) includes a dedicated section on environment matters, ensuring the seller and their legal and professional advisors are provided with a comprehensive list of due diligence requirements.

To act in the client's best interests, solicitors should always highlight these risks and recommend thorough due diligence to identify any potential environmental liabilities. Across England and Wales, it is now standard practice for firms to assess potential liabilities under Part 2A as part of every transaction. This ensures clients are fully informed about any risks associated with a property and can make a sound decision about whether to proceed or renegotiate before completion.

It is worth noting that for Scotland formal Part 2A determinations are rarer than south of the border (due to Local Authority resource constraints) and practice is uneven across councils. This means Part 2A registers may under-represent actual risk which is a potential challenge given the post-industrial past of many areas, particularly in central Scotland. Planning system predominance means that much remediation occurs outside formal Part 2A determinations during development control with use of Land Contamination Risk Management (LCRM) and NQMS (quality mark) principles operating as part of the integrated framework laid out on behalf of the Scottish Government.

What can a solicitor do?

It's essential to make enquiries with the seller and their advisors, even if this is already covered in the DDQ. They may provide useful information about potential land contamination, such as an environmental report. However, it's important to have the necessary expertise to interpret these documents accurately. Otherwise, key risks may be missed.

Solicitors should also consider commissioning an independent environmental report from a commercial provider. The level of detail required will depend on the nature of the transaction. As a minimum, this should include a comprehensive contaminated land risk assessment, supported by expert analysis and designed to highlight any potential concerns. For operational sites, such as waste transfer stations, a more detailed review may be appropriate, such as an environmental due diligence audit.

All environmental reports should be backed by appropriate professional indemnity (PI) insurance and prepared in line with recognised standards of good practice, such as those set by the Conveyancing Information Executive (CIE).

If further information is needed, enquiries should be made to the relevant regulatory body, which may hold records relating to land contamination. This information can be requested under the Environmental Information (Scotland) Regulations. For example, Fife Council has completed inspections of all high- to medium-priority sites, and site-specific data may be highly relevant to a property transaction.

However, as noted above, registers in a Scottish context do not necessarily equal safety due to the variable use by individual councils of the Part 2A regime. So property Lawyers should look beyond the statutory list at other sources to provide assurance.

By following these steps, solicitors can reduce the risk of negligence claims by demonstrating that thorough analysis has been undertaken. A simple and effective way to support this process is by using services such as those offered by Millar & Bryce.

Coal Mining Risk

Laura Baird

The UK's mining legacy and property risk

Coal mining has played a defining role in shaping the UK's landscape and built environment. Although active mining has virtually ceased, the legacy of historic mining activity continues to impact property transactions, especially in regions such as Scotland, Yorkshire, Wales, and the Midlands. Subsidence, ground instability, mine gas emissions, and environmental hazards remain relevant, with over half of Scottish residential properties located on former coalfields. The Mining Remediation Authority (formerly the Coal Authority) maintains extensive archives, but acknowledges that many historic features remain undocumented.

Types of mining legacy risks

Underground mining: Deep and shallow workings can cause subsidence, manifesting as surface depressions, tension cracks, or sinkholes. The 1991 Coal Mining Subsidence Act provides some protection, but not all forms of damage are covered.

Opencast mining: Many brownfield developments are on former opencast sites, where subsidence legislation may not apply and environmental impacts can persist.

Mine entries: Shafts and adits, often poorly recorded, present ongoing hazards. New entries are still being discovered and added to official records.

Geological disruption: Mining can fracture near-surface rocks, creating hidden fissures that may collapse without warning.

Mine gas: Both blackdamp (carbon dioxide and nitrogen) and methane can migrate to the surface, posing health and safety risks. Remediation measures are in place, but not all risks can be predicted.

Why coal mining reports remain essential

Despite the cessation of most mining, property transactions in former coalfield areas require robust due diligence. Coal mining reports are designed to identify and assess risks, providing critical information for buyers, lenders, insurers, and legal professionals. These reports are structured around criteria agreed by the Mining Remediation Authority, Law Societies in Scotland and England & Wales, RICS, and UK Finance, ensuring consistency and reliability. The requirement for provision of a coal report if the property sits within a recognised coal area is set out in the Scottish Standard Clauses.

Core report types for due diligence

a. CON29M Residential and Commercial reports

The CON29M report is the industry standard for property transactions in coal mining areas. It answers Law Society-mandated questions covering:

- Past, present, and future underground and opencast mining
- Mine entries within proximity to the property
- Coal mining geology and subsidence risk

- Mine gas incidents and other hazards
- For commercial properties: withdrawal of support, working facilities orders, and payments to owners of former copyhold land.

b. Ground stability reports

Produced in partnership with the British Geological Survey, these reports supplement the CON29M with detailed information on natural ground movement risks, such as shrinkable clay, running sand, compressible or collapsible deposits, landslides, and soluble rocks.

c. Interpretive and specialist reports

Where initial searches identify risks, further interpretive reports may be commissioned. These provide expert analysis of mine entries, subsidence claims, and surface hazards, including risk assessments for existing buildings or undeveloped land. Claims history reports detail the status and outcomes of subsidence claims, including compensation or repairs.

d. Consultant's reports

For complex or high-value transactions, a Consultant's Report (available from the Mining Remediation Authority) offers a comprehensive, site-specific assessment. These reports, often used for land development, include:

- Large-scale mapping of all relevant mining risks
- Detailed tables of mining activity and geology
- Historical context and treatment details
- Investigative and remedial activity records
- Licensing and future mining activity
- Recommendations for further investigation and technical advice

Providers and data sources

a. Mining Remediation Authority (formerly Coal Authority)

The Mining Remediation Authority is the statutory custodian of the UK's mining records and the primary source of authoritative data for coal mining reports. Its reports are recognised by lenders, insurers, and regulators, and are available for both residential and commercial properties. The Authority also provides interpretive and claims history reports, and operates a 24-hour hazard reporting line.

b. Landmark Information Group (powered by PinPoint Coal)

Landmark offers a suite of coal mining reports for residential and commercial transactions, powered by PinPoint's specialist data and algorithms. Landmark's reports are CON29M-compliant, include professional opinions from Chartered Minerals Surveyors, and feature automated 'zones of influence' calculations to assess subsidence risk. Landmark also provides appendices with detailed mine entry and claims information, and its reports are widely accepted for due diligence in Scotland and across the UK. PinPoint's data is updated weekly and incorporates both Mining Remediation Authority open source and proprietary sources.

c. Other providers

Other providers do now operate in the market utilising the same underlying Mining Remediation Authority data sets as referenced for the providers above but may operate different algorithms to evaluate risk in delivering report outputs.

Report structure and key features

All reputable coal mining reports share certain features:

- **Data integrity:** Reports are based on the Mining Remediation Authority's database, supplemented by British Geological Survey and third-party data where relevant
- **Professional opinion:** Reports include expert interpretation and recommendations for further action if risks are identified
- **Clarity and accessibility:** Summary pages highlight key risks, with detailed appendices and mapping for technical users
- **Legal and regulatory compliance:** Reports are structured to meet Law Society and lender requirements, and are updated regularly to reflect new findings

Practical considerations for property professionals

- **Due Diligence:** Always commission a current, site-specific coal mining report for properties in or near former coalfields. Past reports may be outdated due to ongoing data updates.
- **Follow-up:** Where risks are identified, seek further specialist advice and consider additional surveys or interpretive reports
- **Claims and remediation:** If a history of subsidence or claims is identified, review the adequacy of any repairs or compensation, and consider the implications for future liability
- **Environmental and planning issues:** Be aware that former mining sites may also present environmental risks not covered by subsidence legislation, particularly for brownfield developments

Reference materials and further reading

- The Mining Remediation Authority *(www.miningremediation.co.uk/)*
- Landmark Information Group / Pinpoint Coal *(www.landmark.co.uk/legal-conveyancing/legal-due-diligence-reports/ ; www.pinpointcoal.co.uk/)*
- UK Government *(https://www.gov.uk/government/publications/coal-mining-subsidence-damage-notice-form/coal-mining-subsidence-damage-a-guide-to-your-rights)*
- British Geological Survey *(www.bgs.ac.uk/)*

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