

June 2020

SPF Submission to the Economy Energy and Fair Work Committee on Registers of Scotland

Closure of Registers of Scotland

1. The UK Government had declared that the country was in "lockdown" from 23rd March until further notice. Initially on the morning of 24th March, Registers of Scotland (RoS) announced that a skeleton staff would be working at their offices. By lunchtime and without any warning it was announced that RoS was closed.
2. Our members have questioned whether RoS had a disaster recovery/business interruption policy prior to lockdown. The closure of the application record was a shock to our members and demonstrated that there was no contingency plan for remote working/working from home to allow RoS to continue in such eventualities.

Effect of closure

3. Closure of the Application Record by RoS of Scotland had a significant disruptive effect on customers and an economic impact across both the residential and commercial markets that could have been avoided through proper contingency planning.
4. Exacerbated by the lack of any prior notice, parties found themselves unable to complete property sales and planning agreements, (arguably) putting them in breach of their contractual obligations and effectively bringing the commercial and residential property market to a temporary halt (including transactions which were not linked to physical house moves and could therefore otherwise still have proceeded in a socially distanced environment, such as residential and commercial property investment transactions). Significant time and cost have been spent re-negotiating contracts to cater for the situation.
5. Title to land and property and standard securities securing residential mortgages and commercial lending could not be registered from 24th March. At that point in time, transactions had been settled in the expectation that they would be completed by registration.
6. Failure to register means that the transfer of ownership of a property to a purchaser remains exposed to the insolvency of the seller or other third party claims, and a lender cannot complete a security over the property to secure the funding they have provided. The risk to the purchaser if the seller becomes insolvent is that the property is caught up in the insolvent estate, and the purchaser's legal position would be complex and uncertain. Similarly, the risk to a lender is that either the purchaser has no property to secure their borrowings because the seller has become insolvent, or the purchaser borrower becomes insolvent and another creditor claims a competing interest, denying the lender the chance to exercise a power of sale over the property and thereby recover the funding provided.
7. As well as placing transactions which had already settled at risk, the inability to register applications also halted transactions which were due to settle. Purchasers and more so lenders, were not prepared to take the risk of proceeding to settle the transaction, hand over the price,

and then be left with no title or security. The halt on progressing transactions to settlement was confirmed by the recommendation issued by the Law Society of Scotland to solicitors on 24 March not to settle transactions. This further exacerbated the effect on the economy of lockdown.

8. Since the closure, the RoS have worked hard to create solutions to allow applications to be submitted digitally (with the assistance of solicitors testing those solutions). However, closing the Application Record without having any alternative interim solution in place (such as a socially distanced, skeleton staff at Meadowbank House to continue accepting paper applications and to scan them to colleagues working remotely) does not compare favourably with other public organisations. For example, both Companies House (which has continued to accept paper filings) and HM Land Registry have remained open for business throughout the Covid-19 lockdown, albeit with reduced staff levels. HM Land Registry in England has been able to receive digital submissions for many years and our members have questioned why the RoS in Scotland had not implemented similar systems to enable digital submission of deeds
9. Interim measures were introduced to allow emergency transactions to be registered and our members have reported that, in such an emergency situation, RoS were very helpful in facilitating registration of the deeds involved.
10. The SPF welcomes the launch of a digital service for Sasines in the week beginning 6 July as the inability to register anything with a Sasine element has hampered completions. Members have, however, questioned why the RoS plans service is closed.

Members experience of the digital submission of applications for registration

11. Some of our members were involved in the pilot testing of the system for digital submissions and were impressed by the team from RoS working on the pilot. Our members have now successfully submitted a number of applications using the digital system and find it to be very efficient.
12. Access to the system was initially restricted by reference to the date of the advance notice. However, members found that Customer Services at RoS were very helpful when it was important for transactions to be registered more quickly.
13. The opening of the digital system to all applications for registration in the Land Register, regardless of the date of the advance notice and where there is no advance notice, has been welcomed. Members also welcomed the work done by RoS to allow section 75 planning agreements to be recorded in the Register of Sasines. With the gradual return of construction activity, section 75 agreements are often crucial to unlock development.

Looking forward

14. The pandemic has thrown up a number of challenges for all. RoS will no doubt be reviewing what they might have done differently to ensure that contingencies are in place to mitigate any future interruption to their services and avoid another large scale shut down. We hope such a

review will ensure that, like their counterparts at the English Land Registry, RoS will be able to continue operating through any future lockdown or similar event.

15. We were very impressed by the speed with which a digital system was put in place (RoS closed on 24 March and the digital system was launched on 27 April) and how well it is working and query whether it would have been possible to introduce such a system in some shape or form before now.
16. RoS have successfully introduced a digital system for the registration of discharges of standard securities over residential properties and have persuaded many lenders to use the digital system. However, things seem to have slowed on the commercial front and the digital discharge system has not yet been adopted by lenders in commercial transactions.
17. The project for the digital submission of standard securities has also stalled. RoS have said this project was set aside because the public do not have access to a digital signature of sufficient quality for digital securities. We would suggest that projects for digital submission must be revisited and prioritised given events over the past month or so.
18. Resource has been an issue and a significant backlog of applications had built up since the introduction of the Land Registration etc (Scotland) Act 2012. Dealing with this backlog and pursuing the Scottish Government's target of completing the Land Register by 2024 seem to have consumed a large amount of resource. To what extent are the RoS staff currently able to provide the required level of service from home and will those working from home be able to work on the large backlog of first registrations and transfers of part?
19. While the digital system currently in operation may place additional burdens on some legal firms, which will result in either increased cost for purchasers or reduced margins for law firms, it will save time and resource at RoS if the administrative process of intaking and scanning applications is completed when the application is uploaded digitally to RoS. It may also reduce the opportunities for errors and omissions which RoS currently must deal with.
20. RoS have said that their customer base (solicitors and lenders) were not ready for the digital solutions that they had hoped to introduce. We hope that the experience of the digital system currently in place has shown that all can adapt quickly when required to do so. We also sincerely hope that the digital system will remain in operation when RoS fully open again giving applicants the choice to make either a paper application (for example, to deal with more complex applications) or a digital application.

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