

# **PRACTITIONERS' GUIDE**

**TO THE**

**SCOTTISH STANDARD OFFER**

**AND**

**SCOTTISH STANDARD CLAUSES (EDITION 3)**

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**Issued by the Edinburgh Conveyancers Forum and the Glasgow Conveyancers Forum on  
behalf of the Scottish Standard Clauses Working Party**

## **1. METHOD**

The Scottish Standard Missives can be used throughout Scotland and replaced the previous regional area missives. The Working Party had representatives from the regional areas that previously had Standard Missives. As with some earlier versions if agreement on practice or wording could not be reached by the Scottish Standard Clauses Working Party (SSCWP) the 4 Professors of Conveyancing were available to act as arbiters to decide which was the best approach or wording. In the event the SSCWP reached consensus without that being required. That involved some genuine and good spirited give and take.

They have worked from the premise that most individual firm offers are based on a “wish list” of best possible outcomes but the reality is that qualified acceptances cut these down to size and there then emerges a wording that most people “settle for”. They have generally looked at the “settled for” position of what practitioners will usually accept thus avoiding the previous painful process of offer and numerous qualified acceptances.

## **2. CHANGES IN THE SCOTTISH STANDARD CLAUSES – Edition 3**

Extract of an article by Ross McKay, Convener of Scottish Standard Clauses Working Party:-

" It is perhaps hard to believe that Edition 1 of the Scottish Standard Clauses came into the world as long ago as December 2014 and even more staggering to note that the first edition of the Edinburgh Standard Clauses was issued in 2005 and the first edition of the Combined Standard Clauses was in June 2009. It is perhaps tempting fate to suggest that the underlying style of the Standard Clauses has passed the test of time and more importantly is now an accepted fact of current conveyancing practice.

I would suggest that one reason, amongst others, that the Standard Clauses have found acceptance is that there has been an ongoing effort to ensure that they are amended, updated or rectified to reflect appropriate changes in practice. There may be some cases where the drafters of the Standard Clauses have seen fit to lead changes in practice but the majority of amendments are taken to reflect what is happening “on the ground”.

As part of that process therefore, I am pleased to say that the Third Edition of the Scottish Standard Clauses has now been approved, finalised and registered in the Books of Council and Session.

The registered clauses have been circulated via the Law Society of Scotland and it will be suggested they in effect come into operation on 1 November 2018.

The various changes implemented by the new Edition have been generally trailed at various events and by members of the Working Party within local faculties.

The purpose of this article however, is simply to highlight once again the primary changes within the new Edition. Taking these as follows therefore, utilising the numbering which will be known to you:-

Clause	Explanation of Change/Addition
1.1.4	The list of normal fixtures which are expected to be left has been extended to cover artificial grass. This may seem trivial but it reflects the working nature of the Standard Clauses in that we received a specific approach from a local faculty indicating that this was a particular problem in their area and requesting that this item be added to the list of fixtures for avoidance of doubt. This seemed a reasonable request which we were happy to take on board.
2.1.3	Although over the years missives have been looked at by the Courts, there has in fact been little detailed analysis of any provision within the Standard Clauses. Most cases, we believe, tend to depend on specific factual circumstances rather than the wording of the missives themselves. However, certain clauses were subject to debate within the case of <b>Anwar -v- Britton and Another (2018) SC FAL 31</b> . In particular, the wording of clause 2.1.3 was looked into as it was argued that it should be interpreted as meaning that the seller's warranty only related to <u>current</u> and not past flooding, etc. The learned Sherriff in this case was of the view that this was not the intention of the clause in question (with which the Working Party would have concurred) but for the avoidance of any future doubt, it has now been amended to make clear that the statement relates to previous flooding within the last five years and not just any current events.
2.1.4	Again, for the sake of clarity, this clause now extends to not just rising but also "penetrating damp".
7.1.3	Edition 2 suggested that good practice would be that any application to a factor or managing agent for information should be based on the style letter currently within the PSG website. That particular provision has now in fact been inserted in the clauses themselves making it an obligation on selling agents to use that style letter when applying for repair information, etc.
8.1.1.	Previous Editions required alteration paperwork to include the building warrant itself (notwithstanding the view of most that that particular item was of no inherent benefit). This view was agreed to and therefore the obligation now is in essence to provide building warrant drawings and completion certificate rather than including the actual warrant itself.
14.1.2	Purely as a formality, we now delete reference to CML and replace with UK Finance.
18.1(v)	This now stipulates that not only will the seller deliver all keys held by them for any property, but must include keys for all lockable external doors and garages. It was debated whether or not this should be extended to lockable windows but it was felt that this was not yet standard practice nor in fact something that could be easily achieved in many cases by sellers. The extension of this clause however should address a number of concerns within offers covering this particular topic.
19.1/19.5	The provision for charges, etc. has now been expanded to make clear that this relates to corporate bodies registered in the UK and indeed there is now a warranty that the seller is not a corporate body registered outwith the UK. So if the seller is for example a company registered in say the Cayman Islands further thought will require to be given as to what appropriate paperwork may be necessary to protect a purchaser. I would refer you to the PSG website

Clause	Explanation of Change/Addition
	where guidance is given as to what may be appropriate in the context of a foreign registered seller.
20.4	A new clause has been added requiring the seller to warrant that their current buildings insurance has been obtained on normal reasonable terms appropriate for the property in question. Representations were made that this would be appropriate to protect an ordinary purchaser in the normal course of events against the situation where buildings insurance was only available on extraordinary terms or at unreasonable cost.
26.1	The threshold for <i>de minimis</i> claims has been increased from £300 to £400.
28.2	To ensure full compliance with the Land Registration Act, etc. (Scotland) Act 2012 we now provide for a one year peaceful possession clause.
28.3	A new clause has been added requiring a seller to provide a warranty that they have made no claim for a reduction in Council Tax due to vacant property relief within the period of one year prior to entry.
31	This new section deals with Home Reports which although we have been working with now for almost 10 years have never previously been dealt with perhaps within missives as a general rule.
31.1	This simply clarifies that the “entire agreement” clause 27 will not apply to the terms of the Home Report.
31.2	This requires the seller to confirm that the information contained within the Property Questionnaire (“PQ”) section is true and correct to the best of the seller’s knowledge and belief. This simply reflects the statutory wording.
31.3	This asks the seller to confirm that the information contained within the PQ remains the same at the date of the offer as at the date of issue of the PQ. It was pointed out that whilst the survey element is often refreshed, perhaps many months after the initial report, the information within the PQ is not similarly updated and this clause simply seeks to cover that situation.
32	This is a new clause requiring selling agents to provide a copy of a Power of Attorney under which any deed has been executed at least a week prior to settlement so that a purchasing agent can check that its terms are sufficient.
33	Finally, we have now added a third party rights clause as suggested under the Contract (Third Party Rights) (Scotland) Act 2017.

These are the primary changes.

I hope that practitioners will agree that they reflect a fair and reasonable balance between the interests of purchaser and seller within the Standard Clauses.

The monitoring and review of the Standard Clauses is an ongoing task and if any colleague does wish to suggest further changes at any stage, they should feel free to contact myself or any other member of the Working Party via the Law Society when appropriate.

Ross Mackay  
Convener  
Scottish Standard Clauses Working Party"

### **3. GUIDELINES**

The system is a voluntary one. It is a facility not a straightjacket. It is for each Firm to decide whether it uses the system or requires to make changes to the standard wording to cover a special case. We recommend the following Guidelines to make the system work properly.

The 10 Guidelines are not rules leading to disciplinary action if not adhered to. They are:-

#### **3.1 The offering Solicitor should endeavour to submit the offer in the Standard Offer style referring to the Standard Clauses with as few changes as is possible.**

Changes should be for a valid reason e.g. making the offer subject to survey and not for an invalid one i.e. "pet" qualifications or amendments of style, rather than substance.

#### **3.2 The selling Solicitor should attempt if possible to issue a de plano acceptance.**

Your new perspective is not how many changes you can make but how few. De Plano acceptance should be possible if there are no unusual or onerous title conditions or some problem with the description or with the documentation held being incomplete.

#### **3.3 The aim is to conclude missives with either a de plano acceptance or at most with one qualified acceptance before an acceptance.**

#### **3.4 Goodwill is required from both the purchaser and seller to keep the missives adjustment period to as short a time as possible. Ideally missives should be concluded within one week.**

That is an aim but we hope as Solicitors become more aware of how the system works it will be achievable and in some cases missives may be concluded by return (if not loan or sale dependent).

Given the possibility of a de plano acceptance purchasing Solicitors and their clients have to be completely "up front" with their colleagues and the seller if the offer is subject to (1) survey, (2) loan or (3) conclusion of missives for the sale of the purchaser's existing property. If so this should be disclosed in the offer. The purchaser has to be aware of this. Complete frankness is required as a purchaser may find that he will be bound into a contract sooner than the old method giving him more time. That will not now be possible. There should now be greater transparency re the purchaser's position.

#### **3.5 Purchasers should be warned that if their offer is subject to survey etc then their offer is less likely to be accepted than one which is not so qualified.**

Your clients will require education in this regard. However, to assist with this we have prepared a Client Guide which you may send out to both purchasers and sellers advising that it is likely that the offer that will be sent or received will be in that style.

#### **3.6 On receipt of a non-Scottish Standard Offer, the selling Solicitor should consider requesting an offer in the new style.**

Please be prepared to direct your colleagues to where the styles are e.g.

(1) The GCF website [www.glasgowconveyancersforum.wordpress.com](http://www.glasgowconveyancersforum.wordpress.com)

(2) the ECF website [www.edinburghconveyancersforum.com](http://www.edinburghconveyancersforum.com) and

(3) the Law Society's website [www.lawscot.org.uk](http://www.lawscot.org.uk)

**3.7 We recommend that where your firm is a member of an SPC that the Property Schedules contain the wording "Offers are invited in the style of the Scottish Standard Offer and incorporating the Scottish Standard Clauses (Edition 3)".**

**3.8 If the offering solicitor does not use the Scottish Standard Offer.**

We suggest it is met with a qualified acceptance accepting the offer but only to the extent of the price, entry and extras (if these are so agreed) but delete all the other clauses and incorporate by reference the Scottish Standard Clauses (Edition 3).

**3.9 Please do not send the title deeds at the offer and acceptance stage. Send these immediately on conclusion of missives.**

It is of course acceptable to send the titles if there is a title problem or send the documentation if there is a documentation problem requesting the purchasing solicitors to examine and satisfy themselves. However, please restrict the titles or documentation sent to those in question and do not be tempted to send all the titles and all the documentation simply because you are wishing to qualify on one point.

**3.10 Conflict of Standard Offers**

Previously where there was a regional area missive for the area within which the property was situated we suggested that as a courtesy you discuss with the selling solicitors which was to be used and agree use of your or their regional style. That is not now a concern with this new all Scotland style. The Scottish Standard Clauses are easily accessible on the Law Society of Scotland website. This Guide and the Client Guide are also available on that website.

**4. USE**

SSC and the two Guides are freely available to any solicitor in private practice who wishes to use them subject to the condition that the Guides are not to be sold or hired out but distributed free of charge. You are entitled to "badge" the Client Guide to make it your firm's own. If you feel the wording could be better explained than we have done in our version then of course you are free to do that too.

**5. GUIDANCE ON NEW OR TOPICAL CONVEYANCING MATTERS**

The websites of the Glasgow Conveyancers Forum and the Edinburgh Conveyancers Forum contain opinions and information on a variety of Conveyancing / Property Law topics.

**GCF Website** [www.glasgowconveyancersforum.wordpress.com/](http://www.glasgowconveyancersforum.wordpress.com/)

- [Memorial for Opinion of Professor Robert Rennie on Prescription and Local Authority Consents](#)
- [Opinion of Professor Robert Rennie on Prescription and Local Authority Consents](#)

The Opinion appears to settle the arguments as to "Historic Alterations" not requiring investigation. Professor Rennie has since clarified a point raised re Listed Building Consent

stating "My original answer was meant to cover listed building consent as well as the obtaining of building warrant and completion certificate. It would be illogical if the twenty year prescription was to apply to one but not the other."

- [Note By Professor Robert Rennie on Notice for Potential Liability for Costs](#)
- [Professorial Opinion regarding Statutory Notices](#)

#### Previous Regional Standard Clauses

Previous versions of the various Regional Standard Clauses and also Edition 1 of the Scottish Standard Clauses are contained there.

**ECF website** [www.edinburghconveyancersforum.com](http://www.edinburghconveyancersforum.com)

#### Opinions

- A Memorial to Professor Brymer on the matter of Historic Rateable Values.
- The Opinion of Prof Brymer on the matter of Historic Rateable Values.
- A Note by Professor Rennie on Notices of Potential Liability for Costs
- Professorial Opinion re: Statutory Notices
- Initial Professorial Opinion regarding the Combined Standard Clauses v 1
- Supplementary Professional Opinion regarding Listed Building Consent and other matters.
- Professional Opinion re Statutory Notice deposits 11 March 2006.
- Memorial For Opinion Of Professor Robert Rennie On The Subject Of Prescription And Local Authority Consents For Construction And Alteration
- Opinion by Professor Robert Rennie for Glasgow Conveyancers Forum relative to Prescription Act and Local Authority Consents. The Opinion appears to settle the arguments as to "Historic Alterations" not requiring investigation. Professor Rennie has since clarified a point raised re Listed Building Consent stating "My original answer was meant to cover listed building consent as well as the obtaining of building warrant and completion certificate. It would be illogical if the twenty year prescription was to apply to one but not the other."

Resources and Styles are also available.

**Written by Ian C. Ferguson of Mitchells Robertson Ltd  
on behalf of the Edinburgh Conveyancers Forum and Glasgow Conveyancers Forum and  
Scottish Standard Clauses Working Party**