



Consultation Response

Fee Proposals for Registers
Introduced by the Movable
Transactions (Scotland)
Act 2023

September 2024



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Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

The Banking, Company and Insolvency Law Sub-committee & Administrative Justice Sub-committee welcomes the opportunity to consider and respond to the consultation on the Fee Proposals for Registers Introduced by the Moveable Transactions (Scotland) Act 2023 (**2023 Act**).

Consultation

Register of Assignations (RoA) and Register of Statutory Pledges (RSP) Registration Fees

The following fees are proposed for registration in the RoA and RSP (**Registers**):

- To register an Assignation document in the RoA – £80
 - Where an Assignation document assigns different claims to different assignees - £80 for each claim for which registration is applied for.
- To register a Statutory Pledge document or an Amendment of Statutory Pledge document in the RSP – £80.
 - Where a Statutory Pledge document creates more than one Statutory Pledge - £80 for each Statutory Pledge for which registration is applied for.
 - Where an Amendment of Statutory Pledge document amends more than one RSP Record entry - £80 for each RSP Record entry amended.

1. Do you agree with the above proposals for the RoA and RSP registration fees?

No

Please provide any further information:

We consider the proposed individual fee of £80 to register an assignment and statutory pledge respectively is materially higher than was expected. Whilst this may reflect practice in respect of land, it is materially higher than the usual levels in commercial practice and does not reflect the significant differences between land transactions and registrations and non-land transactions and registrations in the new registers. In particular, we consider the most appropriate domestic comparator to be Companies House, and a fee of £15 is charged to register the particulars of a mortgage or charge for a UK registered company at Companies House (or alternatively £24 to file a paper MR01 form).

Internationally, this fee level is also disproportionately high. Australian registration fees are available from \$6, so approximately £3 (<https://www.ppsr.gov.au/about-us/laws-rules-and-regulations/fees-using-ppsr>), in New Zealand they are \$14, so approximately £7 (<https://ppsr.companiesoffice.govt.nz/help-centre/paying-ppsr-fees/schedule-of-fees/>), and in British Columbia the costs are \$11.50, so approximately £6.50 (<https://www.solutionslaw.com/cost-calculators/ppsa-registrations-across-canada-calculator/>). A number of these comparators provide scaled fees depending on how long the financing statements are to last, but each of these international comparators have a more active role than the Scottish registers will have. The Scottish registers are merely passive depositories. This makes the fees proposed even more excessive.

This higher than expected fee of £80 is further compounded by the likelihood that multiple assignments or statutory pledges are likely to be granted under one document by businesses seeking finance thereby rendering the use of the Registers as comparatively expensive. The Companies House fee mentioned above relates to all mortgages and charges created by a single document registered.

We are very concerned that setting a fee too high will discourage use of the registers, and undo the attractiveness of the new legal reforms (and indeed reduce potential overall revenues from these registers for Registers of Scotland).

RoA and RSP Correction Fees

The following fees are proposed for correction in the Register of Assignations (RoA) and Register of Statutory Pledges (RSP):

- For correction of the RoA under section 29(1) (correction by Court Direction) - £0
- For correction of the RoA under section 29(2) (manifest inaccuracy correction by Keeper) - £0
- For correction of the RSP under S.96(1) (correction by secured creditor) - £20 per record corrected
- For correction of the RSP under S.98(6) (correction by correction demand) - £20 per record corrected

- For correction of the RSP under S.100(1) (correction by court direction) - £0
- For correction of the RSP under S.100(2) (manifest inaccuracy correction by the Keeper) - £0.

2. Do you agree with the proposals above for the RoA and RSP correction fees?

No

Please provide any further information:

We agree with those that have nil charges proposed. For the others, we consider that the £20 fee level would be more appropriate for initial registration, with lower fees charged for corrections.

Single Fees

It is proposed that, where an applicant for registration of an Amendment of a Statutory Pledge under S.88(1) also corrects the Record under S.96(1) (correction by secured creditor), the fee should be £80 for each entry affected.

3. Do you agree that a combined Amendment of a Statutory Pledge and correction should attract a single fee?

It is proposed that, where an applicant for registration of an Amendment of a Statutory Pledge under S.88(1) also corrects the Record under S.96(1) (correction by secured creditor), the fee should be £80 for each entry affected. No

Please provide any further information:

Whilst we consider that a single fee is the most appropriate, we think that this fee level is excessive (see comments above).

Rejection Fees

The following fees are proposed for rejection in the RoA and RSP:

- Where an application for registration is rejected under either S.23(4) (Assignment), S.86(3) (Statutory Pledge) or S.88(3) (Amendment of Statutory Pledge), or any combination of same, the fee will be £0.
- Where an application for correction is rejected under either S.96(3) (correction by secured creditor) or S.99(2) (correction by correction demand), the fee will be £0.

4. Do you agree that there should be no rejection fee?

Yes

Please provide any further information:

For commercial registers no fees are charged for rejections, and so we agree with this approach.

Fees for Searches

It is proposed that the fees for searching either of the RoA or RSP through the Registers of Scotland online system (including a nil return) will mirror the ScotLIS search fee for the Keeper's other registers as at the date that both new registers go live, which fee is currently £3 and is subject to review.

5. Do you agree that the fee for searching should mirror the ScotLIS search fee for the Keeper's other registers as at the date that both new registers go live?

No

Please provide any further information:

We consider this fee to be slightly excessive. Once more, the appropriate comparator is UK Companies House, where there is no fee to search. Internationally, the cost is \$2 in Australia (so approximately £1), \$2 in New Zealand (so approximately £1). British Columbia charges \$7 for online searches, so £3.50.

We consider that the fee for searching the register should include downloads of all documents registered on the assignment record or statutory pledge record to which the search relates.

Extract Fees

The following fees are proposed for Extracts from the RoA and RSP:

- Extract of an entry, or part of an entry, in the RoA or RSP Record - £35.
- Extract of an entry, or part of an entry, or of a document, or part of a document, from the RoA or RSP Archive Record - £35.

6. Do you agree with the above proposals for Extract fees?

Yes

Please provide any further information:

We consider that extracts are unlikely to be utilised very often in practice.

Plain Copy Fees

The following fees are proposed for plain copies from the RoA and RSP:

- Plain copy of an entry, or part of an entry, in the RoA or RSP Record - £25.
- Plain copy of an entry, or part of an entry, or of a document, or part of a document, from the RoA or RSP Archive Record - £25.
- Plain copy of a document issued at date of application for registration - £20.

7. Do you agree with the above proposals for plain copy fees?

No

Please provide any further information:

As per above, any search fee costs should include a download of the relevant registered instruments.

Register Inspection Fees

The following fees are proposed for requests to inspect the RoA and RSP:

- Request for inspection of one entry (including response) in either the RoA or RSP Record - £30.

8. Do you agree with the above proposal for a register inspection fee?

No

Please provide any further information:

We do not agree with a fee of £30 being charged to inspect or download multiple registered documents by single assignor or pledgor in view of this being a free service that Companies House provide when inspecting their register.

We also consider that any search fees should include a downloaded copy of the documents registered.

Variation of Statutory Fees

It is proposed that the Keeper should have the power to vary RoA and RSP between Fees Orders, up to a maximum of £10, with such limitations and conditions as Scottish Ministers may impose, all is specified by Fees Order’.

9. Do you agree with the above proposal that RoS should have the ability to vary statutory fees by an amount not exceeding £10 in such circumstances as described?

No

Please provide any further information:

We consider that any upward variation in fees would materially detriment the utilisation of the registers and so should only be undertaken in the most extreme of circumstances.

10. Do you have any other comments to make on the proposals in this consultation?

Please provide any further information:

We welcome Registers of Scotland's consultation process, both on the development of the two new Registers and the proposed fees that will be charged to use each of these. We are also grateful that the various stakeholders who will be affected by the introduction of the ROA and RSP have been included throughout and draw attention to the importance and benefits of undertaking a robust consultation process to capture the views of all interested parties.

However, we consider the above noted fee proposals are materially high when considered against that of other commercial registers, most notably Companies House, and international comparators. Part of the rationale behind the reforms in Scotland have been to make the jurisdiction more business friendly so as to attract increased investment. Therefore, fees that are comparatively higher than those charged elsewhere may detract from this aim of making Scotland attractive for business.

For these reasons, we ask that Registers of Scotland reconsider the proposed fees to bring these more in alignment with Companies House.

For further information, please contact:

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