

# **PRACTITIONERS' GUIDE**

**TO THE**

**SCOTTISH STANDARD OFFER**

**AND**

**SCOTTISH STANDARD CLAUSES (EDITION 6)**

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**Adapted from the Practitioner Guide originally written by Ian C. Ferguson of Mitchells  
Robertson Ltd on behalf of the Scottish Conveyancers Forum**

## 1. METHOD

The Scottish Standard Missives can be used throughout Scotland.

The new Scottish Standard Clauses (Edition 6) have been prepared by a Working Party of the **Scottish Conveyancers Forum** ("the SCF") who assumed this function by agreement with the Edinburgh Conveyancers Forum and Glasgow Conveyancers Forum. Representatives from various regional areas on the Working Party contributed to the updating of the Clauses. As usual this involved genuine and good spirited give and take.

As with previous Editions they 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 to avoid the previous painful process of offer and numerous qualified acceptances.

## 2. CHANGES IN THE SCOTTISH STANDARD CLAUSES – Edition 6

### **Briefing Note – Edition 6 of Scottish Standard Clauses By the Scottish Conveyancers Forum**

In readiness for the launch of the 6<sup>th</sup> Edition of the Scottish Standard Clauses, this note summarises the changes made (and others considered but not made) in the drafting of SSC6.

### 1. Changes Made

Clause	Explanation
1.4	It has become clear to the drafting group that it had become more or less universal practice to restrict the warranty at Clause 4 to exclude 'appliances'. In order to reflect current practice, the SSC6 now removes appliances from the scope of the warranty, which henceforth is therefore restricted to central heating and systems. Clause 1.4 has been added to clarify that no warranty is given in respect of appliances and that these are sold as seen.
2.1.3	Recent case law ( <i>Busby and Donnelly v Blair [2024] SC EDIN 24</i> ) found – based on a much earlier edition of the SSC – a wide definition of 'infestation' to include Japanese Knotweed. While this was in part dealt with in SSC5 with a separate declaration that a Property is not affected by Japanese Knotweed or other invasive plant species, it was felt that the existing definition of 'infestation' should be clarified to mean by insect or other animal.
2.1.4	On reflection, the reference to 'other invasive plant species' in the previous version of the SSC could be problematic. There are various plant species considered to be invasive – including the likes of rhododendrons - but which are not necessarily a concern in a conveyancing context in the way that Japanese Knotweed is. We have decided to therefore restrict this clause to Japanese Knotweed only.
4	See 1.4 above. This clause has been amended to remove all references to appliances.
11.4	This has been updated to refer to current applicable legislation

14	Another recent case ( <i>Franks and others v Inglis [2021] SC PER 41</i> ) has cast doubt on the protection offered to a purchaser by a Professional Consultants Certificate / Architects Supervision Certificate where a purchaser cannot evidence reliance placed on the Certificate prior to conclusion of missives. Accordingly, it was thought best to remove reference to a PCC in Clause 14, which now refers only to new home warranty cover, and any case involving a PCC will therefore necessitate amendment to missives.
17.5	References to Advance Notices being in a form adjusted with the purchaser were removed in a previous edition of the SSC but one such reference remained at 17.5, which has now been deleted.
18.1.7	This has been deleted as not now correct or required.
19.5	This has been updated to refer to the new clause 36 which deals with the Register of Overseas Entities, while keeping in place the general declaration that the seller not be a corporate body registered outwith the UK.
26	The minimum claim amount has been increased to £500. This had not been increased since SSC3 in 2018. An increase due to inflation seemed sensible.
30.2	This now requires that any Decrofting Direction or Resumption Order be registered in the Crofting Register.
36	A clause has been added in respect of the Register of Overseas Entities, and the drafting group is most grateful to Professors Gretton and Reid for their suggested wording in this regard.
Various	In addition to the above, there have been various more minor updates to clauses including: to correct one definition which had escaped the exercise of making the SSC gender neutral a few years ago, the odd typo or formatting correction, and the addition of bullet points to 1.1.4 to make this more readable.

## 2. Changes considered but not made

### (a) Cladding

There remains no clause in the SSC to deal with cladding. While the Housing (Cladding Remediation) (Scotland) Act 2024 has now been passed, there remains some uncertainty around how this will affect conveyancing practice, including the interplay between the new statutory regime and existing EWS1s, the process for registration in the Cladding Assurance Register or the availability and cost of searches in the Register. For now, cladding will still therefore require separation consideration where it is likely to apply.

### (b) Standard Clause 7

We have had several discussions about Standard Clause 7 and situations where a factor letter discloses significant outstanding debt (which could be billed to current and future owners) but have decided that solutions to this are perhaps more problematic than the issue itself and so have not made any change to the SSC for now.

(c) Late conclusion of Missives

A couple of suggestions have been made to deal with the persistent issue of late conclusion of missives, which is exacerbated by the significant number of 'chains' prevalent in the property market today. Some have suggested including clauses in missives requiring that the Date of Entry must be a certain period after missives have been concluded. While the working party agree that late conclusion of missives is a problem, we do not consider that this will be solved by any changes within the SSC.

### **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 Guidelines have been updated. They 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.**

Your new perspective is not how many changes you can make but how few.

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.

It is of course acceptable to send the titles if there is a title problem or question-mark or send 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.

#### **3.2 The Selling Solicitor should endeavour to qualify with as few Qualifications as is possible.** The same reasons as in 3.1

#### **3.3 The Selling Solicitor should attempt to conclude missives with either a de plano acceptance or at most with one qualified acceptance before an acceptance.**

De Plano acceptance should be possible if there are no unusual or onerous title conditions and no problem with the description or with the documentation being incomplete.

- A draft QA issued after receipt of the Offer will assist
- Ideally missives should be concluded within 1 week of suspensive conditions being purified

#### **3.4 Goodwill is required from both parties' solicitors to keep the missives adjustment period to as short a time as possible. Ideally missives should be concluded within one week of suspensive conditions being purified. A draft Qualified Acceptance will assist.**

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 they 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 of the purchaser’s position. With the above in mind, solicitors should not neglect other aspects of the conveyancing while awaiting purification of suspensive conditions; timeous examination of title and searches is important.

**3.5 Purchasers should be warned that if their offer is subject to survey, loan or sale 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 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 6)”.**

**3.7 If the offering solicitor does not use the Scottish Standard Clauses.**

We suggest it is met with a qualified acceptance

- a) accepting the offer but only to the extent of the price, entry and extras (if these are so agreed) but
- b) deleting all the other clauses and
- c) incorporating by reference the Scottish Standard Clauses (Edition 6).

**3.8 Conflict of Standard Clauses**

That is not now a concern with an all Scotland style in place of regional area styles.

The Scottish Standard Clauses are easily accessible on the websites of

- 1) The Law Society of Scotland
- 2) The Royal Faculty of Procurators in Glasgow
- 3) the Glasgow Conveyancers Forum and
- 4) the Edinburgh Conveyancers Forum and
- 5) the Scottish Conveyancers Forum

This Guide and the Client Guide are also available on the websites.

**4. USE OF CLAUSES and CLIENT GUIDE**

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 OTHER 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 also 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 Scottish Standard Clauses](#)

Previous Editions 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.

**SCF website** <https://scottishconveyancersforum.co.uk/>

Although somewhat younger than the GCF and ECF websites, with less information so far, the SCF website will be updated with further resources in due course. Copies of the current editions of the SSC can be found there.

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