



Law Society
of Scotland

Consultation response

KLTR Ownerless Property Transfer Scheme (OPTS)

December 2022



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Property & Land Law Sub-committee welcomes the opportunity to respond to the KLTR's consultation on a new Ownerless Property Transfer Scheme (OPTS)¹. We do not seek to answer the consultation questions but have the following comments to put forward for consideration.

General comments

We welcome the proposals in the consultation which help to engage with the issues around vacant and abandoned land and seek to deal with these. However, we note that there are likely to remain difficulties in identifying such land and therefore the proposals will naturally be somewhat limited in effect. We question whether there may be other steps which could be taken to aid identification of relevant land.

From a community body's point of view, we consider that the regime proposed is likely to operate in a similar way to existing right to buy and asset transfer requests. The OPTS has the potential to make it more affordable, and therefore practical, for communities to take ownership where they have identified the land. However, we consider that cases involving natural persons are likely to remain difficult.

We suggest that careful consideration is required as to the risk of unintended consequences of introducing the OPTS. As the regime as proposed is fairly low cost, we consider that it has the potential to provide a viable way of dealing with relevant pieces of land but we note that it could carry the risk of being misused. In addition, there is a risk of land being processed through the OPTS that would more appropriately be subject to a CPO, or where issues could be resolved by the prescriptive claimant system. We suggest the KLTR use the OPTS as a means of solidifying the title in appropriate circumstances only.

Given the focus on intended benefits to communities and public bodies of the OPTS, we consider that it would be appropriate to require a such groups to demonstrate the purposes for which they are applying and well as

¹ <https://www.kltr.gov.uk/bona-vacantia/ownerless-property-transfer-scheme-opts/consultation/>

provide for some kind of follow-up mechanism/condition (for example, a year after transfer) to ensure the land is being used as intended. Such a condition may be particularly appropriate to ensure the intended benefits are being delivered where the land has been sold at nominal or below market value.

Finally, we consider that there is a need to clarify the intentions of the OPTS. For example, it is not clear if this is intended to replace the existing KLTR system in full. It is fairly common for title gaps in development sites to be found where the identity of the owner is unknown. In such circumstances if the prescriptive claimant route cannot be taken, it is not clear if this would need to be brought to the KLTR's attention for this to proceed via the OPTS and be exposed for sale at auction. If so, we consider it likely that parties will default to insurance cover rather than risk having another party take title to the land.

For further information, please contact:

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