

Explanatory Note on Scottish Standard Clauses – Edition 2

Dear Colleagues

I am pleased to confirm that a new version (Edition 2) of the Scottish Standard Clauses has now been agreed, prepared and submitted for registration with a view to its use from 3 May 2016. An extract copy of the registered clauses is attached.

In the meantime, however, the purpose of this note is really to highlight what are the relatively few and on the whole non-substantive changes to the previous version, Edition 1.

I refer you to the following clauses therefore where changes have taken place (ignoring those which are simply typographical or grammatical):-

- 1.1.4 We have added the word "fixed" with reference to the inclusion of mirrors. The view was expressed that the former wording might extend to free hanging mirrors and clarification was therefore sought. In addition, reference to "solar panels" has been deleted and I would refer you to later comments in relation to the new Clause 29.3. Lastly the word "fixed" has also been added to the word "shelving" for the purposes of clarity.
- 5.2 We have added the adjective "development" to the word "proposal". It was felt important to make clear that this clause relates in effect to a substantive planning application to expand on the context of Clause 5.1.
- 6.2 We have added a phrase to make clear that the warranty in relation to the Scheme of Common Repairs is in respect of one instigated or administered by any Local Authority or other public body. It was felt appropriate to make this clear in the context of this clause dealing with other local authority repair or similar notices.
- 7.1.2 The use of the verb "proposed" has caused concern in the past. For the purposes of clarity, therefore, the words "currently" has been added and it is also made clear that the proposal has to have been by the factors, managing agents, or another co-owner in writing to the Seller. It is hoped that this makes clear, for the avoidance of doubt, the nature of any such "proposal" in question.
- 17.6 We have proposed reform to current practice in relation to how agents deal with discharges of securities. We are now suggesting that as an alternative to the current practice of issuing a Letter of Undertaking that it would be appropriate to give alternative undertaking to exhibit an updated title sheet within 35 days of settlement showing that any securities disclosed in the Legal Report have been discharged. It was felt that the current practice of delivery of deeds from the seller's agent to the buyer's agent to the Land Register and perhaps back again by way of providing an updated title sheet was unduly cumbersome and matters could easily be dealt with by simple exhibition of an detailed title sheet by the Seller's agents to the Purchaser's agent, post settlement.

This particular practice has also been discussed by the Law Society of Scotland Property Law Committee who have given their approval to this arrangement.

Indeed, it is suggested that rather than providing a separate Letter of Undertaking that the obligation could be written into what might otherwise be a standard settlement letter being issued by a selling agent to a purchasing agent at completion. It is recommended by the drafting team that this practice now be adopted to minimise unnecessary correspondence in this specific area.

- 18.1.1 After discussion, it was suggested that clarity be sought to make clear that a Legal Report should be brought down not only to a date not more than 3 working days prior to entry, but subsequent to the commencement of the protected period. Concern had been expressed that in certain cases, a gap period could inadvertently arise where a Legal Report could not cover the full period up to the date of registration of an Advance Notice. This same provision is also written into Clause 18.1.2.1.
- 18.1.1.2 This clause has been expanded to make clear that the information being provided is to "disclose the Purchaser as the registered owner of the Property".
- 18.1.2 In addition to the amendment above, we have also deleted reference to the Seller being required to provide a Level 1 Plans Report in relation to a registered title. It is believed that it is now quite clear that this is not appropriate or necessary practice and indeed reference in the current standard clause to this provision has caused some uncertainty, if not confusion.
- 18.1.6 This is a new clause simply providing that a purchasing agent shall, on request, provide to the Seller, the application number and the title number allocated by Registers of Scotland to any application. It is felt that whilst this would probably not be contentious for the vast majority of agents, the view was expressed that it would be helpful having a contractual obligation providing for this in the context of any post settlement query.
- 21.2 & 22.1 We have deleted in these clauses dealing with the exhibition of property enquiry certificates and mining reports, the simple phrase "may be" and stipulated the use of the verb "is". The view has been expressed that the former phrase lends an element of uncertainty and in particular an element of subjectivity on the part possibly of a purchaser. It was agreed by the drafting team that any standard here should be objective and factual thus the reason for this minor in terms of wording but important in practical terms change.
- 29.3 This is another new clause, being a simple warranty by the Seller that the property does not benefit from solar panels or similar. The view was expressed that whilst solar panels do exist it was felt they are still relatively minor in practice. A number of important issues may arise however requiring investigation such as local authority consents, contractual obligations and so forth if they do exist. Accordingly, as a more simple protection therefore a negative warranty was preferred thus allowing parties to look into such an issue in more detail should a selling agent make clear that this undertaking could not be given. A very helpful article on this topic can be found in the Scottish Law Gazette 2013 at page 41 (Perils of Solar Panels by Ken Swinton).

I trust this note is of some assistance interpreting the relatively few changes to Edition 2 but as always, myself and the drafting team would be delighted with any comments or

observations on the content of the clauses for future reference. It is no doubt a cliché but it is intended to be a living document to continually reflect ongoing developments in both law and practice. Whilst the drafting team continue to reflect a wide range of practitioners covering the whole country from the Highlands to Dumfries and Galloway they are well aware that developments can take place rapidly, particularly in certain localities and accordingly any information about suggested changes would always be gratefully received.

With best wishes to all

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Convener
Scottish Standard Clauses Working Party