The Land Registration (Scotland) Act 2012 will increase transparency of land ownership and correct the unfairness of the so-called 'Midas Touch'. But, says Professor Stewart Brymer there’s still some way to go.

Since the enactment of the Land Registration (Scotland) Act 1979, considerable progress has been made with regard to the introduction of registration of title across Scotland. In general terms, registration of title has made the practice of conveyancing more straightforward.

Unfortunately however, numerous practical, and in some cases, potentially very serious issues have arisen over the years and it was widely acknowledged that the 1979 Act was no longer fit for purpose. If it were a car, it would possibly have failed its MOT.

In 2002, the Scottish Law Commission commenced an examination of the law of land registration in Scotland. Three extensive Discussion Papers were issued which led to the Commission’s Final Report on Land Registration (Scot Law Com No.222) being published in February 2010.

The said Report included a draft Land Registration (Scotland) Bill. It is doubtful if there has been a more extensive and discursive analysis of land registration and the role of a land registration authority than that which took place over that period. In particular, a special mention must be made of the dedicated work and intellectual leadership of Professor Kenneth GC Reid and Professor George Gretton.

We are fortunate to have such eminent legal scholars and their contribution to the development of the Scots law of Property in what, I am sure, will be regarded in retrospect as a golden age of the law of property in Scotland, cannot be under-estimated. They and their colleagues in the Law Commission are to be congratulated on an excellent piece of work.

The Bill was presented to the Scottish Parliament and received the Royal Assent on 10 July 2012 (Land Registration Etc. (Scotland) Act 2012 (asp 5) (“the Act”).
The Act will be brought into force on a rolling basis according to a timetable laid down by Registers of Scotland ("Registers") in consultation with its stakeholders. Registers will need time to ensure that all relevant systems are in place so as to ensure the efficient introduction of the various reforms into conveyancing law and practice.

Neither Registers or the legal profession generally can risk a false dawn given the challenges which arose as a result of the introduction of and, to a degree, the under-funding of Automated Registration of Title to Land ("ARTL").

This is a major reform which requires to be introduced carefully with attention being given to the interests of the citizen and the profession as well as Registers. This may seem an almost trite thing to say but it needs to be said – and observed.

The Act makes provision for land registration in Scotland and provides a new legislative base for the Land Register. A particular driver for the Act was that it should increase the rate of transfer of property from the General Register of Sasines to the Land Register – the goal being to complete the Land Register and thus make ownership of land in Scotland transparent. This was an underlying aim of the feudal reform package and, nearly ten years after the Appointed Day, there have been major advances in that regard.

The Act enables applications for voluntary registration of titles in the Land Register and gives the Keeper of the Registers ("the Keeper") the power to register a title without an application being made by the proprietor. Such "Keeper - induced" registration is designed to aid the transfer of property to the Land Register an example being where say six out of eight titles to flats in a building are registered in the Land Register and it is felt that registration of all titles in the building would be in the best interests of all concerned.

Another fundamental reform introduced by the Act is what is seen as the realignment of registration law with the law of property, a particularly good example being where a person, through no fault of his/her own, loses a property right because of the fact that the Keeper has put a provision in the Title Sheet of a registered property which is then conclusive of the title position in a situation where there is a dispute with the proprietor of adjoining property the title to which is recorded in Sasines.

In other words, once a proprietor has a title registered in the Land Register, that title is free from challenge unless an inaccuracy has arisen as a result of the proprietor's fraud or carelessness. This has been widely described as the Keeper's "Midas Touch".

It is a cause of much grief to an innocent party who is advised that he/she loses a property right because of the fact of the Midas Touch and cannot get his/her property back at the expense of the registered proprietor in possession -see Section 9 (3) of the 1979 Act. All that is available is monetary compensation which is rarely, if at all, viewed as being satisfactory.
All of the provisions relating to land registration contained in the 1979 Act (sections 1-14) are repealed and so too are sections 19, 23-28, 30 and schedule 2.

There are various other consequential amendments. Section 19 of the 1979 Act provided for agreements to realign common boundaries. Sections 53(4), 64, 107, 108, 109 and 110 came into force on 1 November 2012.

These are essentially administrative sections. The main body of the Act will not come into force until late 2014. It is anticipated, however, that the provisions amending the Requirements of Writing Act 1995 will come into force in November 2013.

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