

PRACTITIONERS' GUIDE

TO THE

SCOTTISH STANDARD OFFER

AND

SCOTTISH STANDARD CLAUSES (EDITION 5)

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**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 5) have for the first time been finalised by a Working Party of the new **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 5

Briefing Note – Edition 5 of Scottish Standard Clauses

by Ross MacKay, Convener of the Scottish Standard Clauses Working Party:-

Changes Not Approved

The drafting team considered a number of changes as usual and initially it may be useful to note arguably the main possible changes that were not approved. These included :

1) "Covid" clause

It was felt, in brief, that this whole area was too uncertain and that any such clause would fail to properly cover many scenarios. It was noted that time having marched on the use of such clauses was minimal in practice.

2) Compliance with regulations

This was specifically raised in light of the recent introduction of the "**smoke alarm**" requirements. The clear consensus was that it was not appropriate for solicitors to be involved in checking such compliance where we are not experts in such technical matters and neither would the average client be such.

As we do not as a profession seek to check compliance on any other set of regulations e.g. on heating or electrics, it was agreed that we should not seek to change that overall established practice merely due to a new set of requirements being added to the tolerable standard rules.

The issues here however have now been flagged up within the Client Guide and it was suggested that terms of business should be amended to make clear advice would not be given on this topic.

3) Cladding

It was agreed that there was no need for a specific suspensive clause to be added to the standard offer as such a matter should be properly dealt with either pre-offer or as part of lifting a suspensive survey or loan finance clause.

If your client does not require a loan or is buying “off-market” without a Home Report, you should consider a subject to survey clause till you are happy with the cladding position.

Changes Approved

Clause	Explanation of Change/Addition
1.1.4	(1) we have retained the format altered in SSC Ed 4 to break down what was an increasingly lengthy list of “normal” fittings into a more easily understood list (2) we have added to that list of expected fittings smoke alarms, CO alarms and heat sensors
2.1.4	We have added to list of “awareness” points Japanese knotweed or other invasive plant species
4.1	We have slightly clarified definition of appliances
8.3	This has been amended to make clear that the works covered are those within 8.1 i.e. works needing council approval.
8.5	We have added a new clause being a warranty by the seller to the effect that notwithstanding the remainder of Standard Clause 8 they themselves have not carried out any alterations
9.1	The wording has been slightly altered. It no longer refers to “disputes” in a general sense, but only to court action/litigation
11.5	A brief new clause has been added to warrant that utility meters are situated within the sale property
17.2	It will no longer be a requirement that a draft Advance Notice be adjusted between agents. This reflects that practice has moved on and this is no longer happening in practice. The details are easily available in the draft or engrossed Disposition adjusted between the purchasing and selling solicitors.
18.2.1	Following a consultation exercise with GCF and ECF members it is now provided that the price is to be paid by electronic transfer as the default position and at the purchaser’s expense.

There are some non-consequential minor changes of a grammatical/typographical nature.

As always we have sought to reflect changing practice in relation to the house sale/purchase process. We are always open to queries or suggestions as to how the content of the SSC can be improved, clarified or expanded.

Colleagues are free to get in touch at any time either direct via their local Conveyancers Forum or faculty or by way of the Law Society. It should be remembered that whilst we have the support of the Society the SSC project is independent of them.

I hope that practitioners will agree that SSC5 reflect a fair and reasonable balance between the interests of purchaser and seller within the Standard Clauses.

Ross Mackay, Coulters Legal LLP

Convener

Scottish Standard Clauses Working Party of the Scottish Conveyancers Forum.

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 he 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 re the purchaser’s position.

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 5)”.

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 5).

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/

- [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

[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.

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