

## Summary of amendments to the Lenders' Handbook for Scotland

Below is a summary of all of the amendments made to **Part 1** of the Lenders' Handbook for Scotland.

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#### Amendments made on 1 July 2017

Amendments were made on 1 July 2017 to Part 1 clause 1.1; clause 6.4.1 and clause 6.4.2 to replace references to Council of Mortgage Lenders or CML with UK Finance, as a result of the merger of CML into UK Finance on 1 July.

#### Amendments made on 19 June 2017

A number of amendments were made to the Handbook as follows:

##### Section 5.3 searches and enquiries

Wording under Section 5.3 has been updated to remove reference to the Law Society guidance notes on coal mining reports as this no longer exists; and makes the clauses more consistent with other jurisdictions, as follows (new wording in italics):

##### 5.3 Searches and enquiries

~~5.3.1 In carrying out your investigation, you must make all usual and necessary searches and enquiries, taking into account the locality and other features of the particular property. You must obtain a property enquiry certificate in respect of the property (see also paragraph 5.3.5 and 5.3.6).~~

~~5.3.3 Where it is reasonable to believe that the property could be affected by underground mine workings, you must:~~

~~follow the current edition of The Law Society of Scotland Guidance Notes on coal mining reports and obtain a Coal Mining Report from the Coal Authority. If the results of the report from the Coal Authority are such that the property is not affected by any of the matters mentioned in the report then we do not need to be notified of its contents. Subject to that, you should advise us if any entries are revealed in the same way as you would advise the borrower. You should not simply send us a copy of the coal mining report; and~~

~~obtain a report on any other underground mine workings where appropriate, which report must not be more than six months old at settlement. Again, if the results of that report are such that the property is not affected by any of the matters mentioned in the~~

~~report then we do not need to be notified of its contents. Subject to that, you should advise us if any entries are revealed in the same way as you would advise the borrower.~~

~~You should not simply send us a copy of the report~~ *In addition, you must ensure that any other usual and necessary searches which may be appropriate to the particular property, taking into account its locality and other features, are carried out. You must report any adverse entry to us but we do not want to be sent the search itself.*

## **Section 6.7 New Properties – Building Standards Indemnity Schemes**

Revised wording was made to clause 6.7.1 relating to New Properties – Building Standards Indemnity Schemes, to make it consistent with other jurisdictions as follows (new wording in italics):

6.7.1 If the property is ~~newly built, or newly converted~~ *has been built or converted within the past ten years*, or to be occupied for the first time, you must ensure that it was built or converted under a new home warranty scheme acceptable to us (see part 2):

## **Section 17.2 and 18.3 relating to discharges**

An amendment was made under section 17.2 and 18.3, to reflect the use of digital discharge services as follows:

17.2.1 On the day of settlement you should send your remittance for the repayment to us. If you have previously sent us the discharge for execution (see part 2 for where to send it), and we have returned it to you prior to redemption, you must hold it as undelivered until you have sent the redemption money to us, *unless you have made a discharge request via the Registers of Scotland digital discharge service.*

18.3.1 You should check our part 2 ~~or the ARTL System~~ to see whether we will digitally execute the discharge. ~~As with a paper discharge, if we have digitally executed the discharge and have returned it to you prior to redemption, you must hold the discharge as undelivered until you have sent the redemption money to us.~~

## **Sections referring to the Sasines Register**

There was a review of sections of the Handbook in light of the closure of the Sasines Register by the Registers of Scotland (ROS). This has been updated as follows:

12.1.2 The borrower is expected to pay for as much work as possible from his own resources before applying to us for the first instalment. No instalment can be released unless our security has been, or will forthwith be, ~~recorded in the Register of Sasines or~~ registered in the Land Register of Scotland. ~~as appropriate.~~

14.1.1 You must forthwith after settlement ~~record/register~~ our standard security in the ~~Register of Sasines or~~ Land Register of Scotland ~~as appropriate~~, *taking the necessary steps if applicable, to complete a voluntary first registration in the Land Register if title to the property is held in the Register of Sasines.* Before making your application for ~~recording/~~registration you must place on your file certified copies of the disposition or other conveyance in favour of the borrower, our standard security and any discharge from a previous heritable creditor.

14.1.2 ~~Where the application for registration of our standard security is to be made to the Land Register of Scotland,~~ We require you, where in your professional judgement it is appropriate:

- to apply for an advance notice under the Land Registration etc. (Scotland) Act 2012 in respect of our standard security;
- to have seen a Legal Report which discloses such advance notice and no other competing advance notice; and
- to submit the application for registration within the protected period afforded by that advance notice.

For the avoidance of doubt these requirements and expectations in no way detract from our requirement to have a fully enforceable first ranking standard security over the property (see paragraph 5.8.1).

~~14.1.3 Where our standard security is recorded in the Register of Sasines you must check that the deeds appear to have been properly recorded and that the completed Searches disclose the relevant deeds, with no adverse entry.~~

#### 14.2 Title deeds

14.2.1 All title deeds, searches, enquiries, consents, requisitions and documents relating to the property must be held to our order and you must not create or exercise any lien over them. Unless otherwise instructed, they must be sent to us (see part 2) with the schedule supplied by us as soon as possible after return of the relevant documents from Registers of Scotland after recording/registration. In particular you must only send us paper Land and Charge Certificates or, for all cases where the application for registration is accepted by the Land Register of Scotland on or after 8 December 2014, a paper copy of the Title Sheet and cadastral map and associated documentation relating to the property where we tell you to (see part 2 and sub-section 14.1). If such return will take longer than usual you should advise us in writing with a copy of any correspondence from Registers of Scotland explaining the delay.

A minor amendment was made to clause 6.7.4 relating to the qualifications of the professional consultant to reflect that the Architecture and Surveying Institute qualifications are no longer offered. The following has been inserted (in italics) under the bullet points for qualifications: :

- fellow or member of the Architecture and Surveying Institute (FASI or MASI) (*only if in conjunction with a FCIOB or MCIOB qualification*);

#### **Amendment made on 1 February 2016**

An amendment to clause 10.2 of the Lender's Handbook. The amendment inserts an additional sentence (in italics), as follows:

10.2 We shall treat the submission by you of the certificate of title as *confirmation that the borrower has chosen to proceed with our mortgage offer* and as a request for us to release the mortgage advance to you. Check part 2 to see if the mortgage advance will be paid electronically or by cheque and the minimum number of days notice we require.

The amendment is designed to reflect the introduction of a requirement, as a result of the Mortgage Credit Directive, for mortgage customers to have a 'reflection period' of at least seven days before accepting a mortgage offer.

The wording intends to clarify that, in cases where the mortgage lender does not already require a formal acceptance from the borrower, that the current practice of the conduct of the borrower in drawing down the loan, acts as acceptance of the mortgage offer, and creates the contract; this in turn, in cases where the draw-down happens before the end of the reflection period, confirms that the customer has brought the reflection period to an end by their conduct, which Recital 23 expressly allows for.

#### **Amendment made on 30 November 2015**

An amendment to clause 6.14.1 to reflect the removal of the Part 2 section; the words 'Check part 2 to see if we have any further requirements in relation to buildings insurance' were deleted.

#### **Amendments made on 8 June 2015**

changes were made to:

- incorporate the introduction of the Land and Buildings Transactions Tax in Scotland

which has replaced stamp duty.

- reflect changes in Scotland due to the Land Registration (Scotland) Act 2012.
- the section on good and marketable title to reflect amendments made to the wording already amended in the Handbook for England and Wales.
- note the change of name from the Association of Building Engineers to the Chartered Association of Building Engineers

Clause affected were 5.5.1, 6.7.4, 10.4, 14.1, 14.1.2, 14.1.3, 14.1.4, 14.2.1 and 15.1 and new part 2 responses were needed for clauses 14.1.4 and 14.2

## **Amendments made on 1 December 2014**

A number of amendments were introduced on 1 December 2014.

### **Paragraphs 1.6; 1.7; 5.1.1; 5.8.1; 5.11; 9.2; 16.2.2**

The removal of term proprietor and replacement with 'owner' or 'seller' as necessary, as proprietor was being used for both seller and buyer which could cause confusion. The addition of 'administrator' in the list at 5.5.1.

### **Section 3 Safeguards**

To update s 3.1 to remove reference to independent licensed conveyancers which no longer exist in Scotland.

Paragraph 3.2 was updated to ensure consistency across jurisdictions. It removes reference to 'note paper' and refers instead to the address 'provided to you'. This was changed to deal with the issue where the correspondence is in the main electronic, and to encourage the Solicitor to check against any/all the addresses they are provided with as lenders have seen the use of both fictitious letter paper and addresses.

#### **Paragraph 4.1.1 Valuation of the property**

An amendment to clarify that solicitors and conveyancers are not expected to pick up any discrepancies between the valuation report they receive and what the lender has, if the lender doesn't supply the report directly to them.

#### **Paragraph 5.4 Planning and building regulations**

To update references with regards to building and planning regulations

#### **Paragraph 5.7.1 title conditions**

To replace obsolete terminology of 'real burden'.

#### **Paragraph 5.9.1**

An additional sentence has been inserted to clarify how solicitors should report if the borrower is in receipt of a gift or loan.

#### **Paragraph 6.6 Properties let at settlement**

Updating references to relevant legislation and procedures under that legislation at paragraphs 6.6.3; 6.6.7.

#### **Paragraph 6.14 Insurance**

This section has been radically simplified to remove the list of risks and range of Part 2 questions in relation to buildings insurance requirements. A part 2 has been retained to allow for lenders to include specific requirements

#### **Paragraph 11.2 The standard security**

Amends to clarify the responsibilities of the solicitor in relation to explaining the mortgage documents to the borrower.

#### **Paragraph 16.4 Properties to be let after settlement**

A minor clarification adding in the term 'borrower'.

### **Amendment made on 8 July 2013**

An amendment was introduced on 8 July 2013 following the introduction of Green Deal Plans on residential properties in Scotland. It allows lenders to choose whether to be informed about Green Deal Plans on properties, via their Part 2 response in section 5.14.

### **Amendment made on 1 August 2011**

Section 6 (clause 6.4.4)

The wording of the clause has been amended to bring it in line with the England and Wales version. It adds an additional bullet point and some extra words of clarification to match the current (July 2011) England and Wales equivalent clause.

### **Amendments made on 1 December 2010**



## **A number of amendments were introduced on 1 June 2010.**

A number of substantial formatting and clause numbering amendments were introduced, as well as some material amendments within both Part 1 and Part 2.

### **Section 1 (clause 1.6 in the new version) –**

Some lenders will not lend where the borrower and the proprietor of the security subjects are not one and the same and this change is intended to make it clear that this needs to be referred to the lender in these circumstances.

### **Section 1 – (clause 1.15)**

We are adding a clause that a firm should not act if the partner or fee earner or one of their immediate family is the seller of the property, unless stipulated in the lender's Part 2.

### **Section 3**

We are updating references to the Money Laundering Regulations 2007.

### **Section 3 – (clause 3.2 & 3.3)**

Some lenders now wish to be advised of the name of the solicitors acting for the seller. This is being introduced in light of some lenders experiencing mortgage fraud. If not familiar with the seller's solicitors, we will ask the solicitor instructed by the lender to check their validity. Lenders will be able to stipulate in Part 2 whether they require notification of the name and address of the sellers' solicitors and if so where this should be sent.

### **Section 5 – (clause 5.13)**

This is a new clause asking solicitors check with the lender as to its requirements on affordable housing schemes.

### **General amendments to formatting**

Numbering has been revised throughout the document (a cross-referencing of Part 2 clause numbering from the previous version to the new version is below).

Where more than one question is posed within a Part 2 clause, these will be identified by (a), (b), (c) etc for ease of reference.

In Part 2, we will change references to the lender in from the second person ("you") to third person ("the lender") and references to the conveyancer from the first person to the second person to ensure consistency with Part 1.

Where a Part 2 clause lists a lender's contact point, these will refer back to the general contact provided under section 1 unless different.

|   | <b>OLD<br/>Part 2<br/>clause</b> | <b>NEW<br/>Part 2<br/>clause</b> |
|---|----------------------------------|----------------------------------|
| <b>NEW Part 2 question</b>  |                                  |                                  |
| Contact point to see if the lender will lend when borrower and proprietor are not one and the same.               |                                  | 1.6                              |
| Contact point for standard documents.   | 1.11                             | 1.11a                            |
| Contact point if standard documents are inappropriate.  | 1.11                             | 1.11b                            |
| May your firm act if the person dealing with the transaction or a member of his immediate family is the borrower? | 1.14                             | 1.14                             |

|   |           |        |
|---|-----------|--------|
| May your firm act if the person dealing with the transaction or a member of his immediate family is the seller?   |           | 1.15   |
| Does the lender require notification of the name and address of the solicitors firm or independent qualified conveyancer acting for the seller?   |           | 3.2    |
| If different from 1.11, contact details if the lender needs to be notified when the seller does not have legal representation   |           | 3.3    |
| Is there a valuation report and if so, does the lender provide it?  | 4.1.1     | 4.1.1  |
| If different from 1.11, contact point if assumptions stated by the valuer are incorrect.  | 4.1.1.2   | 4.1.3  |
| If different from 1.11, contact point if re-inspection required.  | 4.2       | 4.2.1a |
| Where should the certificate of title be sent?  | 4.2       | 4.2.1b |
| If different from 1.11, the contact point if the seller has owned the property for less than 6 months:  | 5.1.1     | 5.1.1  |
| Does the lender accept property enquiry certificates from private firms?  | 5.2.4     | 5.3.4a |
| Does the lender accept search insurance?  | 5.2.4     | 5.3.4b |
| Does the lender you want to receive environmental or contaminated land reports?   | 5.2.5     | 5.3.5  |
| If different from 1.11, contact point if the seller is not giving adequate undertaking to comply with outstanding planning permission and building regulation conditions before settlement. | 5.3.2     | 5.4.2a |
| Does the lender require an original/copy of the planning permission?  | 5.3.2 (2) | 5.4.2b |
| Does the lender require an original/copy building warrants?   | 5.3.2 (3) | 5.4.2c |
| Does the lender require other consents/certificates?  | 5.3.2 (4) | 5.4.2d |
| If different from 1.11, contact point if the property is subject to restrictions which may affect its value or marketability.   | 5.3.3     | 5.4.3  |
| If different from 1.11, contact point if there is a restriction on use.   | 5.5       | 5.6.1  |
| If different from 1.11, contact point if borrower is not providing balance of purchase price from own funds/proposing to give second charge.  | 5.8       | 5.9.1  |
| Does the lender accept long lease titles as security?   | 5.9       | 5.10   |
| If different from 1.11, contact point if unable to certify search entry does not relate.  | 5.10.2.2  | 5.11.2 |
| Does the lender need to be sent the original, an extract or a certified copy of the power of attorney?  | 5.11.3    | 5.12.3 |
| If different from 1.11, contact point for lending on affordable housing, shared equity and shared ownership and where relevant your requirements:   |           | 5.13.1 |
| If different from 1.11, contact point if borrower is not taking up the mortgage offer.  | 6.1.3     | 6.1.3  |
| If different from 1.11, contact if any discrepancies in property's description.   | 6.2       | 6.2.1  |
| If different from 1.11, contact point for any issues relating to purchase price   | 6.3.1     | 6.3.1  |
| Does the lender require me to report incentives?  | 6.3.1     | 6.4.4  |
| If different from 1.11, contact point if I will not have control of the purchase price.   | 6.3.2     | 6.4.5  |
| If different from 1.11, contact point if vacant possession is not being given.  | 6.4       | 6.5.1  |
| If different from 1.11, contact point if property is let/to be let.   | 6.5.1     | 6.6.1  |
| Does the lender need to be sent the counterpart/certified copy tenancy agreement?   | 6.5.2     | 6.6.2  |

|  |         |         |
|--|---------|---------|
| Conditions that apply to the letting:  | 6.5.3   | 6.6.3a  |
| If different from 1.11, contact point if property already let and these requirements not met.  | 6.5.3.1 | 6.6.3b  |
| If different from 1.11, contact point for any failure to register under on the register of landlords.  | 6.5.3.2 | 6.6.3c  |
| If different from 1.11, contact point to report any failure by the borrower to obtain licence under the Civic Government (Scotland) Act 1982 (Licensing of houses in Multiple Occupation) order 2000 as amended. | 6.5.3.3 | 6.6.3d  |
|  | 6.6.1   | 6.7.1   |
| What new home warranty schemes are acceptable to the lender?   |         |         |
| What new home warranty documentation should be sent to the lender?   | 6.6.2   | 6.7.2   |
| Should any assignments of building standards indemnity schemes be sent to the lender?  | 6.6.3   | 6.7.3   |
| Does the lender accept monitoring by a professional consultant?  | 6.6.4   | 6.7.4   |
| Does the lender need to be sent the professional consultant's certificate?   | 6.6.6   | 6.7.6   |
| If different from 1.11, contact point if no bond/retention for an unadopted road or if no public sewer or approved private sewerage  | 6.7.1   | 6.8.1   |
| If different from 1.11, contact point if property not served by public sewer or by private sewerage arrangements with necessary approvals.   | 6.7.2   | 6.8.2   |
| If different from 1.11, contact point if necessary servitudes are absent.  | 6.8.1   | 6.9.1   |
| Who will the lender release any retentions (or instalments of the advance) to?   | 6.9.2   | 6.10.2  |
| If different from 1.11, contact point if property is affected by redevelopment and road proposals.   | 6.10    | 6.11.1  |
| If different from 1.11, contact point if pre-emption rights, resale restrictions, options etc will affect your security.   | 6.11    | 6.12.1  |
| If different from 1.11, contact point if property is affected by improvement/repair grant which will not be discharged.  | 6.12    | 6.13.1  |
| If different from 1.11, contact point if property is not insured in accordance with your requirements.   | 6.13.1  | 6.14.1a |
| Does the lender need the buildings insurance in joint names or its interest noted?   | 6.13.1  | 6.14.1b |
| What is the maximum excess the lender will accept on buildings insurance policy  | 6.13.5  | 6.14.1c |
| Does the lender require confirmation that all the insurance risks are included?  | 6.13.6  | 6.14.1d |
| Does the lender require insurer's confirmation to notify it of non-renewal/cancellation of buildings insurance policy?   | 6.13.7  | 6.14.2  |
| Does the lender need to be sent a copy of the buildings insurance policy and last premium receipt?   | 6.13.8  | 6.14.3  |
| May I also advise any of the specified third parties?  | 8       | 8.1     |
| Does the lender need to be sent the indemnity insurance policy?  | 9       | 9.1     |
| What limit of indemnity insurance do you require?  | 9.2     | 9.2     |
| Will the mortgage advance be paid electronically or by cheque?   | 10.2    | 10.2a   |
| What is the minimum number of days notice lenders require?   | 10.2    | 10.2b   |
| What are the standard deductions made from the mortgage advance?   | 10.2    | 10.3    |

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| On a delayed completion, when and how is advance to be returned?   | 10.3     | 10.4    |
| If different from 1.11, contact point if settlement delayed.   | 10.5     | 10.6    |
| How long can you hold the mortgage advance before returning it?  | 10.6     | 10.7    |
| What, if any, interest does the lender charge if return of the advance is delayed?                       | 10.7     | 10.8    |
| If different from 1.11, contact point for release of retentions/mortgage advance instalments.            | 12.3     | 12.3.1  |
| Does the lender require paper certificates to be issued?   | 14.1     | 14.1.1  |
| Where should the title deeds and documents be sent?  | 14.2.1   | 14.2.1  |
| Which documents must you send after settlement?  | 14.2.2   | 14.2.2  |
| If different from 1.11, contact point for requesting the deeds.  | 16.1     | 16.1.1  |
| Does the lender have a standard form of deed of variation?   | 16.3.1   | 16.3.1  |
| If different from 1.11, contact point for finding out the debt amount.                                   | 16.3.1.2 | 16.3.2  |
| If different from 1.11, contact point for obtaining execution of deed of variation.                      | 16.3.5   | 16.3.6  |
| If different from 1.11, contact point for application for consent to letting.                            | 16.4.1   | 16.4.1  |
| Does a copy of a proposed tenancy need to be sent to the lender?   | 16.4.1   | 16.4.2  |
| Conditions for letting of property after settlement.   | 16.4.2   | 16.4.3  |
| If different from 1.11, contact point for confirming proposed deed will not adversely affect the lender. | 16.5.2   | 16.5.2  |
| Where should the deed of restriction be sent for execution:  | 16.5.3   | 16.5.3a |
| Where should the deed of servitude be sent for execution:  | 16.5.3   | 16.5.3b |
| If different from 1.11, contact point for requesting redemption statement?                               | 17.1.1   | 17.1.1  |
| Where do you send the discharge and repayment remittance?  | 17.2     | 17.2.1  |
| Does the lender allow completion and registration of standard security on ARTL?                          | 18.2     | 18.2.1  |
| Will the lender digitally execute the discharge?   | 18.3     | 18.3    |

#### **Amendments made on 1 June 2007**

Clause 6.6.1.6 The list of acceptable new home warranty providers was removed from Part 1 and lenders were left to detail these in their Part 2s.

#### **Amendments made on 1 January 2007**

Clause 6.6.1.6 Building Life Plans was added to the list of new home warranty providers

#### **Amendments made on 1 December 2006**

The Lenders' Handbook for Scotland was reviewed to update a number of the existing instructions in Part 1 to reflect recent changes in law and practice. There have also been a number of recent developments in the law in Scotland which have necessitated new instructions and guidance being provided in the Handbook. The Registers of Scotland will also be launching its Automated Registration of Title to Land ("ARTL") system early in 2007, necessitating further instructions and guidance.

The following note details the material changes which have been made to Part 1 and also highlights where members will require to amend their Part 2s.

| <b>Part 1 clause</b> | <b>Amendment</b>   | <b>Part 2 change</b>                |
|----------------------|--|-------------------------------------|
| 1.13                 | Amended to include references to civil partner as introduced by the Civil Partnership Act 2004   |                                     |
| 1.17                 | There are a number of specific references to regulations and pieces of both primary and secondary legislation in Part 1. This new clause is to future proof these specific references where the relevant regulations or legislation are subsequently amended.  |                                     |
| 3                    | <p>This is the first major amendment. The detailed provisions regarding checking evidence of identity have been removed from Part 1 along with Lists A and B. This reflects recommendations made by the Joint Money Laundering Steering Group towards a more risk based approach in this area. The rules imposed by the Law Society of Scotland in this regard, coupled with the requirements of the Money Laundering Regulations, are considered to provide more than adequate safeguards to mortgage lenders.</p> <p>The original clause 3.3 has been deleted in its entirety and the old clause 3.4 re-numbered accordingly. There is no longer a Part 2 for this clause.</p> | <b>Former part 2 clause deleted</b> |
| 5.2.3                | The original clause has been split and re-worded to make the distinction clearer as between Coal Mining Reports obtained from the Coal Authority on the one hand and reports on other underground mine workings on the other. There is no time limit on the age of the Coal Mining Report.   |                                     |
| 5.3.1.1              | This clause has been amended to make it clear that the clause is not simply limited to the original construction of the property, but also covers subsequent alterations to the property which are material or significant. If the alterations are trivial or minor then they would not affect the value of the lender's security and would not affect the value of the property or its marketability.   |                                     |
| 5.4.2                | The Tenements (Scotland) Act 2004 makes detailed provisions affecting flatted properties relating to the maintenance and repair of common parts and services. Clause 5.4.2 has therefore been adjusted to cover only those situations where the 2004 Act does not apply.   |                                     |
| 5.6                  | The position relating to title conditions was amended by the Title Conditions (Scotland) Act 2003, and for title conditions to be enforceable they have to be "real burdens" as defined in the Act. Real burdens can now be extinguished by acquiescence or by negative prescription under the Act and 5.6.2.2 has been adjusted to take account of this.  |                                     |
| 6.3.2                | The level of reservation fee beyond which a Solicitor should report to the lender has been increased from £500 to £1000 to reflect the increase in the amounts required by builders and developers.  |                                     |
| 6.5                  | This is the next major amendment to Part 1 affecting properties let at settlement, and reflects the introduction of licensing requirements for landlords under the ASBO legislation and in relation to houses in multiple occupation. A new clause 6.5.3 has been introduced with requirements on the Solicitor to report non-compliance to the lender. Members will require to adjust their Part 2s to detail whom Solicitors should report to.   |                                     |

|       |  |   |
|-------|--|---|
|       | <p>It is assumed that this will be the same contact point as for clause 6.5.1.</p> <p>The starting point is that any letting of the property is prohibited without the lender's consent. If the property is already let, or is to be let, the Solicitor should then check the details set out in the mortgage offer or any consent to let issued by the lender. Accordingly, if members already have detailed letting conditions in place for their buy to let mortgages then Solicitors should comply with these.</p> <p>6.5.3 then provides a default position should you consent to the letting but the mortgage offer otherwise remains silent. It covers three areas:</p> <p>6.5.3.1 requires that the letting be a Short Assured Tenancy and that the borrower serve notice of Ground 2 on the prospective tenants before the tenancy commences. If the property is already let and the let does not comply with these requirements then the Solicitor must report this to you.</p> <p>6.5.3.2 requires the Solicitor to check that the borrower is registered as a landlord under the ASBO landlord licensing requirements and that any letting agent employed by him is also registered. Non compliance must again be reported to you.</p> <p>6.5.3.3 requires the Solicitor to confirm with the borrower that the property meets the HMO licensing requirements and that he has obtained an HMO licence where appropriate. Non compliance must again be reported to you.</p> <p><b>Note:</b> several licensing authorities have reported substantial backlogs in processing applications for landlord registration under the ASBO licensing regime and for HMO licences. If they have not already done so, members should consider what they will require Solicitors to obtain from borrowers in these situations, for example: copies of the application form with confirmation of receipt from the licensing authority and an undertaking to examine the registration certificate/licence once issued. Consideration should also be given as to the procedure should the borrower be refused landlord registration or an HMO licence.</p> | <p><b>Yes</b></p> <p><b>Yes</b></p> <p><b>Yes</b></p> <p><b>Yes</b></p> |
| 6.6.7 | <p>The next major amendment to Part 1 relates to new builds and new conversions. New procedures for obtaining completion certificates were introduced by the Building (Scotland) Act 2003 which came into force on 1 May 2005. 6.6.7.1 covers the old procedure for building warrants issued before 1 May 2005, and 6.6.7.2 details the new procedure for those issued on or after 1 May 2005.</p>   |   |
| 6.10  | <p>The word "materially" has been added, so that the Solicitor's obligation to report to you is where the property is in "an area scheduled for redevelopment or in any way <b>materially</b> affected by road proposals". Again lenders should only be interested in road proposals which might impact on the value of their security.</p>  |   |
| 7.1   | <p>Amended to include references to the Civil Partnership Act 2004</p>   |   |
| 8.3   | <p>Amended to include references to the Civil Partnership Act 2004</p>   |   |
| 10.3  | <p>This has been amended to reflect the replacement of stamp duty with stamp duty land tax. There is also a positive obligation imposed on the Solicitor to ensure that all SDLT returns are timeously completed and submitted to allow registration of the security to take place forthwith.</p>  |   |

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| 14.1   | <p>This is the next major amendment to Part 1 which will start impacting lenders from early 2007 when it is timed to coincide with the launch of ARTL – see 18 below. The Registers of Scotland are changing the registration requirements for titles registered in the Land Register of Scotland to the effect that (a) it will no longer be a requirement to submit the existing paper Land and Charge Certificates when applying to register a dealing, and (b) applicants will have the option to specify in their applications whether or not they require the Registers to issue them with paper Land and Charge Certificates once registration has been completed. Note that this will apply irrespective of whether the application is ARTL or non-ARTL.</p> <p>14.1 has been amended so that it is no longer a requirement to keep a certified copy of the Land Certificate when making an application for registration, given that it will no longer be a requirement to submit the paper Land Certificate.</p> <p>The provisions for checking the title position after registration in the Land Register have been changed to detail what should be checked where no paper Certificates are issued. Members should indicate in the Part 2 whether they require paper Certificates to be issued, and the default answer should be “yes”. Members should then consider the implications of dematerialisation. They should only indicate that they do not require paper Certificates if they have decided to adopt dematerialisation in Scotland. Note that data synchronisation is not required in Scotland for dematerialisation.</p> | Yes |
| 14.2   | <p>As per 14.1, members should indicate in their Part 2 whether they want Solicitors to send them paper Land and Charge Certificates and associated documentation relating to the property following the completion of registration. The default answer should be “yes”, and members should have considered the implications of dematerialisation before changing this to “no”.</p>   | Yes |
| 16.4   | <p>This is the next major change to Part 1 and relates to properties to be let <b>after</b> settlement. The new provisions follow the same approach which is set out above at 6.5 in relation to properties to be let at settlement, though in this case no reference is made to the mortgage offer.</p> <p>16.4.2 has been substantially amended and again introduces requirements on the Solicitor to report non-compliance to the lender. Members will be required to adjust their Part 2s to detail whom Solicitors should report to. It is assumed that this will be the same contact point as for clause 16.4.1.</p> <p>Please see the detailed explanation at 6.5 above.</p>   | Yes |
| 17.1.2 | <p>A change has been made in relation to what goes in the payee line on redemption cheques to tie in with the Law Society of Scotland’s Accounts Rules - Rule 6(2) which states that:</p> <p>“where money drawn from a client account by cheque is payable to a person’s account with any bank or building society, the cash book and ledger entries relating thereto and said cheque shall include the name of the person whose account is to be credited with the payment”</p> <p><b>Note:</b> The Law Society have acknowledged that there is an error on their website which refers to a Rule 6(3) of the Solicitors Accounts Rules. There is no Rule 6(3). The relevant rule is Rule 6(2) as set out above. The Law Society have confirmed that “the name of the person must be</p>  |     |

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|    | <p>stated to comply with the rule but the account number is optional”.</p> <p>Note also that Clause 2.1 is relevant here in that the covering letter should state “the mortgage account or roll number, the surname and initials of the borrower and the property address”.</p> <p>The change to clause 17.1.2 reflects the practical issue that, with many cheques now being printed rather than hand written, there are insufficient character spaces on the payee line to accommodate the name of the lender, the borrower and the roll/account number.</p>  |                                     |
| 18 | <p>Automated Registration of Title to Land (“ARTL”)</p> <p>This is presently scheduled to be launched by the Registers of Scotland at the end of January 2007. Members should already be aware of ARTL and how it will impact on them. If they require further information they should contact the Registers of Scotland’s ARTL liaison officers who are John King and Susan MacInnes on 0131 6596111.</p> <p>The new clause 18 supplements the other clauses in Part 1, and as such is only relevant for ARTL transactions in the Land Register of Scotland.</p> <p>The Law Society of Scotland have already issued a Practice Rule relating to the Mandates which borrowers will require to give their Solicitor to enable the Solicitor to digitally sign and then register the Standard Security on ARTL. 18.1 obliges the Solicitor to follow that Practice Rule and any other Practice Rule or guidance notes issued by the Law Society or the Registers of Scotland on the use of ARTL.</p> <p>18.2 requires the Solicitor to check your instructions or your Part 2 to see whether you allow the completion and registration of your Standard Security on ARTL. If members have already signed up for ARTL, or intend to do so before the launch at the end of January 2007, then they should indicate “yes” in their Part 2. If members are not sure, or may have to delay until after the initial launch, then they should leave their Part 2 silent and address this issue in their mortgage instructions as and when they are ready to go with ARTL. Part 2s can then be adjusted at a later date.</p> <p>18.3 again requires the Solicitor to check your Part 2 to see whether you will digitally execute a Discharge. The Registers of Scotland will also maintain a list of lenders who have signed up for this. Members should indicate in their Part 2 if they are participating in the Discharge side of ARTL if they have already signed up for this, or intend to do so before the launch of ARTL at the end of January 2007. Again, if members are not sure, or may have to delay until after the initial launch, then they should leave their Part 2 silent. Solicitors will always be able to check the listing on the ARTL system if they are in any doubt. Part 2s can then be adjusted at a later date.</p> | <p><b>Yes</b></p> <p><b>Yes</b></p> |

### Amendments made on 30 August 2004

Clause 6.6.2 was amended to read:

"Before you send the certificate of title, you must obtain a copy of a new home warranty provider’s cover note from the developer. The cover note must confirm that the warranty provider has carried out a final/pre-handover inspection and that the new home warranty will be provided. This will only apply where conclusion of missives occurs on or after 30 August



2004. This does not apply to self-build schemes. Check Part 2 to see what new home warranty documentation should be sent to us after settlement."

## **Amendments made on 1 January 2003**

The fundamental change made to the Handbook was that it was produced in electronic format. The following were the other main changes introduced:

### **Safeguards**

With the introduction of the new photo-card driving licence in the UK this was added to List A in the Handbook.

### **Searches and Reports**

With the increase in the number of firms now offering environmental and contaminated land reports, lenders will stipulate in their Part 2 requirements whether they want to see these or not. If the lender does not want to see these reports, the Handbook confirms that the conveyancer does not need to make these arrangements on the lender's behalf. However, lenders will still want to be advised of any adverse entries highlighted in a local authority search. The Handbook also stipulates that in future the property enquiry certificate should include questions on entries included on the Contaminated Land Registers, being compiled by local authorities. From 14 July 2000, local authorities have been required to begin compiling their individual Registers and similar questions have been asked of local authorities in England & Wales for several years. While it is clear that many Registers currently contain limited information, this should increase over time and it is important that any notices or entries are identified as part of the conveyancing process for both borrower and lender clients. These questions are included within the revised text of the Handbook. Finally, the UK Finance recognises that there are new providers of local searches and again lenders will identify in their Part 2 instructions what types of searches they will accept.

### **New Home Warranty Schemes**

Taking into account new entrants in the new home warranty sector, we have added Premier Guarantee for Private Housing and Completed Housing to the list of home warranty schemes named in paragraph 6.6.1. Lenders will also be able to list any other home warranty schemes they find acceptable in their individual instructions in Part 2 of the Handbook. The Consultant's Certificate used in connection with the building of new properties has also been updated.

### **Insurance**

As some lenders no longer require conveyancers to confirm the insurance arrangements where the cover is taken out with a third party insurer, lenders will confirm in Part 2 of the Handbook where these checks should be carried out.

### **The loan and certificate of title**

To provide greater transparency over how the advance will be paid, conveyancers will be asked to check Part 2 to see if the mortgage advance will be paid electronically or by cheque and the minimum number of days notice lenders require. Conveyancers can now also refer to Part 2 to see if there are any standard deductions that may be made from the mortgage advance.

