

# **Consumer market study on the functioning of the real estate services for consumers in the European Union**

Country fiche – SCOTLAND

## General information

<b>Country</b>	Scotland
<b>Researcher name</b>	Professor Stewart Brymer OBE, WS, LLB (Hons) NP, Solicitor
<b>Researcher contact details (email)</b>	stewart@brymerlegal.co.uk
<b>Main Sources Used</b>	See list at point 1.2

## 1. Regulatory background

### 1.1 Level of regulation in the country

**Table 1: Level of regulation**

	<b>Level of regulation</b>	<b>Source of relevant legislation</b>	<b>Ongoing discussion on regulation/deregulation: current state of affairs and main arguments in the debate</b>
<b>Real estate transactions<sup>1</sup></b>	Real estate transactions are processed according to the Scots law of Contract and the law of Property. There is legislative overlay in certain areas, e.g. Unfair Consumer Contracts, but the general rule is that the contract between seller and buyer regulates the transaction and, unless excluded, the common law principle of <i>caveat emptor</i> applies.	<p>Certain UK wide legislation emanating from Westminster and Scotland-specific legislation emanating from the Scottish Parliament.</p> <p>The law of Property in Scotland is a devolved matter that is within the remit of the Scottish Parliament.</p>	<p>Scots Property law has undergone radical change since 2000 with the enactment of The Abolition of Feudal Tenure (Scotland) Act 2000; the Title Conditions (Scotland) Act 2003; the Tenements (Scotland) Act 2004 – all of which came into force on the Appointed Day, 28 November 2004. These changes, although very much focused on property law, have improved the title position and thus the contractual and examination of title phases of residential property transactions.</p> <p>Since 2004, the Land Registration (Scotland) Act 1979 has been repealed by the Land Registration etc. (Scotland) Act 2012, which came into force in 2014. The 2012 Act introduced major changes (permitting secure digital signatures to be used in place of traditional “wet” signatures) as well as a comprehensive overhaul of the system of registration of title in Scotland. Once again, this has improved the process of a transaction in the registration of title phase.</p> <p>The Money Laundering Regulations 2007 extended identity checks to beneficial owners of companies and beneficiaries under trusts.</p> <p>The legislative changes alongside the increasing standardisation of documentation; the use of technology; model contracts and deeds; and the growing consumer expectation of more transparent and straightforward transactions is beginning to lead to calls for deregulation of the conveyancing monopoly and the opening up of the conveyancing process to non-lawyers.</p>

<sup>1</sup> E.g. limitations or prohibitions of certain transactions; specific formality requirements etc.

**Table 1: Level of regulation**

<p>Notary system (or lawyer/conveyancer system)<sup>2</sup></p>	<p>The conveyancing system is regulated through The Law Society of Scotland in its capacity as a regulatory authority for all solicitors holding practising certificates in Scotland. See <a href="http://www.lawscot.org.uk">www.lawscot.org.uk</a></p> <p>Scotland has a system of Notaries Public but it operates in a more limited role than is found in mainland Europe. Notaries have very limited involvement in Scottish property transactions.</p> <p>Solicitors in Scotland have a monopoly on Conveyancing. In essence, however, this relates only to the drawing of the Deed of Conveyance.</p>	<p>None</p>	<p>None required. The involvement of Notaries to formalise certain documents is limited, as explained.</p>
<p>Profession of estate agents</p>	<p>The Estate Agents Act 1979. Consumer, Estate Agents and Redress Act 2007.</p> <p>The Consumer Protection from Unfair Trading Regulations SI2008/11277.</p>	<p>This legislation applies across the UK.</p>	<p>There has been regular criticism of the legislative framework-governing estate agents in the UK. There is a view that the regulation which exists in the Act is not as effective as it could be.</p>

<sup>2</sup> Only in countries where notaries do not exist or do not have a monopoly on conveyancing.

## 1.2 National legislation

**Table 2: List of national legislation**

List of national legislation	Classification of national legislation	Content of the national legislation
Consumer Protection from Unfair Trading Regulations 2008, SI 2007/1277	Consumers	Regulates Unfair Trading
Consumers Rights Act 2011, c 15	Consumers	Sets out standards of letting agents
Consumer, Estate Agents and Redress Act 2007, c 17	Regulation of Estate Agents/Consumers	Requires estate agents to belong to an approved redress scheme
Solicitors (Scotland) Act 1980 and Legal Services (Scotland) Act 2010	This Act and amendments thereto regulate the solicitor profession in Scotland.	<p>See: The Solicitors (Scotland) Act 1980: The case for change - <a href="http://www.lawscot.org.uk/media/732471">www.lawscot.org.uk/media/732471</a></p> <p>The present legal framework surrounding the Scottish legal profession stems from different pieces of legislation. The underpinning and central piece of regulatory legislation, the Solicitors (Scotland) Act 1980 (the 1980 Act), is in itself a consolidation Act, bringing together legislation dating back to 1949, and amended in 1958, 1965 and 1976. Since 1980, there have been further significant changes to the Act in 1990, 2003, 2007 and 2010. The Legal Services (Scotland) Act 2010 is broadly speaking a revised version of the 1980 Act (for example incorporating the changes embedded in legislation above) reflects most of the Law Society's governance.</p> <p>Although the 1980 Act can be interpreted in many instances to reflect the original policy intent, there are many other instances where compliant interpretation is strained because the policy intent did not anticipate or allow for 21st century legal services and the change in social, consumer and business needs and demands.</p> <p>Although many of the provisions of the 1980 Act continue to work well, there is a view that the law needs to be modernised to support and facilitate the evolution of new business structures and advancements in technology, which</p>

**Table 2: List of national legislation**

		<p>threaten to undermine the interests and protection of the Scottish and UK consumer and test the provision of the Act further.</p> <p>The Law Society of Scotland is engaged with the Scottish Government in a full legal services review in Autumn 2017. It is unlikely that this will impact on the house buying/selling system.</p>
Abolition of Feudal Tenure (Scotland) Act 2000	Abolition of Feudal Tenure in Scotland	Reform of the feudal system of tenure in Scotland
Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010, SI 2010/2960	Timeshare transactions	Copies out Directive
Building (Scotland) Act 2003	Regulation of Building Control	Control of permitted development
Companies Act 1985 – where the seller is a limited company	UK-wide	<p>Execution of a deed by a company.</p> <p>Possible to create a floating charge over real estate in the same way as for any other type of asset. A floating charge is a charge (granted under the Companies Act 1985) that hovers over a changing class of assets. It is based on an equivalent English law provision and was incorporated into Scots law.</p>
Town and Country Planning (Scotland) Act 1997	Scotland	Control of permitted development
Electronic Communications Act 2000, s.8	UK legislation derived from EU	Permissive legislation to facilitate e-commerce etc. This was used as a link in order to facilitate automated registration of title to land (“ARTL”).
Title Conditions (Scotland Act 2003	Scotland	Reform and codification of the Scots law of real burdens
The Land Registration etc. (Scotland) Act 2012	Scotland	Overhaul of the Scottish system of registration of title and other matters (including permitting the use of digital signatures as a means of authenticating documents).

**Table 2: List of national legislation**

Land and Buildings Transaction Tax (Scotland) Act 2013	Scotland	On 1 April 2015, Stamp Duty Land Tax (SDLT) ceased to apply to transactions involving land in Scotland and was replaced by the Land and Buildings Transaction Tax (LBTT). LBTT applies wherever the purchaser is based, so long as the land is in Scotland. The Scottish Government has control over the tax base as well as the rates. LBTT is collected by Revenue Scotland, the new Scottish tax authority, working in conjunction with Registers of Scotland.
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### 1.3 Implementation of relevant EU legislation

**Table 3: Implementation of relevant EU legislation**

EU legislation	Implementation achieved?	Implementation of EU legislation at the national level (e.g. the name of the law)	Source of the national implementation legislation	Content of the national legislation in keywords	Which parts of the EU legislation have been transposed?	Which parts of the EU legislation have <u>not</u> been transposed?
<b>Directive 2005/29/EC on unfair commercial practices (UCPD)</b>	Yes	Consumer Protection from Unfair Trading Regulations 2008	SI2007/1277	Same as Directive	All	None
<b>Directive 93/13/EEC on unfair terms in consumer contracts</b>	Yes	Consumer Rights Act 2011	C15	Part 11 integrates Directive and pre-existing domestic law	All but the Regime of Unfair Terms	Regime of Unfair Terms

**Table 3: Implementation of relevant EU legislation**

<b>Directive 2008/122/EC on the protection of consumers, in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts</b>	Yes	Timeshare, Holiday Products, Resale and Exchange <i>Contracts Regulations 2010</i>	SI2010/2960	All	All	In addition to the content of the Directive, the national legislation states that Estate Agents belong to an approved redress scheme
<b>Directive 2010/31/EU of the Energy Performance of Buildings Directive</b>	Yes	The Energy Performance of Buildings (Scotland) Regulations 2008	SSI2008/39 as amended by 2008/389, 2012/190, 2012/315, 2013/12 and 2015/386	All	All	Ensures that an Energy Performance Certificate is required whenever an existing building is sold or let
<b>Directive 2005/36/EC on Recognition of Professional Qualifications, as last amended by Directive 2013/55/EU</b>	Yes	EU (Recognition of Professional Qualifications) Regs 2015	SI2015/2059	Separate regulations exist for professionals in health care.	Copy out	None
<b>Mortgage Credit Directive, 2014/17/EC</b>	Yes	Mortgage Credit Directive Order 2015	SI 2015/0000 as amended by 2015/1557	Amendments to the Financial Services and Markets Act 2008	All	None



## 1.4 Communications and strategy papers

**Table 4: Communications and strategy papers**

<b>Communication or strategy paper</b>	<b>Have the following communications and strategy papers been referred to in national documents?</b>	<b>Name of document</b>	<b>Source</b>	<b>Content</b>	<b>Differences with respect to communications and strategy papers listed in the first column</b>
<b>COM(2015) 550 final Communication of the Commission Upgrading the Single Market: more opportunities for people and business</b>	Yes	Analysis of the long-term Economic Impact of EU Membership and the Alternatives	HM Treasury CM 9250 April 2016 (para 1.138 p 78, fn 187)	Move towards services liberalisation	None
<b>COM(2013)676 Communication from the Commission on evaluating national regulations on access to professions</b>	Yes	Explanatory Memorandum on EU Document	Cabinet Office DB 13 14688/13 25 October, 2013	Explanation of Communication	None
<b>COM(2016)820 Communication from the Commission on reform recommendations for regulation in professional services</b>	No				
<b>European Consumer Agenda</b>	Yes	Parliament European Scrutiny Committee	B3907 10420/12	Cleared from scrutiny	Some concerns expressed in para 7.27
<b>Consumer Programme 2014-2020</b>	Yes	Brexit – Impact Across Policy Areas	HC Briefing Paper 073213 26 August 2016	Information cannot be retrieved	N/A

## 2. General market information

### 2.1 Key market data

**Table 5: Key market data**

<p><b>General market situation (e.g. trends in the market, recent developments in the market, price fluctuations, etc.)</b></p>	<p>As it is the case elsewhere in the United Kingdom, house prices in Scotland have in general risen sharply over the period since 1945, though there has been a tendency for periodic cycles of boom and bust. There is enormous regional variation in prices, with Edinburgh by far the most expensive. Prices have become unaffordable for many would be owners. Previous governments removed almost all security and rent control from the private rental market, which encouraged strong growth in the sector, spurred on by the wide availability of buy to let mortgages. The percentage of owners has fallen back from a peak in 2001 (69%). There is a very substantial shortage of private sector homes, especially at affordable prices, and also social sector rentals and private rental properties, though this effect is regional.</p>
<p><b>Total value of residential transactions for buying and renting for the year 2015 (2014 or 2013 depending on the latest available data) expressed in EUR</b></p>	<p>The latest publication<sup>3</sup> of the monthly UK House Price Index (UK HPI) shows that the average price<sup>4</sup> of a property in Scotland in April 2017 was €165,058 (£145,734) – an increase of 6.8 per cent on April in the previous year and an increase of 5.4 per cent when compared to the previous month. This compares to a UK average of €249,288 (£220,094), which was an increase of 5.6 per cent compared to April in the previous year and an increase of 1.6 per cent when compared to the previous month.</p> <p>Average prices this April showed the highest year-on-year increase since March 2015.</p> <p>The volume of residential sales in Scotland in February 2017 was 5,662 – an increase of 2.8 per cent on February 2016 but a decrease of 10.2 per cent on the previous month.<sup>5</sup></p> <p>The top five local authorities in terms of sales volumes were Glasgow City (722 sales), the City of Edinburgh (562 sales), Fife (356 sales), North Lanarkshire (351 sales) and South Lanarkshire (313 sales).</p> <p>The biggest price increase when comparing April 2017 with April 2016 was in East Dunbartonshire where the average price increased by 11.2 per cent to €229,322 (£202,466). The biggest decrease was again in the City of Aberdeen, where prices fell by 4.3 per cent to €189,889 (£167,630).</p>

<sup>3</sup> For the full picture and detail access the UK HPI and the HPI Scotland. As with other indicators in the Housing Market, which typically fluctuate from month to month, it is important not to put too much weight on one month's set of house price data.

<sup>4</sup> Registers of Scotland has also recently published its '10-year property market report', detailing trends in the land and property market over the last ten years.

<sup>5</sup> The statistics have been produced in accordance with the Code of Practice for official statistics. The UK House Price Index is calculated by the Office for National Statistics and Land & Property Services Northern Ireland. Find out about the methodology used.

**Table 5: Key market data**

	<p>Across Scotland, all property types showed an increase in average price in April 2017 when compared with the same month in the previous year. Detached properties showed the biggest increase, rising by 8.0 per cent to €285,985 (£252,492).</p> <p>(Source - <a href="https://www.ros.gov.uk/about-us/news/2017/monthly-house-price-index-for-april-2017-published">https://www.ros.gov.uk/about-us/news/2017/monthly-house-price-index-for-april-2017-published</a>)</p> <p>RoS began compiling quarterly statistics on the housing market with the completion of the extension of the Land Register to all counties in Scotland in April 2003. The differences in methodology between their quarterly statistics and the HPI are also highlighted. Charts are also available on our website to allow comparison between the two statistical outputs and to explain the key differences.</p> <p>No information found on average private and public sector rents in Scotland.</p>																					
<p><b>Ratio house owners – tenants (i.e. the percentage of households that are owners resp. tenants of dwelling units)</b></p>	<p>Scottish Government figures show:</p> <ul style="list-style-type: none"> <li>• Circa 58% of properties owner occupied;</li> <li>• Circa 4% of properties vacant or second homes;</li> <li>• Circa 15% private rent;</li> <li>• Circa 11% housing association;</li> <li>• Circa 12% local authority.</li> </ul>																					
<p><b>Usage of land (Quotas for built land, agricultural land, “wild land” (forests, lakes etc.)</b></p>	<p>The Return for England &amp; Wales refers to the DEFRA/ONS figures, use of land in 2010 as being:</p> <table border="1" data-bbox="969 967 1856 1423"> <thead> <tr> <th></th> <th>Thousand hectares</th> <th>%</th> </tr> </thead> <tbody> <tr> <td><b>Agricultural land</b></td> <td>15,333</td> <td>65.4</td> </tr> <tr> <td><b>Forestry</b></td> <td>3,059</td> <td>13.1</td> </tr> <tr> <td><b>Urban/developed land</b></td> <td>2,748</td> <td>11.7</td> </tr> <tr> <td><b>Coastal and inland water</b></td> <td>631</td> <td>2.7</td> </tr> <tr> <td><b>Other</b></td> <td>1,658</td> <td>7.1</td> </tr> <tr> <td><b>Total</b></td> <td>23,429</td> <td></td> </tr> </tbody> </table>		Thousand hectares	%	<b>Agricultural land</b>	15,333	65.4	<b>Forestry</b>	3,059	13.1	<b>Urban/developed land</b>	2,748	11.7	<b>Coastal and inland water</b>	631	2.7	<b>Other</b>	1,658	7.1	<b>Total</b>	23,429	
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	<p>See J Khan, T Powell, A Harwood, <i>Land Use in the UK</i> (DEFRA, ONS, 2015).</p> <p>The latest statistics notice from the June 2017 survey can be found at:</p> <p><a href="https://www.gov.uk/government/statistics/farming-statistics-final-land-use-livestock-populations-and-agricultural-workforce-as-at-1-june-2016-england">https://www.gov.uk/government/statistics/farming-statistics-final-land-use-livestock-populations-and-agricultural-workforce-as-at-1-june-2016-england</a></p> <p>This only provides details on agriculture land use and woodlands.</p>	
<p><b>Average prices of residential property</b></p>	<p><i>According to the type of property</i></p> <ul style="list-style-type: none"> <li>• <i>Average flat of ca. 70 sqm</i></li> <li>• <i>Terrace house of ca. 100 sqm</i></li> <li>• <i>Detached (one family house) of ca. 150 sqm</i></li> </ul>	<p>See section above on latest figures on value of residential property transactions in Scotland.</p> <p>National UK Data is available from the House Price Index UK (month and year) – <a href="http://www.ons.gov.uk">www.ons.gov.uk</a>. Specific data for Scotland is available from - <a href="https://www.ros.gov.uk/about-us/news/2017/monthly-house-price-index-for-april-2017-published">https://www.ros.gov.uk/about-us/news/2017/monthly-house-price-index-for-april-2017-published</a> See above and below for comments on same.</p> <p>The HPI Index was based at 100 in June 2015. In March 2017 it stood at 113.21, representing an average £215,847. Prices rose 4.1 annually between March 2016 and March 2017, though they had fallen month on month by 0.6%. The reports give figures by country and historical data back to 2002.</p> <p>Contains Land Registry data and National Statistics data © Crown copyright and database right [2017].</p> <p>NOTE: the following information is reproduced from the Return for England &amp; Wales.</p> <p>Average monthly price by property type</p>

**Table 5: Key market data**

		<ul style="list-style-type: none"> <li>• Property type</li> <li>• March 2017</li> <li>• March 2016</li> <li>• Difference</li> </ul> <hr/> <ul style="list-style-type: none"> <li>• Detached</li> <li>• £324,927</li> <li>• £313,564</li> <li>• 3.6%</li> </ul> <hr/> <ul style="list-style-type: none"> <li>• Semi-detached</li> <li>• £203,177</li> <li>• £192,884</li> <li>• 5.3%</li> </ul> <hr/> <ul style="list-style-type: none"> <li>• Terraced</li> <li>• £174,036</li> <li>• £167,656</li> <li>• 3.8%</li> </ul> <hr/> <ul style="list-style-type: none"> <li>• Flat or maisonette</li> <li>• £195,830</li> <li>• £189,180</li> <li>• 3.5%</li> </ul> <hr/> <ul style="list-style-type: none"> <li>• All</li> <li>• £215,847</li> <li>• £207,333</li> <li>• 4.1%</li> </ul> <hr/> <p>UK House Price Index summary: March 2017, <a href="http://www.gov.uk/">www.gov.uk/</a>, Open Government licence</p> <p>Contains Land Registry data and National Statistics data © Crown copyright and database right [2017].</p>
	<p><i>According to the type of location</i></p> <ul style="list-style-type: none"> <li>• <i>Capital city</i></li> <li>• <i>Urban areas</i></li> <li>• <i>Rural areas</i></li> </ul>	<p>No precise indication according to the location.</p>

**Price development of residential property**

*According to the type of property*

- Average flat of ca. 70 sqm
- Terrace house of ca. 100 sqm
- Detached (one family house) of ca. 150 sqm

National UK Data is available from the House Price Index UK (month and year) – [www.ons.gov.uk](http://www.ons.gov.uk). Specific data for Scotland is available from - <https://www.ros.gov.uk/about-us/news/2017/monthly-house-price-index-for-april-2017-published> See above and below for comments on same.

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<p>Development of price index (Housing price index if existing, otherwise Consumer price index)</p>	<ul style="list-style-type: none"> <li>• UK House Price Index from Land Registry data on <a href="https://www.gov.uk/">https://www.gov.uk/</a>;</li> <li>• See also similar data produced by Registers of Scotland on <a href="https://www.ros.gov.uk/about-us/news/2017/monthly-house-price-index-for-april-2017-published">https://www.ros.gov.uk/about-us/news/2017/monthly-house-price-index-for-april-2017-published</a>.</li> </ul> <p><b>Headline Statistics in May 2017</b></p> <ul style="list-style-type: none"> <li>• The average price of a property in Scotland was <b>£143,106</b>;</li> <li>• The annual price change of a property in Scotland was <b>3.5%</b>;</li> <li>• The monthly price change of a property in Scotland was <b>0.7%</b>;</li> <li>• The index figure for Scotland (January 2015 = 100) was <b>106.0</b>.</li> </ul> <p><b>Average price change by property type for Scotland</b></p> <table border="1" data-bbox="698 847 2040 1294"> <thead> <tr> <th>Property type</th> <th>May 2017</th> <th>May 2016</th> <th>Difference</th> </tr> </thead> <tbody> <tr> <td>Detached</td> <td>£245,888</td> <td>£232,058</td> <td>6.0%</td> </tr> <tr> <td>Semi-detached</td> <td>£150,057</td> <td>£144,286</td> <td>4.0%</td> </tr> <tr> <td>Terraced</td> <td>£118,237</td> <td>£116,339</td> <td>1.6%</td> </tr> <tr> <td>Flat or maisonette</td> <td>£103,447</td> <td>£100,780</td> <td>2.6%</td> </tr> <tr> <td><b>All</b></td> <td><b>£143,106</b></td> <td><b>£138,256</b></td> <td><b>3.5%</b></td> </tr> </tbody> </table> <p>Source: <a href="https://www.gov.uk/government/publications/uk-house-price-index-scotland-may-2017/uk-house-price-index-scotland-may-2017">https://www.gov.uk/government/publications/uk-house-price-index-scotland-may-2017/uk-house-price-index-scotland-may-2017</a></p>		Property type	May 2017	May 2016	Difference	Detached	£245,888	£232,058	6.0%	Semi-detached	£150,057	£144,286	4.0%	Terraced	£118,237	£116,339	1.6%	Flat or maisonette	£103,447	£100,780	2.6%	<b>All</b>	<b>£143,106</b>	<b>£138,256</b>	<b>3.5%</b>
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## 2.2 Service providers

Table 6: Service providers						
	Total number of firms	Total number of professionals	Total number of employees	Branch offices per firm	Market concentration in % of turnover	Average turnover per firm (expressed in EUR)
Estate agents	16,500 (UK)	50,000	158,000	1.15	Very small	€650,000
<p>Lawyer/Advocates/Solicitor</p> <p>Regulated by The Law Society of Scotland.</p>	1,165 Practice Units and a further 900 businesses employing solicitors.	<ul style="list-style-type: none"> <li>Number of lawyers on the Roll of Scottish solicitors = 14,043;</li> <li>Solicitors holding a practising certificate = 11,629;</li> <li>Solicitor advocates = 350 (note that there is a separate Faculty of Advocates with around 500 members);</li> <li>1,882 registered foreign lawyers (mainly from England and Wales);</li> <li>415 registered paralegals;</li> <li>798 trainees;</li> </ul>	Not known	1.15 (interestingly, exactly the same figure as above but calculated on basis of 178 branch offices against 1165 offices).	Significant. Turnover of these 1,165 businesses last year was £1.2 billion.	This figure is not available since half of all businesses are sole practitioners. One could do the arithmetic and say it was effectively £1 million per business average (£1.2 billion divided by 1,165).

**Table 6: Service providers**

		<ul style="list-style-type: none"> <li>• 342 non-practising members;</li> <li>• Total population around 17,000.</li> </ul>				
Notary	8,522(majority also Scottish Solicitors).	Note that there is no entitlement to exercise powers of a notary unless someone holds a current practising certificate cf. Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5) Section 62.	N/A	N/A	N/A	N/A
Licensed conveyancers	None	8 - Currently regulated by The Law Society of Scotland.	N/A	N/A	N/A	N/A
Architects	Not known	3,486 registered architects in Scotland.	Unknown	Unknown	Only a small percentage of work undertaken by architects is in the residential sales market.	Unknown
Surveyor	Unable to confirm via RICS	74,000	Unknown	Currently are 10,125 RICS regulated Head Offices in the UK	Unknown	Unknown

**Table 6: Service providers**

Engineers	Unable to confirm – regulation of engineers is complex given different branches that exist within the profession e.g. structural/civil	Unknown	Unknown	Unknown	Very few engineers would work in residential property – main involvement would be to comment upon structural soundness of particular residential dwellings when required	Unknown
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Of Solicitors' firms, 610 are sole practitioners, 130 are Limited Liability Partnerships, 342 are Limited Company Incorporated Practices and the remainder are partnerships.

Property accounts for 40 % of turnover of solicitors' firms; around 75% of business is reserved business (including conveyancing, matters for which there is a monopoly for registered legal services providers).

NOTE: these figures are approximations only as The Law Society of Scotland does not hold this information.

### 3. Roles of professionals and services in the real estate market

**Table 7: Role of professionals in the real estate market**

	<b>Estate agent</b>	<b>Property valuator<sup>6</sup></b>	<b>Lawyer/Advocate/Solicitor</b>	<b>Notary</b>	<b>Bank</b>	<b>Licensed conveyancer</b>	<b>Technical expert (architect, engineer, surveyor)</b>
<b>Main function: does the professional typically work independently or as part of a firm or another organisation?</b>	Can be sole agent but more often within a firm of Estate Agents or the Estate Agency Division of a Law firm.	Does not exist as a separate profession from Estate agency in Scotland. Valuation may be carried out by a Chartered Surveyor as part of the sale/purchase and secured lending process	Firm, Advocates are self-employed, Solicitor-Advocates are generally within firms.  Neither Advocates nor Solicitor Advocates are involved in real estate work except perhaps where Advocates are called upon for their professional opinions in areas of conflict/property law.	Usually a Solicitor	N/A	N/A	Firm
<b>Extent of engagement (at which point(s) does each</b>	As above	As above	At outset of property being brought to the market. This is done by individual	As required to notarise documents etc.	Mortgage application – may be introduced by agent, solicitor	N/A	In event of structural problems/

<sup>6</sup> In some EU countries, the real estate property valuers are regulated as a profession that is separate from estate agents (e.g. Hungary, Lithuania, Latvia); their services might be obligatory, especially when taking mortgage loans.

**Table 7: Role of professionals in the real estate market**

<b>professional intervene in the process?)</b>			firms marketing their services and through the Scottish Solicitors' Property Centre network – <a href="http://www.sspc.co.uk">www.sspc.co.uk</a> . These Centres operate on a regional network. See <a href="http://www.espc.com">www.espc.com</a> and <a href="http://www.aspc.co.uk">www.aspc.co.uk</a>		or mortgage broker.		development proposals.
<b>Mandatory involvement</b>	As above	N/A	N/A	N/A	N/A	N/A	No
<b>How are their fees/charges structured</b>	Percentage based generally (of sale price of property) though can be fixed	Unknown	Driven by market but generally reflect value of property being sold. Fixed fees are becoming more common	Unknown	Fixed fees cited on bank websites	N/A	Usually by time

Many solicitors practise as sole practitioners and many of these are being squeezed out of conveyancing since they are not included in lenders' approved panels.

The Scottish Solicitor Property Centre network has been the subject of challenge for being an unfair trade practice. Both challenges to date have been unsuccessful.

#### 4. Land registration

**Table 8: Land registration**

<b>Responsible authority(ies) dealing with land registration</b>	Registers of Scotland – <a href="http://www.ros.gov.uk">www.ros.gov.uk</a>
<b>Actors involved in the registration procedure and their main functions</b>	Solicitors; Lenders (through their nominated solicitors and direct when dealing with the Digital Discharge Service).
<b>Intermediate steps of the registration procedure</b>	An Advance Notice preserves priority for the registration of the transfer/mortgage provided the transfer is lodged within the period specified in the Advance Notice. This process brought Scotland into line with the Priority of Search provisions in England & Wales and was introduced by the 2012 Act.

## 5. The process to buy or sell a property

### 5.1 Main steps in the transaction process to buy or sell a property

<b>Table 9: Main steps of the process to buy or sell a property</b>			
<b>Main steps</b>	<b>Main function</b>	<b>Applicable</b>	<b>National specificities/additional functions/main actors</b>
<b>Estate agent services</b>	Matching the parties	Yes	There are less standalone Estate Agencies in Scotland than in England. Scottish Solicitors have retained much of the Estate Agency business. See the Scottish Solicitors' Property Centre network – <a href="http://www.sspc.co.uk">www.sspc.co.uk</a> Much use is made of online marketing.
<b>Alternative matching devices</b>	Matching the parties	Unusual	Newspaper advertisement; personal contact; online
<b>Preliminary contract</b>	Securing the transaction before the final contract is concluded	No	Solicitor
<b>Preliminary checks (land register, administrative permits)</b>	Ensuring that the buyer knows all legal obligations and relevant features related to the property	No	Solicitor
<b>Drafting the sales contract and/or deed of conveyance</b>	Summarising the agreement of the parties	Yes	Solicitor
<b>Legal advice or counselling</b>	Ensuring that the transaction is valid and that the parties know about their rights and duties	Yes	Solicitor

**Table 9: Main steps of the process to buy or sell a property**

<b>Certification of signatures</b>	Ensuring the validity of the agreement	Yes	<ul style="list-style-type: none"> <li>• Solicitor;</li> <li>• Deeds required to be witnessed, not necessarily by practitioners, but the conveyancer must carry out <i>Know Your Client</i> checks before accepting instructions.</li> </ul>
<b>Contract execution (transfer of payment)</b>	Executing the contract (and securing that both parties perform their obligations)	Yes	Solicitors – who need not themselves act as witnesses but must ensure that the deed is validly subscribed/executed to comply with formalities.
<b>Contract execution (transfer of property)</b>	Executing the contract (and securing that both parties perform their obligations)	Yes	Solicitor
<b>Registration</b>	Making the transaction visible to third parties and the public	Yes	Whilst in theory a client could make an application for a deed to enter a public register of deeds (Land Register of Scotland) this is extremely rare and a task almost always falling to lawyers. Usually the purchaser’s solicitor also acts for the lender if no conflict of interest exists – see <a href="http://www.cml.org.uk">www.cml.org.uk</a> .
<b>Taxation (esp. transfer tax)</b>	Creating revenue for the state	Yes	Land and Buildings Transaction Tax must be paid before registration
<b>Post-transaction controls</b>	Securing that the contract is duly executed	usual	Falls to the solicitor to ensure that party to implement any post contractual obligations that they are committed to under the contract by operation of law.
<b>Other steps</b>		Yes	Money Laundering checks at the outset



## 5.2 Sale contract and transfer of ownership

**Table 10: Contract of sale and transfer of ownership**

Main steps	Actors involved per intermediate step	Payment details <sup>7</sup>		Typical risks associated to these steps
		Payments expressed : • In EUR as % of total purchase price <u>and</u> • As a fixed amount if available (add if VAT applies)	When is the payment made	
<b>Estate agent services or alternative matching devices</b>	Agency usual – payment made by the selling client on sale	0.75 – 1.5 % of the selling price	Upon sale	Sale falling through – no contract being agreed upon
<b>Preliminary contract (usual)</b>	Not in Scotland			
<b>Preliminary checks (land register, administrative permits)</b>	Solicitor	Part of overall fee. No distinction is made in the make up fees.	Upon completion	Sale falling through – no contract being agreed upon
<b>Drafting the sales contract and/or deed of conveyance</b>	Solicitor	Part of overall fee. No distinction is made in the make up fees.	Upon completion with fees and outlays being deducted from the sale proceeds	Party resiling from contract
<b>Legal advice or counselling</b>	Solicitor	Part of overall fee. No distinction is made in the make up fees.	Completion	Party resiling from contract

<sup>7</sup> Payment shall be considered as the 'discharge of an obligation by its settlement equal to the monetary value of the debtor's obligation' while fees can be defined as 'a charge for services rendered' (Retrieved from: <http://www.investorwords.com/3634/payment.html>, <http://www.investorwords.com/1922/fee.html>). Payment, therefore, includes both the cost of the service and the fees for the service in question.

**Table 10: Contract of sale and transfer of ownership**

<b>Certification of signatures</b>	As above – ensures signs correctly but need not personally certify/act as witness	Part of overall fee. No distinction is made in the make up fees.	Completion	Party resiling from contract
<b>Contract execution (transfer of payment and registration; transfer of property)</b>	Solicitor	Part of overall fee. No distinction is made in the make up fees.	Completion	Party resiling from contract
<b>Registration in land register or similar device</b>	Solicitor	Part of overall fee and outlays	Completion	Transaction not proceeding
<b>Taxation (esp. transfer tax)</b>	Solicitor deals with payment of Land and Buildings Transaction Tax on behalf of purchasing client if applicable	See below	Completion	Transaction not proceeding
<b>Other steps</b>	Electronic bank transfer	£40-45	Completion	Transaction not proceeding

**▲ Legal position of a tenant occupying the dwelling to be sold. In particular: Does the rule emptio non tollit locatum apply?**

Residential property is generally sold with vacant possession. Where leases exist, it depends on their length and manner of creation as to whether the tenant can remain. Most residential tenancies are of a rolling short nature and notice to quit can be served.

**Fees:** Legal fees for Estate agency and conveyancing services are not fixed and vary according to providers and market forces.

**Land and Buildings Transaction Tax Rates:**

- Purchase Price – Up to £145,000 – 0%;
- Above £145,000 - £250,000 – 2%;
- Above £250,000 to £325,000 – 5%;
- Above £325,000 to £750,000 – 10%;
- Over £750,000 – 12 %.

If the purchase price is above the nil rate tax band of £145,000, LBTT is charged at the appropriate rate on the amount of the chargeable consideration within the relevant bands. For example, a house bought for £280,000 is charged at:

- 0% for the first £145,000; then
- 2% for the next £105,000; and
- 5% for the next £30,000;
- So £3,600 would be paid in LBTT.

#### Additional Dwelling Supplement – LBTT rates and Bands:

The Land and Buildings Transaction Tax (Amendment) (Scotland) Act 2016 provides for an Additional Dwelling Supplement (ADS) of LBTT to be applied on purchases of additional residential properties in Scotland (such as buy-to-let properties and second homes) of £40,000 or more. The current rate of ADS is 3% of the relevant consideration (usually the purchase price). This applies just the same the second home or buy-to-let is located in another country to Scotland.

### 5.3 Professional services performed in the real estate market related to buying and selling a property

**Table 11: Professional services performed in the real estate market related to buying and selling a property**

Services in the real estate market	Minimum standards for information provided by law	Service providers involved	Quality of involvement	Fees expressed: • In EUR as % of total purchase price <u>and</u> • As a fixed amount (if available)
<b>Estate agent services or alternative matching devices</b>	The Housing (Scotland) Act 2006 requires that sellers must provide a Home Report prior to a property being marketed. The Home Report comprises a Single Survey Report, An Energy Report , which consists of an Energy Performance Certificate, compiled by a surveyor, detailing the property's grade of energy efficiency and a Property Questionnaire which is completed by the Seller about the property in general terms e.g. their knowledge of services etc.	<ul style="list-style-type: none"> <li>• Estate agents/online;</li> <li>• Surveyors generally provided the Single Survey and the related Home Report.</li> </ul>	Optional but usual. Someone could arrange a private sale.	0.75% - 1.5 % average ( of actual sale price)

**Table 11: Professional services performed in the real estate market related to buying and selling a property**

<b>Provision of mandatory information before the start of the transaction</b>	See above re-Home Report	As above	As above	As above
<b>Preliminary contract (usual)</b>	No minimum content prescribed for	Solicitor	A contract of sale and purchase (Missives) is required. Such contracts must be in writing.	Included in overall fee
<b>Preliminary checks (land register, administrative permits)</b>	Per individual contractual arrangements	Solicitor	Usual	Included in overall fee
<b>Drafting the sales contract and/or deed of conveyance</b>	Contract	Solicitor	A contract of sale and purchase (Missives) is required. Such contracts must be in writing.	Included in overall fee
<b>Legal advice or counselling</b>	In accordance with Law Society Rules and Regulations	Solicitor	Usual	Included in overall fee unless special advice outwith normal Terms of Business.
<b>Certification of signatures</b>	Law Society Rules and Regulations	Solicitor – by way of ensuring these are correctly subscribed/executed as opposed to necessarily witnessing the documentation.	Standard practice	Included in overall fee

**Table 11: Professional services performed in the real estate market related to buying and selling a property**

<b>Contract execution (transfer of payment; transfer of property)</b>	Part of transaction	Solicitor	Standard practice	Included in overall fee
<b>Registration in land register or similar device</b>	Registers of Scotland Guidance and Land Registration etc. (Scotland) Act 2012	Solicitor	Standard practice	Fees set by Scottish Government. Based on property value
<b>Taxation (esp. transfer tax)</b>	HMRC	Solicitor	Standard practice	Land and Buildings Transaction Tax to be paid by purchaser
<b>Other services</b>	A solicitor may encourage clients to prepare new Wills and Continuing and Welfare Powers of Attorney at the time of completing a sale/purchase transaction.	Solicitor	Usual	Fees agreed with clients

## 5.4 Creating a Mortgage

**Table 12: Mortgage requirements**

<b>Main steps to create a mortgage</b>	<b>Actors/institutions involved</b>	<b>Minimum standards for information</b>	<b>Additional requirements for consumer mortgages</b>	<b>Fees expressed:</b> • <b>In EUR as % of total purchase price and</b> • <b>As a fixed amount</b>	<b>Typical risks associated to these steps</b>
<b>Conclusion of credit and mortgage agreement with lender (bank)</b>	<ul style="list-style-type: none"> <li>An initial referral to mortgage broker/provider can sometimes be made by Solicitor or a potential Borrower may approach an institutional lender direct;</li> <li>The Purchaser's Solicitor can act in the creation of a Standard Security (Legal Charge) over the residential property in addition to acting for the Purchaser in respect of the purchase.</li> </ul>	<ul style="list-style-type: none"> <li>Under Financial Services and Markets Act 2000 as amended to comply with MCD;</li> <li>Law Society of Scotland Rules on Conflict of Interest.</li> </ul>	<p>Lenders have detailed lending Handbooks – many of which are only available in online versions through the Council of Mortgage Lenders see <a href="http://www.cml.org.uk/lenders-handbook">www.cml.org.uk/lenders-handbook</a></p> <p>NOTE: CML now part of UK Finance – <a href="http://www.ukfinance.org.uk">www.ukfinance.org.uk</a></p>	<ul style="list-style-type: none"> <li>Booking fees (which pay to “hold” a particular deal with a specific lender) whilst the application is processed vary but are generally around €113 figure;</li> <li>Arrangement Fees again can vary but the average is around €1,144 though can rise to €2288 Euros at the higher end of the scale.</li> </ul>	Mortgage Fraud

**Table 12: Mortgage requirements**

<b>Insertion of mortgage in the land register, usually at first rank</b>	Solicitor	Law Society Rules and Regulations	-	Registration dues payable to Register of Scotland. €57 (electronic version) – €68 if paper version.	-
<b>Credit sum paid to mortgagor (buyer) or seller</b>	-	State for Settlement	-	Included in the conveyancing work	-

## 6. The process to rent or let a property

### 6.1 Main steps in the transaction process to rent and let a property

**Table 13: Main steps of the process to rent and let a property**

<b>Main steps</b>	<b>Process involved</b>
<b>Finding and matching landlords and tenants</b>	Letting Agents advertise properties mainly via website and high street premises.
<b>Information search by landlords or tenants (e.g. about salary, outstanding debts)</b>	Done by soliciting letting agents
<b>Inspection of the property by tenants (in some cases with the help of professionals)</b>	Yes – usually with letting agent present
<b>Delivery of mandatory information to tenants prior to the conclusion of the contract</b>	Letting agent
<b>Delivery of energy performance certificate to tenant</b>	Letting agent
<b>Provision of additional guarantees to landlord</b>	Unusual
<b>Conclusion of the contract in the usual form (e.g. oral, written, preformulated)</b>	Written lease
<b>Rent payment and deposit (e.g. bank account)</b>	Deposit (generally of one month's rent) required and payment thereafter by direct debit. Deposits covered by a government run Deposit Protection Scheme.



**Table 13: Main steps of the process to rent and let a property**

<b>Registration of the contract in the land register (e.g. excluded, optional or mandatory)</b>	No – residential leases in Scotland are generally of short duration.
<b>Other steps</b>	Each Council in Scotland holds a formal register of all Landlords and Letting Agents in their area. The registration system is designed to help Councils monitor private landlords and ensure that they are suitable people to let out property by asking Landlords to meet a “fit and proper person” test.

## 6.2 Rent contract

**Table 14: Rent contract**

Main steps	Actors involved per intermediate step	Payment details <sup>8</sup>		Typical risks associated to these steps
		Payments expressed :	When is the payment made	
		<ul style="list-style-type: none"> <li>• In EUR as % of total purchase price <u>and</u></li> <li>• As a fixed amount if available (add if VAT applies)</li> </ul>		
<b>Finding and matching the parties</b>	Usually letting agents	By landlord as part of fee to letting agent. Letting agent takes a % for fees for finding suitable tenant and dealing with issues arising regarding condition of the property etc., e.g. leaks.	Completion	Either premises or tenant are not suitable
<b>Information search by landlord on tenant</b>	Usually letting agent	Letting agent fees vary but are generally around 10% of the property rental per month.	Completion	No real risk

<sup>8</sup> Payment shall be considered as the 'discharge of an obligation by its settlement equal to the monetary value of the debtor's obligation' while fees can be defined as 'a charge for services rendered' (Retrieved from: <http://www.investorwords.com/3634/payment.html>, <http://www.investorwords.com/1922/fee.html>). Payment, therefore, includes both the cost of the service and the fees for the service in question.

<b>Table 14: Rent contract</b>				
<b>Inspection of the property by tenant (in some cases with the help of professionals)</b>	Accompanied by letting agent	N/A	Completion	Need careful inventory of all Landlord's fittings and fixtures in property and state of condition of same.
<b>Delivery of mandatory information to tenant prior to the conclusion of the contract</b>	Letting agent	N/A	Completion	No real risk
<b>Delivery of energy performance certificate to tenant</b>	Letting agent	N/A	Paid when obtained and reimbursed at Completion	No real risk
<b>Conclusion of the contract in the usual form (e.g. oral, written; if written, indicate whether preformulated are usual)</b>	Letting agent arranges written lease	Fees vary widely, but for a letting only service are typically one-month's rent plus VAT. Landlords should be aware of extras e.g. for inventories.  Rent collection is usually 5% of rent, full management 10% of rent.	Completion	Tenant may withdraw and decide not to proceed.
<b>Rent payment and deposit (e.g. bank account)</b>	Direct debit. Deposit need. Government scheme in place re-deposit	Varies	Completion	Funds not made available.
<b>Registration of the contract in the land register or other device (excluded, optional or mandatory)</b>	Not usual in Scotland	N/A	N/A	N/A

Information on payment details and on the moment in which the payment is made cannot be indicated. There are no set fees and a market economy operates.

### 6.3 Professional services performed in the real estate market related to renting and letting a property

**Table 15: Professional services performed in the real estate market related to renting and letting a property**

Services in the real estate market	Minimum standards for information provided by law	Service providers involved	Quality of involvement (e.g. mandatory; exclusive rights)	Fees expressed: • In EUR as % of total purchase price <u>and</u> • As a fixed amount (if available)
<b>Finding and matching landlords and tenants</b>	None	Rental agency	Agreement	N/A
<b>Information search by landlords or tenants (e.g. about salary, outstanding debts)</b>	Data protection rules. Data Protection is regulated by statute throughout the UK.	Rental Agency	Agreement	Fees charged by a Letting Agent to the instructing Landlord are generally based on a fixed % of the rental for the property and are deducted from the rent paid to the Landlord each month. Fees of between 8 - 10% are common. Fees vary widely, but for a letting only service are typically one-month's rent plus VAT. Landlords should be aware of extras e.g. for inventories.  Rent collection is usually 5% of rent, full management 10% of rent

**Table 15: Professional services performed in the real estate market related to renting and letting a property**

<b>Inspection of the property by tenants (in some cases with the help of professionals)</b>	Defects disclosed brought to attention of letting agents and landlord. May or may not be rectified prior to commencement of lease but record kept of condition of leased subjects	Rental Agency	Agreement	Included in overall fee
<b>Delivery of mandatory information to tenants prior to the conclusion of the contract</b>	Deposit Protection Scheme	Rental Agency	Agreement	Included in overall fee
<b>Conclusion of the contract in the usual form (e.g. oral, written, preformulated)</b>	Written lease –arranged by Rental Agency	Rental Agency	Agreement	Included in overall fee
<b>Rent payment and deposit (e.g. bank account)</b>	Data protection rules	Rental Agency	Agreement	Included in overall fee
<b>Registration of the contract in the land register (e.g. excluded, optional or mandatory)</b>	Not generally undertaken in Scotland	N/A	N/A	N/A

## 7. Professional services regulation: notaries

### 7.1 Market entry and structure regulation

**Table 16: Market entry and structure regulation**

	<b>Regulation</b>	
<b>Subjective requirements</b>	<i>Qualifications (diplomas, exams, concours) required to become a notary in the Country:</i>	LLB (Law degree) in Scots Law and post graduate Diploma in Professional Legal Practice followed by completion of 2-year traineeship. A Notary Public requires to be in possession of a current practising certificate from The Law Society of Scotland. Alternative routes to qualification exist through professional examinations offered by The Law Society of Scotland for both the degree and the postgraduate qualification although these are limited in terms of the uptake by those seeking the profession to around 7 candidates per year. A trainee can apply for admission as a Solicitor and Notary Public jointly or as a Solicitor only. The vast majority apply for the joint process.
<b>Objective requirements</b>	<i>Do numerus clauses and other objective requirements exist?</i>	No
<b>Citizenship requirements</b>	<i>Are foreign candidates admitted de iure and also de facto under the same conditions as nationals?</i>	Yes
<b>Inter-professional cooperation</b>	<i>Are forms of collaboration between notaries and other professionals allowed and usual?</i>	The majority of Scottish Solicitors are also Notary Publics
<b>Business structure</b>	<i>Are notary associations/corporations allowed?</i>	See above – the Notary role is commonly alongside that of the solicitor function
<b>Geographical limitations</b>	<i>Are there limitations with respect to the area in which the notary can exercise his/her</i>	It is competent for a Scottish Notary to countersign and authenticate documents for use in foreign jurisdictions often signed under Apostille.

**Table 16: Market entry and structure regulation**

	<i>activities (e.g. at the regional or municipal level)?</i>	
	<i>Are these limitation restricted to specific tasks?</i>	No

## 7.2 Market conduct regulation

**Table 17: Market conduct regulation**

	<b>Regulation</b>	
<b>Exclusive rights</b>	<i>Specify for which transactions or parts of them only notaries may act against payment.</i>	Only if something requires to be certified and even then these days, the certification can often be done by a qualified solicitor or some other person.
<b>Duty to provide services</b>	<i>Are notaries allowed to refuse a request to act?</i>	Solicitors/Notaries have the right to decide whether or not to act in Scotland.
<b>Professional standards</b>	<i>How are professional standards regulated? What are the tasks of the professional representation (e.g. Chamber of Notaries) in this context?</i>	There are 8,522 Scottish Solicitors presently who are also Notaries. There is no formal equivalent of a Chamber of Notaries.
<b>Mandatory intervention</b>	<i>Is the intervention of a notary required for the registration procedure?</i>	No
<b>Compulsory indemnity insurance</b>	<i>Is indemnity insurance compulsory? If yes, what is the indicative amount of the</i>	No

**Table 17: Market conduct regulation**

	<i>insurance? List of the different types of indemnity insurance</i>	
<b>Continuing education</b>	<i>Do forms of continuing education exist? If yes, is continuing education mandatory?</i>	Not specifically for Notaries
<b>Advertising restrictions</b>	<i>Are there limitations on advertising?</i>	See section below regarding Advertising for Solicitors
<b>Fee regulation</b>	<i>Notarial fee system</i>	Such fees are not fixed by statute and will vary according to the provider/market forces. They are borne by the client seeking to benefit from the certification of documentation e.g. documents to be used as court productions in actions abroad

8. Professional services regulation: lawyers or other licensed conveyancers (only relevant if legally admitted to perform real estate transactions and/or to assist the conclusion of tenancy agreements)

8.1 Market entry and structure regulation

**Table 18: Market entry and structure regulation**

	<b>Regulation</b>	
<b>Subjective requirements</b>	<i>Conditions (diplomas, exams, concours) required to become a lawyer in your country.</i>	LLB (law degree) in Scots Law plus post graduate Diploma in Professional Legal Practice followed by two-year successful completion of traineeship. An alternative route to the profession exists via examinations provided by The Law Society of Scotland but uptake of this route is limited to around 7 candidates or so per year.
<b>Objective requirements</b>	<i>Do numerous clauses and other objective requirements exist?</i>	No
<b>Citizenship requirements</b>	<i>Are foreign candidates admitted de iure and also de facto under the same conditions as nationals?</i>	Yes
<b>Inter-professional cooperation</b>	<i>Are forms of collaboration between lawyers and other professionals allowed and usual?</i>	The Legal Services (Scotland) Act 2010 enables Alternative Business Structures which would see majority owned by Solicitors and/or other regulated professionals such as accountants or surveyors
<b>Business structure</b>	<i>Are lawyer associations/corporations allowed?</i>	Yes. Businesses may take the form of sole practitioners, partnerships, limited liability partnerships or incorporated legal practices.
<b>Geographical limitations</b>	<i>Are there limitations with respect to the area in which the lawyer can exercise his/her activities (e.g. at the regional or municipal level)?</i>	Scottish lawyers are limited to practising in Scotland. It is possible however to become dual qualified in both Scottish and English jurisdictions. There is no municipal restriction.
	<i>Are these limitations restricted to specific tasks?</i>	No



## 8.2 Market conduct regulation

**Table 19: Market conduct regulation**

	<b>Regulation</b>	
<b>Exclusive rights</b>	<i>Transactions or parts of them only lawyers may act against payment</i>	Drawing the Deed of Conveyance.
<b>Neutrality</b>	<i>Is the lawyer allowed to act on behalf of both parties involved in the transaction? In this case, what type of fees apply and which party has to bear them?</i>	The general rule in Scotland is no but with limited exceptions, which are set out in Practice Rules set out by The Law Society of Scotland such as acting for different family members. It is also open to Solicitors to apply to The Law Society of Scotland for a waiver of the Rules. In circumstances where Scottish Solicitors are able to act for both sides, each party generally bears his/her own fees.
<b>Duty to provide services</b>	<i>Are lawyers allowed to refuse a request to act?</i>	In general terms, a solicitor is free to decide whether or not to accept instructions from a particular client, whether new or established.
<b>Professional standards</b>	<i>How are professional standards regulated? What are the tasks of the professional representation (e.g. Chamber of Lawyers/Advocates) in this context?</i>	The profession is regulated by The Law Society of Scotland
<b>Compulsory indemnity insurance</b>	<i>Is indemnity insurance compulsory? If yes, what is the indicative amount of the insurance?</i>	Yes. £2M minimum PII requirement
<b>Continuing education</b>	<i>Do forms of continuing education exist? If yes, is continuing education mandatory?</i>	Continuing Professional Development, CPD, is a mandatory requirement for Scottish Solicitors who wish to have a practising certificate. The minimum number of hours that a Solicitor must undertake annually is 20 hours. Since 2011, members self-certify their CPD compliance.

**Table 19: Market conduct regulation**

<b>Advertising restrictions</b>	<i>Are there limitations on advertising?</i>	The limitations on advertising by solicitors are within Rule B3 of the Solicitors (Scotland) Practice Rules 2011. Essentially, lawyers are able to advertise their services subject to restrictions around inappropriate advertising, approaching clients of others (whether directly or indirectly) as well as making misleading claims.
<b>Fee regulation</b>	<i>Are lawyer fees fixed by statute and which party has to bear them.</i>	Fees are not fixed and are driven by the market. Usually the instructing party bears her own fees although there are occasional instances where, by consensus, one party might agree to meet another's fees in a matter.

## 9. Professional services regulation: estate agents

### 9.1 Market entry and structure regulation

**Table 20: Market entry and structure regulation**

	<b>Regulation</b>	
<b>Subjective requirements</b>	<i>Qualifications (level and duration of education and training, diplomas, exams, traineeships or professional experience requirements, concours) required to become an estate agent in your country. Other access requirements for a professional (such as compulsory membership in professional bodies/compulsory registration, minimum age requirements, clean criminal record, etc.)</i>	None (many agents are members of the RICS or NAEA).
<b>Objective requirements</b>	<i>Do numerous clauses and other objective requirements exist?</i>	N/A
<b>Licence requirements</b>	<i>Are estate agents licenced or do they work as employees?</i>	The Estate Agents Act 1979 imposes a 'negative licensing regime' in which an estate agent found to be in breach of duties or convicted of offences of dishonesty may be banned from estate agency work.
<b>Citizenship requirements</b>	<i>Is unlimited access to the profession granted to foreign professionals de iure and de facto?</i>	Yes
<b>Inter-professional cooperation</b>	<i>Are estate agents allowed to exercise another profession or business activity? Is inter-professional cooperation regulated?</i>	Yes
<b>Business structure</b>	<ul style="list-style-type: none"> <li><i>Indicate the share of estate agent acts acting as sole practitioners and as companies (if data are available)?</i></li> <li><i>Can the agent be employed by another agent or establish a partnership with other agents?</i></li> <li><i>Are there any restrictions on the corporate structure of a real estate enterprise (such as voting rights reserved to qualified members of a profession, shareholding requirements etc.)?</i></li> </ul>	<ul style="list-style-type: none"> <li>Not known;</li> <li>Yes.</li> </ul> No

**Table 20: Market entry and structure regulation**

<b>Geographical limitations</b>	<ul style="list-style-type: none"> <li>Are there limitations with respect to the area in which the estate agent can exercise his/her activities (e.g. at the regional or municipal level)?</li> </ul>	No
	<ul style="list-style-type: none"> <li>Are these limitation restricted to specific tasks?</li> </ul>	N/A

## 9.2 Market conduct regulation

**Table 21: Market conduct regulation**

	<b>Regulation</b>	
<b>Neutrality</b>	<i>Is neutrality regulated? Is the agent allowed to act on behalf of both parties involved in the transaction? In this case, what type of fees applies and which party bears these?</i>	The Estate Agent is instructed by the seller who bears their professional fees.
<b>Professional standards</b>	<i>How are professional standards regulated? Are entities or associations ensuring the professional representation and respect of rules of good practice (e.g. association of real estate professionals)?</i>	<ul style="list-style-type: none"> <li>Consumers, Estate Agents and Redress Act 2007;</li> <li>Consumer Protection from Unfair Trading Regulations 2008, SI 2007/1277.</li> </ul>
<b>Compulsory indemnity insurance</b>	<i>Is indemnity insurance compulsory for estate agents? If yes, what is the indicative amount of the insurance?</i>	Not currently but will be when The Lettings Code of Practice (Scotland) Regulations come into force on 31 <sup>st</sup> January 2018.
<b>Continuing education</b>	<i>Do forms of continuing education exist? If yes, is continuing education mandatory? What are the requirements related to the content and duration of continuing education? What are the consequences of non-compliance?</i>	No
<b>Advertising restrictions</b>	<i>Are there limitations on advertising?</i>	<ul style="list-style-type: none"> <li>Unfair Trading regulations as contained in the Consumer Protection legislation – see, for example: The Consumer Protection (Amendment) Regulations 2014;</li> </ul>

**Table 21: Market conduct regulation**

		<ul style="list-style-type: none"> <li>• For more information, see <a href="https://etsos.co.uk/consumer-protection">etsos.co.uk/consumer-protection</a>;</li> <li>• Ensuring that any information provided, whether in writing, in pictures or given verbally, is accurate when advertising for new business or when marketing property. Breaches of the regulations might include falsely claiming to be a member of a professional body, misdescribing a property for sale or making unfair comparisons with competitors.</li> </ul>
<b>Fee regulation</b>	<i>Are fees limited by statute? Which party is responsible for their payment?</i>	Fees are met by the property seller and generally are a % of the actual sale price of the property. In Scotland this percentage can vary from 0.75 – 1.5%. Some agents charge very low fixed fees/commission (less than 0.5%). Fees are usually deducted from the sale price upon completion.
<b>Compulsory membership in professional bodies/compulsory registration</b>	<i>Is membership in professional bodies compulsory? If so, what are the membership conditions and the membership fees? Does the professional body have a supervisory or another important regulatory role?</i>	No

## 10. The real estate market

### 10.1 Transaction costs for sample transactions

Table 22: Transaction costs VAT excluded						
	Estate agent <sup>9</sup>	Technical services (if usual)	Legal services	Land register fee	Transfer tax/stamp duty	Total usual transfer costs
<b>€100,000 sales price (no mortgage)</b>	0.75- 1.15% of sales price or a fixed fee.  (Definitive totals cannot be given as a result.)	<ul style="list-style-type: none"> <li>Provision of Home Report;</li> <li>€433.</li> </ul>	€858  (Exact sum may vary as there is no recommended Table of Fees. Market forces dictate. As a result, the foregoing figure is only an estimate. In addition, both the seller and the buyer would require to engage their own solicitor).	£120 or €136 (Payable by Purchaser)	Zero LBTT	<ul style="list-style-type: none"> <li>€2,041-2,441 – paid by seller (exclusive of outlays such as search costs as part of conveyancing process);</li> <li>The purchaser would also be responsible for his/her own legal and other costs in connection with the purchase and any secured lending associated therewith.</li> </ul>
<b>€100,000 sales price + 100.000€ mortgage</b>	As above	<ul style="list-style-type: none"> <li>Provision of Home Report ;</li> <li>€433.</li> </ul>	€916  (Exact sum may vary as there is no recommended Table of Fees. Market forces dictate. As a	<ul style="list-style-type: none"> <li>£120 or €136 to register property transaction;</li> <li>£60 or €68 to register new mortgage document;</li> </ul>	Zero LBTT	<ul style="list-style-type: none"> <li>€2,099-2,499 paid by seller (exclusive of outlays such as search costs as part of conveyancing process);</li> <li>The purchaser would also be responsible for his/her own legal and</li> </ul>

<sup>9</sup> An agent usually receives a percentage of the transaction value.

**Table 22: Transaction costs VAT excluded**

			result, the foregoing figure is only an estimate. In addition, both the seller and the purchaser would require to engage their own solicitor).	<ul style="list-style-type: none"> <li>£60 or €68 to register discharge of any prior mortgage;</li> </ul> (Payable by Purchaser)		other costs in connection with the purchase and any secured lending associated therewith.
<b>€250,000 sales price (no mortgage)</b>	As above	<ul style="list-style-type: none"> <li>Provision of Home Report;</li> <li>€707.</li> </ul>	€1,087  (Exact sum may vary as there is no recommended Table of Fees. Market forces dictate. As a result, the foregoing figure is only an estimate. In addition, both the seller and the purchaser would require to engage their own solicitor).	£480 or €545  (Payable by Purchaser)	£1,500 or €1,700 LBTT - paid by purchaser	<ul style="list-style-type: none"> <li>€3,669-4,669 paid by seller (exclusive of outlays);</li> <li>The purchaser would also be responsible for his/her own legal and other costs in connection with the purchase and any secured lending associated therewith.</li> </ul>
<b>€250,000 sales price + 250,000€ mortgage</b>	As above	<ul style="list-style-type: none"> <li>Provision of Home Report;</li> <li>€707.</li> </ul>	€1,144  (Exact sum may vary as there is no recommended Table of Fees. Market forces	£480 or €545 to register property transaction.  £60 or €68 to register new	£1,500 or €1,700LBTT - paid by purchaser	<ul style="list-style-type: none"> <li>€3,726-4,726 paid by seller (exclusive of outlays);</li> <li>The purchaser would also be responsible for his/her own legal and other costs in</li> </ul>

**Table 22: Transaction costs VAT excluded**

			dictate. As a result, the foregoing figure is only an estimate. In addition, both the seller and the purchaser would require to engage their own solicitor).	mortgage document.  £60 or €68 to register discharge of any prior mortgage.  (Payable by Purchaser)		connection with the purchase and any secured lending associated therewith.
<b>€500,000 sales price (no mortgage)</b>	As above	<ul style="list-style-type: none"> <li>• Provision of Home Report;</li> <li>• €981.</li> </ul>	€1,602  (Exact sum may vary as there is no recommended Table of Fees. Market forces dictate. As a result, the foregoing figure is only an estimate. In addition, both the seller and the purchaser would require to engage their own solicitor).	£600 or €682  (Payable by Purchaser)	£23,350 or €26,535 LBTT - paid by purchaser	<ul style="list-style-type: none"> <li>• Market forces operate and fees vary according to price and nature of the transaction. The seller would be responsible for his/her own legal fees and outlays;</li> <li>• The purchaser would also be responsible for his/her own legal and other costs in connection with the purchase and any secured lending associated therewith.</li> </ul>



**Table 22: Transaction costs VAT excluded**

<b>€500,000 sales price + €500,000 mortgage</b>	As above	<ul style="list-style-type: none"> <li>Provision of Home Report;</li> <li>€981.</li> </ul>	<p>€1,659</p> <p>(Exact sum may vary as there is no recommended Table of Fees. Market forces dictate. As a result, the foregoing figure is only an estimate. In addition, both the seller and the purchaser would require to engage their own solicitor).</p>	<p>£600 or €682 to register property transaction.</p> <p>£60 or €68 to register new mortgage document.</p> <p>£60 or €68 to register discharge of any prior mortgage.</p> <p>(Payable by Purchaser)</p>	<p>£23,350 or €26,535 LBTT - paid by purchaser</p>	<ul style="list-style-type: none"> <li>Market forces operate and fees vary according to price and nature of the transaction. The seller would be responsible for his/her own legal fees and outlays;</li> <li>The purchaser would also be responsible for his/her own legal and other costs in connection with the purchase and any secured lending associated therewith.</li> </ul>
<b>%VAT applicable</b>	20%	20%	20%	0%	0%	-

The figures for legal services are, by necessity, indicative only as market rates vary.

As noted above, the parties to the sale and purchase transaction meet their own legal fees in virtually all cases and are also each responsible for certain outlays.

For example:

- Seller: Estate Agency/Advertising/Home Report/Property Centre insertion fee/registration dues of Discharge of Standard Security/legal fees/cost of Property Enquiry Certificate and Water Authority Search/Legal Reports/Advance Notice/Bank Transfer fees if applicable.
- Buyer: Private survey fee (if instructed)/legal fees for purchase and security work/additional survey or specialist reports/Bank Transfer fees if applicable/mortgage broker fees/ Lender arrangement fees and other related costs/insurance.

As yet, there is no consolidated register or database of all non-title information relative to land and property in Scotland. Such registers exist elsewhere in Europe e.g. Norway – [www.infoland.no](http://www.infoland.no). A similar register is planned in Scotland and the first version thereof will be launched in October 2017 by Registers of Scotland. It will be called ScotLIS - <https://www.ros.gov.uk/about-us/scotlis>. ScotLIS is an online land and information system that will ultimately allow citizens, communities, professionals and business users to find out comprehensive information about any piece of land or property in Scotland with a single enquiry. ScotLIS is currently in development. It is envisaged that ScotLIS will make searching for relevant information much easier and less costly than it currently is due to information currently being held in individual silos by a range of different organisations. This should make residential property transactions more secure and hopefully less costly.

The Law Society of Scotland has been looking into the future of conveyancing and the sale and purchase process and recommendations for change are expected to result due to developments in IT etc. The current process is viewed by some as being too slow and lacking the degree of certainty, which citizens deserve. See article in The Law Society of Scotland Journal by Professor Stewart Brymer and Emeritus Professor Robert Rennie entitled “Missives: can we conclude more quickly?” – Vol.62 No.5 – May 2017.

## 10.2 Transaction features

**Table 23: Transaction features**

Transaction / service	Party bearing the costs of intermediation service (buyers or sellers, landlords or tenants)	Indicate fees as expressed in the contract:	Possible hidden costs faced by buyers or tenants, if applicable
	<p><b>Costs expressed:</b></p> <ul style="list-style-type: none"> <li>• In EUR as % of total purchase price <u>and</u></li> <li>• As a fixed amount (if available)</li> </ul> <p>Fees vary according to area and type of transaction. Meaningful figures cannot be given.</p>	<ul style="list-style-type: none"> <li>• In EUR as % of total purchase price <u>and</u></li> <li>• As a fixed amount (if available)</li> </ul>	
<b>Estate agents</b>	<ul style="list-style-type: none"> <li>• 0.75- 1.5% of sale price of property;</li> <li>• Seller bears the cost.</li> </ul>	Expressed in % of sale price as before. There are providers who offer fixed cost Estate Agency fees. This offering is becoming more available in the marketplace with offerings from online agents etc.	VAT

**Table 23: Transaction features**

<b>Technical services</b>	Seller	Seller pays for provision of Home Report.	Beneficial for the Purchaser to have his/her own independent survey and valuation
<b>Legal services</b>	The seller and buyer pay their own legal costs.	Almost all conveyancers quote a fixed price.	VAT and outlays associated with sale/Purchase e.g. LBTT and Registration Dues and Search Dues.
<b>Land register fees</b>	<ul style="list-style-type: none"> <li>• Seller pays registration dues of discharge of mortgage (if applicable);</li> <li>• Buyer pays registration dues of purchase price of house (scale fees dependent on price) and registration dues of mortgage if applicable.</li> </ul>	<p>57-68 Euros for registration of Discharge payable by Seller.</p> <p>Buyer to meet registration dues of conveyance in its favour and any standard security (fixed charge) granted in favour of a lender</p>	
<b>Taxes on conveyancing</b>	VAT on fees payable by both sellers and purchasers	20%	
<b>Transfer taxes</b>	Land and Building Transaction Tax – payable by purchaser	Fixed scale in Bands	Additional Dwelling Supplement as noted above

### 10.3 Taxes during the process of buying and selling a property

**Table 24: Taxes related to buying and selling a property**

	Relevance of the tax	When to pay the tax as part of the process of buying or selling	Tax amount (expressed in EUR as % of total purchase price <u>and</u> as a fixed amount if available)
<b>Registration tax<sup>10</sup></b>	No		
<b>Mortgage tax</b>	No		
<b>Cadastral tax</b>	No		
<b>Stamp tax</b>	No		
<b>Transfer tax (tax on the acquisition of property)</b>	No		
<b>Archives tax</b>	No		
<b>Other taxes</b>	<ul style="list-style-type: none"> <li>Land and Buildings Transaction Tax - Additional Dwellings Supplement (if applicable);</li> <li>Capital Gains Tax</li> </ul>	<ul style="list-style-type: none"> <li>Upon completion and prior to registration;</li> <li>Seller may be liable but not on principal residence.</li> </ul>	

<sup>10</sup> Registration taxes are public levies associated with the registration act. They are not to be confused with registration fees, i.e. the payment required by the registration office to carry out the registration. Registration fees are contained in Table 10.

**Land and Buildings Transaction Tax Rates:**

Purchase Price – Up to £145,000 – 0%  
 Above £145,000 - £250,000 – 2%  
 Above £250,000 to £325,000 – 5%  
 Above £325,000 to £750,000 – 10%  
 Over £750,000 – 12 %

If the purchase price is above the nil rate tax band of £145,000, LBTT is charged at the appropriate rate on the amount of the chargeable consideration within the relevant bands. For example, a house bought for £280,000 is charged at:

0% for the first £145,000, then  
 2% for the next £105,000  
 5% for the next £30,000 and

so £3,600 must be paid in LBTT

## 10.4 Taxes during the process of renting and letting a property

**Table 25: Taxes related to renting or letting a property**

	<b>Relevance of the tax</b>	<b>When to pay the tax in the process of renting or letting</b>	<b>Tax amount (expressed in EUR as % of total purchase price <u>and</u> as a fixed amount)</b>
<b>Registration tax</b>	No		
<b>Stamp tax</b>	No		
<b>Other taxes concerning the use of the property</b>	No		

## 11. Consumer situation in the market

### 11.1 Consumer rights

**Table 26: Consumer rights**

<p><b>Are there specific consumer rights in the context of real estate transactions and residential tenancies in your country?</b></p> <p><b>In particular: are residential tenants treated as consumers?</b></p>	<p><i>With respect to buyers</i></p>	<ul style="list-style-type: none"> <li>• Rights against developers in respect of defective construction;</li> <li>• Rights against negligence of solicitors;</li> <li>• Rights against selling agents real estate property misdescriptions/misleading particulars.</li> </ul>
	<p><i>With respect to sellers</i></p>	<p>Rights against solicitor for negligence.</p>
	<p><i>With respect to tenants</i></p>	<p>Rights against landlord – if, for example, condition of property to be kept wind and watertight. This is usually contracted out but claims may still exist due to a breach by the landlord of its obligations in the lease.</p>
	<p><i>With respect to landlords</i></p>	<p>Rights against letting agents for misleading advertisements for example.</p>
<p><b>Which existing marketing practices are non-compliant with national consumer legislation?</b></p>	<p>-</p>	
<p><b>Which existing marketing practices are non-compliant with EU consumer legislation?</b></p>	<p>-</p>	
<p><b>Are there existing marketing practices detrimental to consumers, even if not necessarily illegal, in both domestic and cross-border transactions?</b></p>	<p>Not really. However, problems can arise from the strong demand for properties, both to buy and to rent, the main one being lack of affordability.</p>	

## 11.2 Consumer complaints

<b>Table 27: Consumer complaints</b>	
<b>How often do buyers and sellers complain due to arising legal issues (e.g. invalid contract, missing information, hidden defects, missing building permit, delay in payment)?</b>	<p>In the Annual Report of the Scottish Legal Complaints Commission, SLCC (<a href="http://www.scottishlegalcomplaints.org.uk">www.scottishlegalcomplaints.org.uk</a>) prepared for the Reporting Period 2015/6, 23% of the complaints received within that period related to the buying and selling of residential property. This is the sector of legal services with the highest area of complaints.</p> <p>The Scottish Legal Complaints Commission or SLCC is the Non-departmental public body, which acts as a gateway for all unresolved complaints against legal practitioners operating in Scotland. It was established under the Legal Profession and Legal Aid (Scotland) Act 2007 and came into operation on 1 October 2008, replacing the Scottish Legal Services Ombudsman.</p>
<b>How often do tenants and landlords complain due to arising legal issues (e.g. invalid contract, missing information, increase of rent, termination of the contract without proper notice)?</b>	<p>Previously, many issues had arisen with deposits not being returned to tenants. The Tenancy Deposit scheme in Scotland has assisted with this issue. The Landlord Registration Scheme with its “fit and proper person” requirements has also enhanced the rental sector.</p>
<b>Are consumer complaints against a professional service provider frequent, in particular as regards the fees and quality or service?</b>	<p>See above. Not all complaints received by the SLCC are regarded as eligible complaints worthy of further investigation. Many relate to service complaints about factors such as lack of communication, regular updates etc. as opposed to technical/legal issues.</p>
<b>To whom can consumers complain (e.g. local or national administration, consumer protection agencies)? And through which means (e.g. formal letter, online form)? Is the procedure effective (in particular: average time needed for reply, solutions available for redress)?</b>	<p>The Law Society of Scotland in respect of conduct complaints and the Scottish Legal Complaints Commission with respect to service complaints. Complaints to SLCC are made online. No complaints can be made directly to The Law society of Scotland but instead must be raised via the SLCC.</p>