

SSC6 – Briefing Note

In readiness for the launch of the 6th Edition of the Scottish Standard Clauses, this note summarises the changes made (and others considered but not made) in the drafting of SSC6.

1. Changes Made

Clause	Explanation
1.4	It has become clear to the drafting group that it had become more or less universal practice to restrict the warranty at Clause 4 to exclude 'appliances'. In order to reflect current practice, the SSC6 now removes appliances from the scope of the warranty, which henceforth is therefore restricted to central heating and systems. Clause 1.4 has been added to clarify that no warranty is given in respect of appliances and that these are sold as seen.
2.1.3	Recent case law (<i>Busby and Donnelly v Blair [2024] SC EDIN 24</i>) found – based on a much earlier edition of the SSC – a wide definition of 'infestation' to include Japanese Knotweed. While this was in part dealt with in SSC5 with a separate declaration that a Property is not affected by Japanese Knotweed or other invasive plant species, it was felt that the existing definition of 'infestation' should be clarified to mean by insect or other animal.
2.1.4	On reflection, the reference to 'other invasive plant species' in the previous version of the SSC could be problematic. There are various plant species considered to be invasive – including the likes of rhododendrons - but which are not necessarily a concern in a conveyancing context in the way that Japanese Knotweed is. We have decided to therefore restrict this clause to Japanese Knotweed only.
4	See 1.4 above. This clause has been amended to remove all references to appliances.
11.4	This has been updated to refer to current applicable legislation
14	Another recent case (<i>Franks and others v Inglis [2021] SC PER 41</i>) has cast doubt on the protection offered to a purchaser by a Professional Consultants Certificate / Architects Supervision Certificate where a purchaser cannot evidence reliance placed on the Certificate prior to conclusion of missives. Accordingly, it was thought best to remove reference to a PCC in Clause 14, which now refers only to new home warranty cover, and any case involving a PCC will therefore necessitate amendment to missives.
17.5	References to Advance Notices being in a form adjusted with the purchaser were removed in a previous edition of the SSC but one such reference remained at 17.5, which has now been deleted.
18.1.7	This has been deleted as not now correct or required.

19.5	This has been updated to refer to the new clause 36 which deals with the Register of Overseas Entities, while keeping in place the general declaration that the seller not be a corporate body registered outwith the UK.
26	The minimum claim amount has been increased to £500. This had not been increased since SSC3 in 2018. An increase due to inflation seemed sensible.
30.2	This now requires that any Decrofting Direction or Resumption Order be registered in the Crofting Register.
36	A clause has been added in respect of the Register of Overseas Entities, and the drafting group is most grateful to Professors Gretton and Reid for their suggested wording in this regard.
Various	In addition to the above, there have been various more minor updates to clauses including: to correct one definition which had escaped the exercise of making the SSC gender neutral a few years ago, the odd typo or formatting correction, and the addition of bullet points to 1.1.4 to make this more readable.

2. Changes considered but not made

(a) Cladding

There remains no clause in the SSC to deal with cladding. While the Housing (Cladding Remediation) (Scotland) Act 2024 has now been passed, there remains some uncertainty around how this will affect conveyancing practice, including the interplay between the new statutory regime and existing EWS1s, the process for registration in the Cladding Assurance Register or the availability and cost of searches in the Register. For now, cladding will still therefore require separation consideration where it is likely to apply.

(b) Standard Clause 7

We have had several discussions about Standard Clause 7 and situations where a factor letter discloses significant outstanding debt (which could be billed to current and future owners) but have decided that solutions to this are perhaps more problematic than the issue itself and so have not made any change to the SSC for now.

(c) Late conclusion of Missives

A couple of suggestions have been made to deal with the persistent issue of late conclusion of missives, which is exacerbated by the significant number of 'chains' prevalent in the property market today. Some have suggested including clauses in missives requiring that the Date of Entry must be a certain period after missives have been concluded. While the working party agree that late conclusion of missives is a problem, we do not consider that this will be solved by any changes within the SSC.