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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2017 No.**

**ELECTRONIC COMMUNICATIONS**

**LAND REGISTRATION**

**REGISTERS AND RECORDS**

**The Registers of Scotland (Digital Registration, etc.)  
Regulations 2017**

*Made* - - - - *December 2017*

*Coming into force* - - *1st January 2018*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 34(2), 43(7), 56(4), 99(3), 100, 115 and 116(1) of the Land Registration etc. (Scotland) Act 2012(a) (“the 2012 Act”), section 9G(3) and (5)(a) of the Requirements of Writing (Scotland) Act 1995(b) (“the Requirements of Writing Act”) and all other powers enabling them to do so.

In accordance with sections 99(4) and 115(2) of the 2012 Act, they have consulted the Keeper of the Registers of Scotland (“the Keeper”).

In accordance with section 100(4) of the 2012 Act and section 9G(4) of the Requirements of Writing Act, they have consulted the Keeper, the Keeper of the Records of Scotland and the Lord President of the Court of Session.

In accordance with section 116(3)(j) and (4)(a) of the 2012 Act, a draft of the Regulations has been laid before and approved by resolution of the Scottish Parliament(c).

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(a) 2012 asp 5, (“the 2012 Act”) amended by S.S.I. 2015/265, S.I. 2013/1575, the Co-operative and Community Benefit Societies Act 2014 (c.14), section 151(4) and schedule 7, paragraph 1 and S.S.I. 2014/190 and S.S.I. 2014/346.

(b) 1995 c.7 (“the 1995 Act”) amended by the Petroleum Act 1998 (c.17), schedule 5, Part 1, paragraph 1, the Scotland Act 1998 (c.46), schedule 8, paragraph 31, S.I. 1999/1820, schedule 2, Part 1, paragraph 118, the Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), schedule 12, Part 1, paragraph 58, S.I. 2000/2040, schedule, Part 1, paragraph 17, the Housing (Scotland) Act 2001 (asp 10), schedule 10, paragraph 22, S.S.I. 2001/128, schedule 4, paragraphs 4 and 5, the Title Conditions (Scotland) Act 2003 (asp 9), schedule 15, paragraph 1, S.S.I. 2006/491, article 3, the Companies Act 2006 (c.46), schedule 16, paragraph 1, the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), sections 48(1) and 222(2) and (3), S.I. 2008/948, schedule 1, Part 2, paragraph 199, S.I. 2009/1941, schedule 1, paragraph 151 and the 2012 Act, sections 96, 97 and 98 and schedule 3. Section 9G(3) and (5)(a) was inserted by section 97 of the 2012 Act for limited purposes by, and subject to transitional provision for Automated Registration of Title to Land (“ARTL”) documents in article 3(2) of S.S.I. 2014/41.

(c) The powers in these Regulations are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10). These Regulations are subject to the affirmative procedure by virtue of section 33(3) of that Act.

## PART 1

### Introductory

#### **Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Registers of Scotland (Digital Registration, etc.) Regulations 2017 and come into force on 1st January 2018.

(2) In these Regulations—

“the Automated Registration Regulations” means the Land Register of Scotland (Automated Registration) etc. Regulations 2014(a);

“the Land Register Rules” means the Land Register Rules etc. (Scotland) Regulations 2014(b);

“the Sasine Application Rules” means the Register of Sasines (Application Procedure) Rules 2004(c).

## PART 2

### Advance notices

#### **Procedure for application for an advance notice or discharge of advance notice in Land Register**

2.—(1) The Land Register Rules are amended as follows.

(2) In regulation 3(1) (procedure for application for an advance notice relating to the whole of a registered plot)—

(a) for “An application” substitute “Subject to paragraph (3), an application”;

(b) omit “the whole of”;

(c) omit “or” after sub-paragraph (a);

(d) omit sub-paragraph (b)(ii) and the “or” which precedes it;

(e) at the end, insert—

“; or

(c) the Keeper is otherwise satisfied that exceptional circumstances make it impractical to do so;”;

(f) after paragraph (1), insert-

“(1A) In particular, paragraph (1)(c) is met—

(a) if the applicant is a natural person who granted the deed to which the advance notice relates; and

(b) the application is not made by a person who, in connection with the grant, acts as a solicitor or other legal adviser to the granter.”.

(3) For regulation 3(3) (procedure for application for an advance notice relating to part of a registered plot) substitute—

“(3) Except in respect of advance notices relating to the whole of a registered plot, paragraph (1) does not apply unless the Keeper has notified a date in accordance with paragraph (4).

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(a) S.S.I. 2014/347 amended by S.I. 2016/696.

(b) S.S.I. 2014/150 amended by S.S.I. 2014/347.

(c) S.S.I. 2004/318 amended by S.S.I. 2006/568 and S.S.I. 2014/190.

(4) Such a notification by the Keeper must state the date on which it comes into effect, which date may not be earlier than 6 months after the date of its publication on the Keeper’s website(a).

(5) Before making such a notification, the Keeper must consult the Scottish Ministers.”.

### **Procedure for application for an advance notice or discharge of advance notice in Register of Sasines**

3. After rule 4 of the Sasine Application Rules insert—

#### **“Procedure for application for an advance notice or discharge of an advance notice**

**4A.**—(1) From a date notified by the Keeper in accordance with paragraph (3), an application for the recording in the Register of Sasines of an advance notice or discharge of an advance notice must be sent to the Keeper electronically using a computer system under the management and control of the Keeper, unless—

- (a) the computer system notifies the applicant who attempts to use it that it is unavailable for a period of 48 hours or longer;
- (b) the applicant has no computer facilities with access to the internet; or
- (c) the Keeper is otherwise satisfied that exceptional circumstances make it impractical to do so.

(2) In particular, paragraph (1)(c) is met—

- (a) if the applicant is a natural person who granted the deed to which the advance notice relates; and
- (b) the application is not made by a person who, in connection with the grant, acts as a solicitor or other legal adviser to the granter.

(3) Such a notification by the Keeper must state the date on which it comes into effect, which date may not be earlier than 6 months after the date of its publication on the Keeper’s website.

(4) Before making such a notification, the Keeper must consult the Scottish Ministers.”.

### **Description of unregistered plot or unregistered lease**

4. In regulation 4 of the Land Register Rules (description of an unregistered plot or unregistered lease in an advance notice)—

- (a) at the end of paragraph (2)(a), insert “if such a deed exists”; and
- (b) in paragraph (3), after “land” insert “have not been recorded in or”.

## **PART 3**

### **Registration in the Land Register**

#### **Digital registration system - authorisation of deeds and persons**

5.—(1) The Automated Registration Regulations are amended as follows.

(2) In regulation 1(2) (interpretation)—

- (a) omit the definition of “ARTL system”;
- (b) in the definition of “authorised person” for “ARTL” substitute “digital registration”;

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(a) <https://www.ros.gov.uk/>

- (c) in the definition of “ARTL document” for “ARTL” both times it occurs substitute “digital registration”;
  - (d) after the definition of “digital registration document” (so substituted) insert—
    - ““digital registration system” means a computer system managed and controlled by the Keeper in accordance with section 99(1) of the Land Registration etc. (Scotland) Act 2012;”;
  - (e) omit the definition of “local registration authority”; and
  - (f) in the definition of “user”, for “a local registration authority to use the ARTL system” substitute “an authorised person to use the digital registration system on behalf of that person”.
- (3) In the title to regulation 2 (deeds to be used in the ARTL system) for “ARTL” substitute “digital registration”.
- (4) In regulation 2(1) for “an ARTL document” substitute “a digital registration document”.
- (5) After regulation 2(2) insert—
- “(3) The deeds mentioned in paragraph (2) relating to part of a registered plot of land or any other kinds of deeds are authorised to be created as a digital registration document where their use in the digital registration system has been published on the Keeper’s website.
  - (4) Before publishing such deeds or kinds of deed for use, the Keeper must—
    - (a) consult the Scottish Ministers about that authorisation; and
    - (b) state the date on which that authorisation comes into effect.”.
- (6) In the title to regulation 3 (authorisation to use the ARTL system) for “ARTL” substitute “digital registration”.
- (7) In regulation 3(1), for “ARTL” substitute “digital registration”.
- (8) In regulation 4 (duties of persons authorised to use the ARTL system)—
- (a) omit paragraphs (1) and (2);
  - (b) in paragraph (3)—
    - (i) for “ARTL”, both times it occurs, substitute “digital registration”; and
    - (ii) omit “, local registration authority”; and
  - (c) in paragraph (4)—
    - (i) omit “, local registration authority”;
    - (ii) for “ARTL” substitute “digital registration”; and
    - (iii) at the end, insert “(including terms and conditions as to the insolvency or inactivity of any person or user)”; and
  - (d) in paragraph (5) for “a local registration authority” substitute “an authorised person”.
- (9) In regulation 5 (suspension or revocation of authorisation)—
- (a) in paragraph (2)(a)—
    - (i) omit “a condition of”; and
    - (ii) at the end, insert “or a material breach of terms and conditions imposed under regulation 4”;
  - (b) in paragraph (2)(b) omit “or local registration authority”; and
  - (c) at the beginning of paragraph (3)(b) insert “in the case of any current digital certificate issued by the Keeper,”.

(10) Regulation 7 (application procedure for registering authorised deed) is revoked.

(11) In schedule 1 (appeals), after paragraph 1, insert—

“**1A.** Where the notice of the appeal of a suspension or revocation of an authorisation so requests, the Scottish Ministers may determine whether to reinstate the authorisation pending determination of the appeal.”.

(12) Schedule 2 (ARTL document application form) is revoked.

### **Procedure and form for registration in the Land Register**

**6.**—(1) The Land Register Rules are amended as follows.

(2) For regulation 7 (form to apply for registration in the Land Register)(a) substitute—

#### **“Procedure and form to apply for registration in the Land Register**

**7.**—(1) From a date notified by the Keeper in accordance with paragraph (5), an application for registration of—

- (a) a kind of deed under section 21 of the Act; or
- (b) an unregistered plot under section 27 of the Act,

must be sent to the Keeper in accordance with paragraphs (2) and (3).

(2) The application must be sent in electronic form using a computer system under section 99 of the Act unless—

- (a) the computer system notifies the applicant who attempts to use it that it is unavailable for a period of 48 hours or longer;
- (b) the applicant has no computer facilities with access to the internet; or
- (c) the Keeper is otherwise satisfied that exceptional circumstances make it impractical to do so.

(3) In particular, paragraph (2)(c) is met—

- (a) if the applicant is a natural person who granted the deed, or to whom the deed is granted; and
- (b) the application is not made by a person who, in connection with the grant, acts as a solicitor or other legal adviser to the person.

(4) Where an application under paragraph (1)(a) must be sent in electronic form, the deed must be an electronic document within the meaning given by the Requirements of Writing (Scotland) Act 1995(b).

(5) Such a notification by the Keeper must state the date on which it comes into effect, which date may not be earlier than 6 months after the date of its publication on the Keeper’s website.

(6) Before making such a notification, the Keeper must consult the Scottish Ministers.”.

(3) Part 4 of schedule 1 (form of application for registration) is revoked.

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(a) Regulation 7 was amended by regulation 8 of S.S.I. 2014/347.

(b) Part 3 of the 1995 Act was added by Land Registration etc. (Scotland) Act 2012 (asp 5).

## **Amending registration applications relating to an unregistered plot**

7. After regulation 13 of the Land Register Rules (amendments etc. of application), insert—

### **“Amendments of applications relating to an unregistered plot**

**13A.** Where—

- (a) an application for registration of a deed which is an electronic document which relates to an unregistered plot is received by the Keeper; and
- (b) within a period of 14 days from receipt of the application the Keeper receives prior deeds necessary to allow the Keeper to comply, in respect of the application, with the Keeper’s duties under Part 1 of the Act,

the Keeper must consent to amendment of the application in order to include those deeds.”.

## **Prescriptive claimants – notification by claimant**

8. At the end of regulation 18 of the Land Register Rules (notification by prescriptive claimants), insert—

“(3) The applicant may submit the application within the 60 days mentioned in paragraph (1) in respect of a person mentioned in section 43(4) of the Act, if that person states in writing that the person does not object and that statement accompanies the application.”.

## **PART 4**

Other electronic document requirements for registration in the Keeper’s registers

## **Amendment of the Electronic Documents (Scotland) Regulations 2014**

9.—(1) The Electronic Documents (Scotland) Regulations 2014(a) are amended as follows.

(2) In regulation 1(2) (interpretation)—

- (a) omit the definition of “the ARTL system”;
- (b) in the definition of “ARTL document”—
  - (i) for “ARTL document” substitute “digital registration document”; and
  - (ii) for “ARTL system” substitute “digital registration system”; and
- (c) after the definition of “digital certificate” insert—

““digital registration system” means a computer system managed and controlled by the Keeper in accordance with section 99(1) of the Land Registration etc. (Scotland) Act 2012;”.

(3) In regulation 6 (registration of electronic documents in the Land Register)—

- (a) the existing regulation becomes paragraph “(1)”;
- (b) for “ARTL document” substitute “digital registration document”
- (c) in paragraph (a), for “ARTL system” substitute “digital registration system”;
- (d) in paragraph (c)—
  - (i) in sub-paragraph (i) omit “(10/12)”;

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(a) S.S.I. 2014/83 amended by S.S.I. 2014/347 and S.I. 2016/696.

- (ii) in sub-paragraph (iv) for “Secure Hash Algorithm-1 (SHA-1)” substitute “Secure Hash Algorithm-2 (SHA-2)(a)”;
- (iii) in sub-paragraph (v), after “documents” insert “, land and buildings transaction tax land transaction returns”; and
- (iv) in sub-paragraph (viii), after “or to refer” insert “land and buildings transaction tax or”;
- (e) at the end, insert—
  - “(2) A digital registration document to be recorded in the Register of Sasines against burdened or benefitted property (or both) which is capable of being, and is also to be, dual registered in the Land Register of Scotland under section 4(5) or 75(1) of the Title Conditions (Scotland) Act 2003(b)—
    - (a) must comply with the requirements of paragraph (1)(a) to (c); and
    - (b) may be registered using the digital registration system.”; and
  - (f) at the end of the title to that regulation insert “and Register of Sasines”.
- (4) In regulation 7 (registration of ARTL standard securities for preservation and execution), for “ARTL document” substitute “digital registration document”.
- (5) In the title to that regulation for “ARTL” substitute “electronic”.

## PART 5

### Register of Sasines - dual registration of electronic documents

#### **Amendment of the Land Registers (Scotland) Act 1868**

**10.—**(1) The Land Registers (Scotland) Act 1868(c) is amended as follows.

(2) In section 2 (interpretation)—

- (a) the existing text becomes subsection “(1)”; and
- (b) after that subsection, insert—

“(2) In this Act, “traditional document” and “electronic document” have the meanings given by sections 1A and 9A respectively of the Requirements of Writing (Scotland) Act 1995(d).”.

(3) In section 6 (provision for writs transmitted by post to Register of Sasines), after “other writ”, insert “which is a traditional document”.

(4) After section 6, insert—

#### **“6A. Provision for writs transmitted electronically to general register of sasines**

(1) This section applies where an application is transmitted electronically for recording in the general register of sasines of a writ which is an electronic document which may be recorded in the register(e).

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(a) This algorithm is set out in Federal Information Processing Standards Publication 180-2 issued by the United States National Institute of Standards and Information dated 1st August 2002 (<https://csrc.nist.gov/csrc/media/publications/fips/180/2/archive/2002-08-01/documents/fips180-2withchangenotice.pdf>).

(b) Section 4 is amended by the Land Registration etc. (Scotland) Act 2012 asp 5 and the Tenements (Scotland) Act 2004 asp 11. Section 75 is amended by the Land Registration etc. (Scotland) Act 2012 asp 5.

(c) 1868 c.64 amended by the Land Registers (Scotland) Act 1995 (c.14), the Abolition of Feudal Tenure etc. (Scotland) Act 2000 asp 5, the Land Registration etc. (Scotland) Act 2012 (asp 5) (“the 2012 Act”) and the Scotland Act 1998 (Consequential Modifications) (No. 2) Order S.I. 1999/1820.

(d) For traditional documents see Part 2 of the Requirements of Writing (Scotland) Act 1995 (c.7) (“the 1995 Act”) as so called by schedule 3 of the 2012 Act; for electronic documents see Part 3 inserted by section 97 of the 2012 Act.

(e) See section 9G(3) of the 1995 Act and regulation 6 of S.S.I. 2014/83 amended by S.S.I. 2014/347 and S.I. 2016/696.

(2) The keeper of the register must on receipt of an application cause it to be acknowledged to the sender.

(3) The keeper must cause the name of the sender to be entered in the presentment book.

(4) The writ is to be recorded in the same manner as a traditional document, save that the copy or copies are to be entered in and kept on a computer or similar device under the keeper's management and control.

(5) Following recording, the keeper must confirm recording to the sender.

**6B. Writs received at the same time as writs transmitted electronically**

(1) This section applies where an application transmitted electronically under section 6A is received by the keeper at the same time as—

- (a) another such application, or
- (b) another application by post under section 6.

(2) The entries in the presentment book and minute book for the writs in respect of which such applications are made are to be of the same year, month and day, and such writs are to be deemed to be presented and registered contemporaneously.”.

(5) In section 14 (registered writs to be authenticated)—

- (a) after “every writ” insert “which is a traditional document”; and
- (b) after “such writ” insert “(which is a traditional document)”.

**Amendment of the Public Registers and Records (Scotland) Act 1948**

**11.** In section 2(b) of the Public Registers and Records (Scotland) Act 1948(a) (provisions as to recording in Register of Sasines), after “by post” insert “or electronically”.

**Signing of traditional documents and electronic applications for recording**

**12.** In rule 4 of the Sasine Application Rules (signing of application for recording)—

- (a) the existing rule becomes paragraph “(1)”;
- (b) for “The application” substitute “In the case of recording a traditional document (within the meaning of the Requirements of Writing (Scotland) Act 1995), the application”; and
- (c) at the end, insert—

“(2) An application sent electronically need not be signed but the applicant must confirm that the applicant makes the Applicant Statement and Declarations.”.

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(a) 1948 c.57 amended by the Scotland Act 1998 (c.46), the Abolition of Feudal Tenure etc. (Scotland) Act 2000 asp 5, the 2012 Act, schedule 5 and the Scotland Act 1998 (Consequential Modifications) (No 2) Order S.I. 1999/1820.



**PART 6**  
**Transitional**

**Staff of authorised persons**

**13.**—(1) Any member of staff authorised by a local registration authority<sup>(a)</sup> under regulation 4(2)(b) of the Automated Registration Regulations immediately before 1st January 2018 continues to be authorised for the purposes of those Regulations as if authorised by the authorised person to use the digital registration system on behalf of that person.

(2) In this regulation, “authorised person” and “digital registration system” have the meaning given in the Automated Registration Regulations.

St Andrew’s House,  
Edinburgh  
Date

*Name*  
A member of the Scottish Government

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(a) See regulation 4(1) and (2)(b) of S.S.I. 2014/347.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations alter the arrangements for registering documents in the Land Register of Scotland (and Register of Sasines) in connection with the registration of electronic documents and other miscellaneous matters concerning land registration.

They enable other kinds of deed in the form of electronic documents to be registered in the Land Register from a date published by the Keeper of the Registers of Scotland (“the Keeper”) where the Keeper complies with certain requirements (regulation 5(5)).

They also amend the Land Register Rules etc. (Scotland) Regulations 2014 (“the Land Register Rules”) for connected purposes, in particular:-

- They require deeds to be registered in the form of electronic documents in circumstances set out in the Regulations from a date notified by the Keeper (regulation 6(2)). Deeds in the form of traditional documents (e.g. on paper) may still be registered if the computer system is unavailable, the applicant has no computer system with access to the internet, or the Keeper is otherwise satisfied that exceptional circumstances make electronic registration impractical (which includes applications to register deeds submitted by natural persons not engaging the services of a solicitor or other legal advisor).
- They remove the prescribed forms for registration of a deed (regulation 6(3)).

Regulation 2 amends the Land Register Rules to align the arrangements for electronic advance notices with these new arrangements. It also enables electronic registration of an advance notice over part of a plot of land already registered in the Land Register. Regulation 3 makes similar provision in the Register of Sasines (Applications Procedure) Rules 2004 for registration of an advance notice over a plot of land not before registered in the Land Register.

Regulation 4 is a minor amendment to disapply a requirement for an advance notice relating to a plot of land or a lease previously unregistered in the Land Register to refer to a description recorded in the Sasine register if none exists.

Regulations 5(2) to (4), (6) to (12) and 9 make amendments related to enabling electronic registration to the Land Register of Scotland (Automated Registration) etc. Regulations 2014 and the Electronic Documents (Scotland) Regulations 2014 in moving to a digital registration system. They remove the prescribed ARTL application form, amend the requirements around authorising persons to use the computer system used by the Keeper for digital registration and make minor amendments to the technical requirements for the form and authentication of electronic documents which require to be registered, including providing for dual registration by registering in the Land Register as well as recording against a title in the Sasine Register, to create real burdens or positive servitudes under the Title Conditions (Scotland) Act 2003 - see sections 4(5), 75(1) and 120 of that Act.

Regulation 7 creates a limited exception to the “one-shot rule” under which all relevant documents must accompany an application for registration in the Land Register. For electronic registration, prior deeds (e.g. paper writs) may be received by the Keeper within 14 days from the day on which the Keeper receives an electronic application for first registration.

Regulation 8 amends the rules for notification by prescriptive claimants (the term introduced by section 43 of the Land Registration etc. (Scotland) Act 2012 for registration of *a non domino* dispositions). The Land Register Rules are amended so there is no need to wait 60 days after such a claimant notifies a person of their registration application if a statement by the person that they do not object accompanies the application.

Part 5 of the Regulations (regulations 10 to 12) amend the Land Registers (Scotland) Act 1868, the Public Registers and Records (Scotland) Act 1948 and the Register of Sasines (Applications Procedure) Rules 2004 to allow for electronic registration of deeds which require to be dual registered to create real burdens or positive servitudes under the Title Conditions (Scotland) Act 2003.

The Regulations apply from 1st January 2018. The provisions enabling and requiring electronic registration of deed types in certain circumstances will apply from dates to be published by the Keeper. Where electronic registration is required the Keeper must provide 6 months' notice.

A business and regulatory impact assessment has not been provided for this instrument as no significant impact on the private or voluntary sectors is foreseen.

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