

Draft Regulations laid before the Scottish Parliament under sections 116(3)(j) and (4)(a) of the Land Registration etc. (Scotland) Act 2012, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

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⁽¹⁾ (“the 2012 Act”), section 9G(3) and (5)(a) of the Requirements of Writing (Scotland) Act 1995⁽²⁾ (“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⁽³⁾.

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- (1) 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](#).
- (2) 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](#).
- (3) 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(4);

“the Land Register Rules” means the Land Register Rules etc. (Scotland) Regulations 2014(5);

“the Sasine Application Rules” means the Register of Sasines (Application Procedure) Rules 2004(6).

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—

(4) [S.S.I. 2014/347](#) amended by [S.I. 2016/696](#).

(5) [S.S.I. 2014/150](#) amended by [S.S.I. 2014/347](#).

(6) [S.S.I. 2004/318](#) amended by [S.S.I. 2006/568](#) and [S.S.I. 2014/190](#).

“(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).

(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(7).

(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 grantor.

(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”.

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

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”;
 - (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)(8) 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(9).

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

(9) Part 3 of the 1995 Act was added by Land Registration etc. (Scotland) Act [2012 \(asp 5\)](#).