
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 8 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.

Part 5 of the Regulations (regulations 9 to 11) 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.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: The Registers of Scotland (Digital Registration, etc.) Regulations 2018 No. 72

The Regulations apply from 12th March 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.