

POLICY NOTE

THE LAND REGISTRATION ETC. (SCOTLAND) ACT 2012 (AMENDMENT AND TRANSITIONAL) ORDER 2014

SSI 2014/346

1. The powers to make this instrument are conferred by sections 110(1) and (2), 116(1) and 117 of the Land Registration etc. (Scotland) Act 2012 (“the 2012 Act”). It is subject to the affirmative procedure.

Policy Objective

2. The 2012 Act makes provision for land registration in Scotland and provides a new legislative basis for the Land Register. The purpose of this draft Order is to make a number of amending and transitional provisions, including amendments of the 2012 Act itself, considered appropriate for the purposes of, in consequence of, and for giving full effect to the Act. Some of the amendments made relate to points raised by Professor Kenneth Reid of the University of Edinburgh.

Policy background

The Requirements of Writing (Scotland) Act 1995

3. Article 2 amends an incorrect cross-reference in the Requirements of Writing (Scotland) Act 1995 inserted by a consequential amendment made by the 2012 Act. The consequential amendment in the 2012 Act is also amended as it is only partially in force.

The 2012 Act – evidence as to electronic testamentary documents in commissary proceedings

4. Article 3 amends the consequential amendment in paragraph 14 of schedule 5 to the 2012 Act of section 21A(a) of the Succession (Scotland) Act 1964. It updates the amendment to ensure that confirmation in respect of a will may be obtained where the formal validity of a document is governed by any of the presumptions by which a signature is presumed to be signed by a particular person in section 3 or 4 (in respect of traditional documents) or section 9C or 9D, or by virtue of section 9E(1) (in respect of electronic documents) of the Requirements of Writing (Scotland) Act 1995.

The 2012 Act – transitional provisions

5. Article 4 amends the transitional provisions in schedule 4 to the 2012 Act. Paragraph 11B of that schedule, as inserted by S.S.I. 2014/190, provides for an exception to the general rule that registration of a deed affecting a lease triggers registration in the Land Register of the relative plot of land in respect of an assignation of a registered lease. This allows the Keeper of the Registers of Scotland (“the Keeper”) to carry out “business as usual” processes for those applications—where the lease was already registered in the Land Register, but the underlying plot of land was registered only in the General Register of Sasines.

6. Article 4 extends this exception to other deeds which affect such a lease, such as variations, renunciations, minutes of alteration, extract decrees of irritancy, etc. Accordingly, paragraph 11B is amended to exempt those deeds which relate to registered leases but where the underlying plot is not registered from this requirement

(except subleases or notices of title which have special arrangements in section 24(4) and (6) of the 2012 Act respectively). These arrangements will cease when the Register of Sasines is closed to such deeds under section 48(3) of the 2012 Act.

The Land Register Rules etc. (Scotland) Regulations 2014

7. The Land Register Rules etc. (Scotland) Regulations 2014 provide for the rules regulating the making up and keeping of the land register, and the procedure for applications, etc. Article 5 of the draft Order amends the application form for registration in the land register to change the entry for rent from 'annual rent' to 'relevant rent'. This is to reflect the requirements of paragraph 1 of Schedule 1 to the Registers of Scotland (Fees) Order 2014.

The Registers of Scotland (Fees) Order 2014

8. The Registers of Scotland (Fees) Order 2014 provides for the fees chargeable for registering, recording or entering deeds or documents in any register under the management and control of the Keeper. Certain deeds set out in Schedule 1, paragraph 1(3) attract a fee based on the consideration or value of the land (whichever is the greater). Article 6 of the draft Order corrects an omission in paragraph 1(3)(c) by providing for a fee to be charged for a notice of title to a registered plot of land.

Consultation

9. A full public consultation was carried out on a draft Land Registration (Scotland) Bill in 2010 prior to the Parliamentary passage of the 2012 Act:

<http://www.scotland.gov.uk/Publications/2010/09/landregistrationbill>. There has also been a consultation in 2013 on aspects of implementing the 2012 Act:

http://www.ros.gov.uk/consultation/consultation_lr_act.html

10. In relation to article 6, on behalf of the Scottish Ministers, Registers of Scotland consulted on the proposed Fees Order from 29 October 2013 to 24 January 2014. The consultation document was published on the websites of both the Scottish Government and Registers of Scotland, and is available at:

<http://www.scotland.gov.uk/Publications/2013/10/9982>

11. A combined Analysis and Report of the consultation can also be found on the Registers of Scotland website at the following address:

http://www.ros.gov.uk/consultation/fee_review_2014/Post_Consultation_Report_and_Analysis.pdf

12. In accordance with section 110(3) of the 2012 Act, the Keeper has been consulted.

Impact Assessments

13. An Equalities Impact Assessment and a pre-screening report for Strategic Environmental Assessment were carried out before the introduction of the Bill:

<http://www.ros.gov.uk/lrbillconsultation/consultation.html>.

An Equality Impact Assessment (EQIA) has not been considered necessary for this Order as there are no direct impacts on any of the relevant equalities groups.

The Bill had Accompanying Documents in the usual way:

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/44469.aspx>.

Financial Effects

14. No Business and Regulatory Impact Assessment (BRIA) has been prepared for this Order as no significant financial effect or impact on the private, voluntary or public sector is foreseen. A [BRIA](#) accompanied the Land Registration etc. (Scotland) Bill on introduction to the Scottish Parliament.

Registers of Scotland on behalf of the Scottish Government