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## EXPLANATORY NOTE

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

The Land Registration etc. (Scotland) Act 2012 (“the 2012 Act”) allows the Keeper of the Registers of Scotland (“the Keeper”) to operate a computer system for creating electronic documents, generating and communicating registration applications, and automated registration. The 2012 Act repeals certain amendments made to the Requirements of Writing (Scotland) Act 1995 (“the 1995 Act”) and the Land Registration (Scotland) Act 1979 that provided for the Automated Registration of Title to Land (“ARTL”) system.

These Regulations make provision for continuation of an ARTL system. Regulation 2 provides for the kinds of deeds which are authorised for use in the system. Regulation 3 provides for the persons authorised (i.e. licensed) to use the system. Regulation 4 sets out the duties which apply to those authorised persons.

Regulation 5 provides for the suspension or revocation of an authorisation and regulation 6 for appeals against the Keeper’s decision to refuse, suspend or revoke an authorisation (the procedure for appeals is in Schedule 1).

Regulation 7 sets out the procedure for creating an application form in the system and Schedule 2 sets out information and the questions which require to be completed to create the application.

Regulation 8 amends the Land Register Rules etc. (Scotland) Regulations 2014 to disapply the prescribed application form for registration in respect of ARTL transactions.

The 2012 Act also amends the 1995 Act to permit relevant electronic documents – contracts, obligations, trusts and conveyances where formal writing is required under section 1(2) of the 1995 Act – to have equivalent status and standards of validity and authenticity to paper documents. Regulation 9 amends the Electronic Documents (Scotland) Regulations 2014 which provide that those electronic documents must have an advanced electronic signature to be valid. It inserts new regulations 5, 6 and 7 about authentication of electronic documents in special cases, registration of electronic documents in the Land Register of Scotland and registration for preservation and execution of electronic standard securities, respectively.

- Inserted regulation 5 provides for the authentication of an electronic signature applied to a document granted by a partnership, limited liability partnership, company, local authority, other corporate body, Minister or office holder. This regulation is equivalent to the provision for traditional documents in Schedule 2 to the 1995 Act.
- Inserted regulation 6 makes it competent to register ARTL electronic documents in the Land Register, if the document is created in the ARTL system, and is in PDF form and meets the other requirements of that regulation. The electronic signature applied to such a document must be supplied by the Keeper and certified by the Keeper’s public key infrastructure (“PKI”). The registration of other electronic documents in the Land Register, the General Register of Sasines or the Books of Council and Session is not yet provided for.
- The Keeper’s PKI is a set of policies and practices which specify the management, creation, distribution and revocation of digital certificates which attach unique public keys to individual users of the ARTL system. The private key that is paired with the public key is used in combination with an electronic deed generated by the ARTL system to produce an electronic signature. Once embedded in an electronic deed, the electronic signature provides proof that the document has not been altered since it was signed, who it was signed by and when it was signed.

**Status:** *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- Inserted regulation 7 temporarily makes equivalent provision to section 6A of the 1995 Act so an extract of an ARTL standard security may be registered for preservation and execution in the Books of Council and Session to enable a creditor to employ summary diligence. This is transitional prior to section 9G enabling registration in the Books of Council and Session.

A Business Regulatory Impact Assessment has not been provided for this instrument as no significant impact on the private or voluntary sectors is foreseen.