SCOTTISH STATUTORY INSTRUMENTS

2014 No. 347

The Land Register of Scotland (Automated Registration) etc. Regulations 2014

Amendment of the Electronic Documents (Scotland) Regulations 2014

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

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

(a) before the definition of "electronic document", insert—

""the ARTL system" means the computer system managed and controlled by the Keeper to facilitate the creation of electronic documents and the electronic generation and communication of an application for registration of a deed relating to a registered plot in the Land Register of Scotland and automated registration of that deed in accordance with section 99(1) of the Land Registration etc. (Scotland) Act 2012(**1**);

"ARTL document" means a document created as an electronic communication within the ARTL system;

"digital certificate" means an electronic document in a standardised format(**2**) which proves ownership of a "public key", includes information about its owner's identity and is digitally signed by the organisation that has verified the certificate's contents are correct and issued the certificate;"; and

(b) after the definition of "electronic document", insert—

""the Keeper" means the Keeper of the Registers of Scotland;

"public key" is one of a pair of mathematical keys that are used in the authentication of electronic documents, which is intrinsically linked with the private key (although it is computationally infeasible to determine one key from knowledge of the other key) and is made public and forms part of the digital certificate;

"private key" is one of a pair of mathematical keys that are used in the authentication of electronic documents, which is intrinsically linked with the public key (although it is computationally infeasible to determine one key from knowledge of the other key) and is kept private to be used, in combination with data from an electronic document, to create a digital signature which is uniquely linked to both the signer of the document and the document itself;

"signature-creation data" has the meaning given in Article 2(4) of Directive 1999/93/ EC of the European Parliament and of the Council of 13th December 1999 on a Community framework for electronic signatures(**3**).".

(3) After regulation 4 (annexations to electronic documents) insert—

(**1**) 2012 asp 5, amended by the Co-operative and Community Benefit Societies Act 2014 (c.14), section 151(4) and Schedule 7, paragraph 1.

(**2**) Must comply with the International Telecommunications Union Telecommunication Standardization Sector (ITU-T) cryptography standard X509 (http://www.itu.int/rec/T-REC-X.509/en).

(**3**) OJ L 013, 19/01/2000, p.12-20, amended by Regulation (EC) No. 1137/2008 of the European Parliament and of the Council (OJ L 311, 21.11.2008, p.1-54).

"**Authentication of electronic documents: special cases**

5.—(1) An electronic signature applied to an electronic document where the granter is a person mentioned in paragraphs (2) to (7) is authenticated as follows.

(2) Where the granter is a partnership(**4**), an electronic signature on behalf of the partnership must be applied by—

(a) a partner; or

(b) a person authorised to sign by the partnership.

(3) Where the granter is a limited liability partnership, an electronic signature on behalf of the limited liability partnership must be applied by a member of the limited liability partnership.

(4) Where the granter is a company, an electronic signature on behalf of the company must be applied by—

(a) a director of the company;

(b) a secretary of the company; or

(c) a person authorised to sign by the company.

(5) Where the granter is a local authority, an electronic signature on behalf of the local authority must be applied by a proper officer of the authority.

(6) Where the granter is a body corporate other than a company or a local authority, the electronic signature on behalf of the body corporate must be applied by—

(a) a member of the body's governing board;

(b) a member of the body;

(c) a secretary of the body; or

(d) a person authorised to sign by the body.

(7) Where the granter is a Minister or office holder, the electronic signature by or on behalf of the Minister or office holder must be applied by—

(a) the Minister or office holder;

(b) where permitted by an enactment that a document may be signed by an officer of the Minister or by any other Minister, the officer or other Minister;

(c) where permitted by an enactment that a document may be signed by an officer of the office holder, the officer; or

(d) a person authorised to sign by the Minister or office holder.

Registration of electronic documents in the Land Register

6. An ARTL document to be registered in the Land Register of Scotland must be—

(a) in the form of a PDF(**5**) created in the ARTL system; and

(b) authenticated by the type of electronic signature created by signature-creation data associated with a digital certificate supplied by the Keeper; and

(c) certified by a digital certificate which must—

(i) comply with the International Telecommunication Union Telecommunication Standardization Sector (ITU-T) cryptography standard X509 (10/12)(**6**) ("X509");

(**4**) "Partnership" has the meaning in section 1 of the Partnership Act 1890 (c.39), amended by S.I. 2009/1941.
(**5**) Portable document format – ISO 32000-1: 2008.
(**6**) http://www.itu.int/rec/T-REC-X.509/en.

    (ii) be bound to the holder in an identification process which meets a minimum of a level 3 Identity as specified in the Cabinet Office Good Practice Guide No. 45, Identity proofing and verification of an individual(**7**);

    (iii) use a public key and private key pair which are at least 1024 bits;

    (iv) employ a hashing algorithm no less satisfactory than Secure Hash Algorithm-1 (SHA-1)(**8**);

    (v) not be subject to any limitation preventing use for authentication of conveyancing deeds and documents or certification of Stamp Duty Land Tax land transaction returns;

    (vi) be certified under a certificate in respect of which revocation is managed by a Certificate Revocation List compliant with X509;

    (vii) be issued under policy, contractual and reliance documentation which contains no exclusion or limitation of liability clauses inappropriate to the reliance placed on conveyancing deeds, land registration applications and tax returns; and

    (viii) not be created under policy, contractual or reliance documentation including choice of law or prorogation of jurisdiction clauses serving to refer Scots land law and property registration issues to the courts or legal system of a jurisdiction other than Scotland; or to refer Stamp Duty Land Tax issues to the courts or legal system of a jurisdiction outwith the United Kingdom.

Registration of ARTL standard securities for preservation and execution

7.—(1) An extract of an electronic standard security that has been created as an ARTL document may be registered for preservation and execution in the Books of Council and Session.

(2) An extract registered in accordance with paragraph (1) is to be treated for the purposes of executing any diligence as if—

    (a) the standard security were created by a document to which section 9C(1) of the 1995 Act(**9**) applies; and

    (b) the extract were that electronic standard security.".

(**7**) https://www.gov.uk/government/publications/identity-proofing-and-verification-of-an-individual.

(**8**) This algorithm is set out in the Federal Information Processing Standards Publication 180-1 issued by the United States National Institute of Standards and Information dated 17th April 1995.

(**9**) Section 9C is inserted by section 97 of the 2012 Act. In relation to diligence, see sections 1 and 2 of the Writs Execution (Scotland) Act 1877 (c.40).