

EXPLANATORY MEMORANDUM TO
THE STAMP DUTY LAND TAX (ELECTRONIC COMMUNICATIONS)
(AMENDMENT) REGULATIONS 2006
2006 No. 3427

1. This explanatory memorandum has been prepared by H M Revenue & Customs and is laid before the House of Commons by Command of Her Majesty.

2. **Description**

2.1 These regulations amend the existing Stamp Duty Land Tax (Electronic Communications) Regulations 2005 (S.I. 2005/844). They provide for the submission of land transaction returns and payment of stamp duty land tax (SDLT) to HMRC through the Automated Registration of Title to Land (ARTL) system of the Registers of Scotland.

3. **Matters of special interest to the Select Committee on Statutory Instruments**

3.1 None.

4. **Legislative Background**

4.1 These regulations are made under the negative resolution procedure.

4.2 Sections 132 and 133 Finance Act 1999 empower the Commissioners for Revenue & Customs to make regulations facilitating the use of electronic communications for the delivery of information, or the making of payments, required by tax legislation.

4.3 The Stamp Duty Land Tax (Electronic Communications) Regulations 2005 (S.I. 2005 No. 844) make such regulations in respect of land transaction returns and of payments and repayments of SDLT, and provide in particular (regulation 4) for the use of intermediaries in this connection.

4.4 Section 47 Finance (No.2) Act 2005 amends the main SDLT legislation at Part 4 Finance Act 2003 to facilitate the incorporation of SDLT in electronic conveyancing schemes which may be introduced by national land registries.

4.5 The Automated Registration of Title to Land (Electronic Communications) (Scotland) Order 2006 (S.S.I. 2006/491) enables the introduction of the ARTL system. ARTL is a project of Registers of Scotland to provide for electronic submission and processing of routine applications to register transactions affecting property in the Land Register of Scotland.

4.6 The present regulations

- confer functions on the Keeper of the Registers of Scotland as intermediary for the Commissioners of Revenue and Customs in receiving and transmitting to HMRC land transaction returns and payments of SDLT;
- provide for appropriate statutory declarations to be included in land transaction returns submitted through ARTL and for such returns to be authenticated by the “digital signature” issued to ARTL users in place of a written signature, and
- provide that a land transaction return submitted through ARTL will be treated as received by HMRC on the date of receipt within the ARTL system and make other minor evidential provisions.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom although it will have practical effect only in Scotland.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Stamp duty on transfers of land and property was replaced by stamp duty land tax from 1 December 2003. One reason for making the change was to pave the way for the development of electronic conveyancing via the internet (Budget Report 2003, para. 5.87).

7.2 ARTL is the first such system to come into operation and will be rolled out to users from 31 January 2007. Use of ARTL will be optional and will be limited to registered users, who will be solicitors and conveyancing firms. Registers of Scotland estimate that by 2009-10 between 30% and 40% of Scottish land transactions involving SDLT will be registered through ARTL.

7.3 SDLT functionality (supplied by HMRC) will be an integral part of ARTL. This will streamline the registration process in a number of ways.

- First, it allows the online land transaction return to be pre-populated from data entered into the registration pages of the system.
- Second, it eliminates the usual requirement for an HMRC land transaction certificate – confirming that SDLT requirements have been met – to be submitted with the registration documents. Registration can take place as soon as a valid return is submitted.
- Third, SDLT and registration fees will be paid together via a direct debit drawdown arrangement between the authorised user and Registers of Scotland. This eliminates the separate payment to HMRC.

7.4 These regulations are needed to include this functionality. In the absence of legislation ARTL users would have to make a land transaction return (either on paper or by electronic filing) and pay SDLT to HMRC in the usual way and submit a land transaction certificate to Registers of Scotland before the property transfer could be registered. This would greatly reduce the benefit to customers of the ARTL system.

7.5 SDLT functionality has always been seen as an integral part of the ARTL project and consultation on the ARTL proposals generally has been undertaken by Registers of Scotland. These regulations impose no new SDLT obligations on customers but simply provide for an alternative channel for making land transaction returns and paying SDLT.

7.6 Registers of Scotland have been consulted throughout on the drafting of these regulations and the final version reflects their comments at all stages. Technical consultation on draft regulations was undertaken over one month with bodies representing potential ARTL users. No substantive comments were received.

7.7 HMRC does not propose to issue separate guidance in respect of these regulations. The form of the online SDLT return to be used in ARTL is substantially identical to that used in HMRC's existing electronic filing channel and includes built-in help. Guidance on the use of ARTL generally will be provided to authorised users by Registers of Scotland.

7.8 There is no current proposal to consolidate the 2005 regulations with the amendments introduced by these regulations. Further secondary legislation will be required in 2007-8 to provide for SDLT functionality to be included in H.M. Land Registry (England & Wales)'s e-conveyancing system. The issue of consolidation will be reconsidered at that point.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum.

8.2 The impact on the public sector is negligible.

9. Contact

Keith Brown at H M Revenue & Customs, tel: 020-7147 2790 or e-mail: keith.brown@hmrc.gsi.gov.uk, can answer any queries regarding the instrument.

REGULATORY IMPACT ASSESSMENT

THE STAMP DUTY LAND TAX (ELECTRONIC COMMUNICATIONS) (AMENDMENT) REGULATIONS 2006

1. Title of proposal

This is the Regulatory Impact Assessment for the Stamp Duty Land Tax (Electronic Communications) (Amendment) Regulations 2006 (S.I. 2006 No. xxxx).

2. Purpose and intended effect

Policy objective

The objective of this Order is to amend the Stamp Duty Land Tax (Electronic Communications) Regulations 2005 (S.I. 2005/844), to enable the submission of land transaction returns and payment of stamp duty land tax (SDLT) through the Automated Registration of Title to Land system (ARTL) of the Registers of Scotland. ARTL will become operational at the end of January 2007. The Order applies to all of the United Kingdom, although it will have practical effect only in Scotland, and is deregulatory.

Background

Registers of Scotland intends to introduce a system for electronic, automated registration of routine transactions involving properties which are registered in the Land Register of Scotland.

Legislative provision for ARTL has been made in the Automated Registration of Title to Land (Electronic Communications) (Scotland) Order 2006 (S.S.I. 2006/491) and the system will be introduced on 31 January 2007.

ARTL will be an alternative to the existing process of registering paper deeds. Use of ARTL will be optional and it will be restricted to solicitors who are registered as users of the system.

Rationale

One of the reasons put forward by Ministers for introducing SDLT in 2003 was to facilitate electronic conveyancing initiatives.

Integrating SDLT into the ARTL process means that much of the information in the land transaction return can be pre-populated from registration data and the return can be validated within the ARTL system, so HMRC does not have to issue a land transaction certificate before registration can take place. This streamlines the registration process and is consistent with policy on the development of e-commerce.

3. Consultation

Within Government

The project to include SDLT functionality within ARTL has involved close consultation throughout, including a joint project board, with Registers of Scotland. Other interested parties including the Valuation Office Agency. Her Majesty's Land Registry - who currently plan to introduce SDLT functionality into their own electronic conveyancing system for England and Wales early in 2008 - and the Land Registers of Northern Ireland have also been involved.

Public consultation

Consultation on the draft regulations has been undertaken with key stakeholders including the Registers of Scotland, the Land Registry (England and Wales), the Law Society of Scotland, the Scottish Law Agents' Society and the Scottish Consumer Council. Comments from Registers of Scotland have been taken into account in the final version of the regulations to allow them to better address the requirements of the ARTL system. No other substantive comments were received although the regulations were generally welcomed.

4. Options

Options considered were either to include SDLT functionality in ARTL or not. If it was not included there would be no change to existing SDLT procedures for the customer. This would mean that ARTL users would have to use existing channels (either a paper form or e-filing) to submit a land transaction return and payment to HMRC. This would not have the benefit of pre-population of the return from registration data.

HMRC would then have to send a land transaction certificate to Registers of Scotland before an ARTL transaction could be registered. E-filing now incorporates an electronic certificate feature and this could be used (with modifications) for ARTL. But this procedure would delay registration and would not present a "joined up" approach to customers.

The chief risk associated with including SDLT functionality in ARTL is the compliance risk involved in providing for validation of returns and certification within a third-party system. This risk will be minimised by using validation rules supplied by HMRC within the ARTL system and by ensuring that return data is submitted and separately validated through the Government Gateway, and an electronic receipt ("IR Mark") is transmitted back to ARTL. The project is governed by a detailed service level agreement between HMRC and Registers of Scotland.

5. Costs and benefits

The Order imposes no new regulatory burdens. Use of ARTL will be optional (although dealing with SDLT within ARTL will be compulsory for transactions registered via ARTL). The alternative of registration using paper documents and existing channels for SDLT will remain. The information required in the land transaction return is laid down by statute and the return takes the same form in all channels.

There will be no effect on Exchequer yield. SDLT liability is not affected by the channels used to submit land transaction returns and payment.

Sectors and groups affected

The order will directly affect a limited group of around 1,000 solicitors' and conveyancing firms in Scotland engaged in property work.

HMRC and Registers of Scotland have been unable to establish how many of these firms are small (1-49 employees) or medium (50-249 employees) enterprises. However, we understand that around 24 solicitor's firms in Scotland have 250 or more employees and around 500 are sole practitioners. However, the costs and benefits of using the SDLT functionality within ARTL are not expected to vary significantly according to size of business.

The clients of these firms will be indirectly affected by the impact of ARTL (including the SDLT element) in terms of speed of registration and fee levels charged by solicitors.

The Order will have no race, Northern Ireland or other equality impacts, and raises no Human Rights issues.

Benefits

Members of the public and other parties to conveyancing transactions will continue to deal with their solicitor or conveyancer in the usual way and will benefit from faster completion of transactions through the integration of SDLT administration and payment with registration and the absence of a separate land transaction certificate.

Solicitors and conveyancers will benefit from being able to deal with all aspects of registration, including the land transaction return and payment of SDLT, in a single transaction, and from re-population from registration data of the majority of fields in the return. Practitioners moving to ARTL from paper returns will gain the benefits of electronic submission including online help, assurance that the submitted return has passed validity checks and immediate electronic certification.

HMRC estimates that compliance cost savings of £106.1 million will accrue to solicitors and conveyancers using ARTL. This represents the cost over the first six years of the ARTL scheme at net present value. The savings reflect a reduction in postage costs arising from increased levels of e-filing and time savings due to pre-population of 64 out of 71 fields in the main land transaction return (form SDLT 1).

A telephone survey of 80 predominantly small and medium sized solicitors' firms by Registers of Scotland indicated that firms of all sizes anticipated that use of ARTL would have a beneficial, or at least neutral, economic impact on their businesses.

For HMRC, dealing with SDLT through ARTL will move more land transaction returns into the electronic domain, increasing the proportion of valid returns, reducing the amount of staff time devoted to chasing missing or invalid information in paper returns and allowing more staff time to be devoted to compliance work. No staff reductions are envisaged in connection with this development.

HMRC expects to achieve cost savings of £8.7 million in scanning paper forms, producing land transaction certificates, postage and staff costs. Again, this figure represents the cost over the first six years of the ARTL scheme at net present value.

Costs

Use of ARTL is optional and this Order imposes no additional costs on businesses because the information required in the land transaction form is the same regardless of the channel used for its transmission.

Access to the ARTL system requires a user solicitor to have access to a desktop computer with internet access. These are now normal business tools for most conveyancing practitioners. The ARTL system (including the SDLT element) is free-standing and will not require case-management or other software which is not already in use.

The only cost to the user is the small cost of providing a smartcard reader to allow authorised users access to the ARTL system. The smartcard will also be used to authenticate land transaction returns submitted through ARTL. An industry-standard format is used and readers are available from around £30.

HMRC will incur IT costs of £2.3 million for the provision of SDLT functionality to Registers of Scotland for use in ARTL. Again, this figure represents the cost over the first six years of the ARTL scheme at net present value.

Competition assessment

The order is not a market regulation and does not have competition implications. It permits an option of making use of electronic communication to carry on existing activities. This will be available equally to all of the roughly 1,000 solicitors' and conveyancing firms participating in the Scottish conveyancing market. It will not impose barriers to new entrants to the market and will not impose differential barriers to participation by firms of any particular size.

Enforcement, sanctions and monitoring

This Order imposes no additional compliance obligations on ARTL users. Compliance with SDLT legislation will be enforced under HMRC's normal enquiry

powers. Monitoring of take-up will be carried out using HMRC's existing procedures.

Implementation and delivery plan

Implementation of SDLT functionality in ARTL is being achieved through a joint project board involving HMRC and Registers of Scotland, with other interested parties. Land transaction return pages, online help and validation checks are being written by HMRC (based on existing e-filing functionality) and delivery to Registers of Scotland. A phased rollout of ARTL is under way and is planned to be complete by April 2007, with the SDLT element going "live" at the end of January 2007.

The Order does not provide for all the intended elements of SDLT functionality in ARTL. Further primary and secondary legislation will be required to permit submission of the SDLT self certificate through ARTL. This is used for certain transactions for no consideration, where a land transaction return is not required.

Registers of Scotland has implemented a stakeholder communication strategy for ARTL and HMRC officials have participated in presentations to likely users.

Post-implementation review

HMRC proposes to conduct a post-implementation review of this measure in the summer of 2009, in connection with the further measure outlined above to enable the submission of the SDLT self certificate through ARTL.

Summary and recommendations

This order facilitates inclusion of SDLT functionality in ARTL. This provides an alternative channel for submitting land transaction returns and paying SDLT. It streamlines registration by amalgamating SDLT and registration processes into a single transaction and eliminating the requirement for HMRC to issue a land transaction certificate before registration can take place. Normal SDLT compliance requirements are otherwise unaffected.

HMRC recommends that the Order is made as drafted.

Contact point

Keith Brown at HM Revenue & Customs, Excise & Stamp Taxes, 100 Parliament Street, London SW1A 2BQ will answer enquiries about this Regulatory Impact Assessment. The telephone number is 020-7147 2790 and the email address is keith.brown@hmrc.gsi.gov.uk.

REGULATORY IMPACT ASSESSMENT

The Stamp Duty Land Tax (Electronic Communications) (Amendment) Regulations 2006

Statement of Ministerial Approval

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.

Signed by the responsible Minister:

Ed Balls

Economic Secretary to the Treasury

Dated: 20/12/06