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SCOTTISH STATUTORY INSTRUMENTS

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**2014 No. 347**

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

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Land Register of Scotland (Automated Registration) etc. Regulations 2014 and come into force on 8th December 2014.

(2) In these Regulations—

“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;

“authorised deed” means a deed which complies with regulation 2;

“authorised person” means a person granted authorisation by the Keeper under regulation 3 to use the ARTL system;

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

“local registration authority” means a person appointed by the authorised person under regulation 4(1); and

“user” means an individual who is authorised by a local registration authority to use the ARTL system.

(3) In these Regulations, a reference to a document being in writing includes an electronic communication within the meaning of section 15(1) (general interpretation) of the Electronic Communications Act 2000<sup>(1)</sup>, which has been recorded and is consequently capable of being reproduced.

**Deeds to be used in the ARTL system**

2.—(1) The deeds mentioned in paragraph (2) are authorised to be created as an ARTL document where they relate to the whole of a registered plot of land.

(2) The deeds are—

(a) a disposition;

(b) an assignation of a lease;

(c) a standard security;

(d) a discharge of a standard security;

(e) an assignation of a standard security;

(f) a Notice of Payment of Grant (under the Housing (Scotland) Act 2006<sup>(2)</sup> (“the 2006 Act”));

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(1) 2000 c.7, amended by the Communications Act 2003 (c.21), section 406 and Schedule 17, paragraph 158.

(2) 2006 asp 1. There are no relevant amendments.

- (g) a Charging Order<sup>(3)</sup>;
- (h) a discharge of a Charging Order;
- (i) a Notice of Cesser of Conditions of Improvement Grant (under the 2006 Act);
- (j) a Notice of Cesser of Conditions of Repair Grant (under the 2006 Act); and
- (k) a repayment charge.

### **Authorisation to use the ARTL system**

3.—(1) Any firm of solicitors (including a sole practitioner or partnership), firm of licensed conveyancers, commercial lender (within the meaning of section 75(5) of the Housing (Scotland) Act 2006), local authority or other person may apply to the Keeper for authorisation to use the ARTL system.

(2) The Keeper must consider an application for authorisation and must either grant or refuse to grant authorisation within 28 days beginning on the date of receipt of the application and must notify the applicant of the decision.

(3) If the Keeper refuses to grant authorisation, the Keeper must, when notifying the applicant, provide reasons for the refusal.

(4) The authorisation under paragraph (2) must be in writing and subject to the conditions set out in regulation 4.

### **Duties of authorised persons**

4.—(1) An authorised person must appoint a member of its staff to be the local registration authority.

(2) The local registration authority must, before any other members of staff of the authorised person may use the ARTL system—

- (a) have an identity verification meeting with a member of staff of the Keeper; and
- (b) authorise those other members of staff of the authorised person to be users.

(3) Prior to using the ARTL system, the authorised person, local registration authority and each user must submit to the Keeper agreement to the terms and conditions of use of that system by completing the appropriate box on the ARTL system.

(4) Those terms and conditions are those in respect of the authorised person which the Keeper acting reasonably considers appropriate, which have been notified to the authorised person, local registration authority or user from time to time to protect the security, integrity or stability of the ARTL system.

(5) A person may not be a local registration authority or user if that person—

- (a) has a conviction for fraud; or
- (b) is a disqualified person.

(6) In paragraph (5)(b) a disqualified person means—

- (a) in the case of a solicitor, a person who is—
  - (i) disqualified from practising as a solicitor by reason of the fact that his or her name has been struck off the roll of solicitors; or
  - (ii) suspended from practising as a solicitor, by the Law Society of Scotland or the Scottish Solicitors' Discipline Tribunal;

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(3) Any order made under an enactment by the Secretary of State for Scotland, the Scottish Ministers or a local authority.

- (b) in the case of a registered foreign lawyer, a person—
  - (i) whose name has been removed from the register of foreign lawyers by the Scottish Solicitors' Discipline Tribunal; or
  - (ii) whose certificate of registration as a registered foreign lawyer has been suspended in accordance with section 24F of the Solicitors (Scotland) Act 1980<sup>(4)</sup>; or
- (c) in the case of a registered European lawyer, a person—
  - (i) whose name has been removed from the register of European lawyers by the Scottish Solicitors' Discipline Tribunal; or
  - (ii) whose certificate of registration as a registered European lawyer has been suspended in accordance with section 24F of the Solicitors (Scotland) Act 1980.

### **Suspension or revocation of authorisation under regulation 3**

- 5.**—(1) The Keeper may at any time suspend or revoke an authorisation under regulation 3.
- (2) The powers referred to in paragraph (1) may be exercised—
- (a) on a contravention of a condition of these Regulations; or
  - (b) where any information provided by the authorised person or local registration authority is false.
- (3) Where any of the powers referred to in paragraph (1) is exercised the Keeper must—
- (a) notify the authorised person in writing of the suspension or revocation; and
  - (b) revoke the authorised person's digital certificate.
- (4) In this regulation—
- “digital certificate” has the meaning given in the Electronic Documents (Scotland) Regulations 2014<sup>(5)</sup>.

### **Appeals**

- 6.**—(1) A person who has had an application for authorisation under regulation 3 refused, or an authorisation under regulation 5 suspended or revoked by the Keeper may appeal to the Scottish Ministers against the decision of the Keeper.
- (2) On determining an appeal against a decision of the Keeper, the Scottish Ministers may—
- (a) affirm the decision;
  - (b) if the decision was a refusal to grant an authorisation, direct the Keeper to grant the authorisation;
  - (c) if the decision was a suspension of an authorisation, direct the Keeper to remove the suspension; or
  - (d) if the decision was a revocation of an authorisation, direct the Keeper to reinstate the authorisation.
- (3) Schedule 1, which makes provision for procedures for appeals under this regulation, has effect.

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(4) 1980 c.46, amended by S.S.I. 2000/121, S.S.I. 2005/465, the Adult Support and Protection (Scotland) Act 2007 (asp 10), section 77(2) and schedule 2, paragraph 1 and the Legal Services (Scotland) Act 2010 (asp 16), section 137(3).

(5) S.S.I. 2014/83. See regulation 1(2), as amended by regulation 9(2) of these Regulations.

### Procedure for application for registering an authorised deed

7. An application for registering an authorised deed which is an ARTL document in the Land Register of Scotland is made by the authorised person providing—

- (a) the information required in Part A; and
- (b) answers to the questions in Part B,

of the form in Schedule 2, as are relevant to the registration of the authorised deed.

### Amendment of the Land Register Rules etc. (Scotland) Regulations 2014

8.—(1) The Land Register Rules etc. (Scotland) Regulations 2014<sup>(6)</sup> are amended as follows.

(2) At the end of regulation 7 (form to apply for registration in the Land Register) insert “except where the application for registration is made using the ARTL system as defined in the Electronic Documents (Scotland) 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<sup>(7)</sup>;

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

“digital certificate” means an electronic document in a standardised format<sup>(8)</sup> 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;”;

(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;

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(6) S.S.I. 2014/150.

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

(8) 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>).

“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<sup>(9)</sup>.”.

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

**“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<sup>(10)</sup>, 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<sup>(11)</sup> created in the ARTL system; and

<sup>(9)</sup> 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).

<sup>(10)</sup> “Partnership” has the meaning in section 1 of the Partnership Act 1890 (c.39), amended by S.I. 2009/1941.

<sup>(11)</sup> Portable document format – ISO 32000-1: 2008.

- (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)(12) (“X509”);
  - (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(13);
  - (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)(14);
  - (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(15) applies; and
- (b) the extract were that electronic standard security.”.

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(12) <http://www.itu.int/rec/T-REC-X.509/en>.

(13) <https://www.gov.uk/government/publications/identity-proofing-and-verification-of-an-individual>.

(14) 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.

(15) 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).

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Edinburgh  
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*FERGUS EWING*  
Authorised to sign by the Scottish Ministers