

Data Protection Impact Assessment

Registers of Scotland Digital Submissions

The Register of Scotland (Digital Registration, Etc.) Regulations 2022

Version date: 10 December 2021

Following closure of her offices on 24th March 2020, the Keeper of the Registers of Scotland (RoS) introduced a digital submission service in collaboration with customers to enable applications to the Land Register, Register of Sasines and Register of Inhibitions to be submitted electronically, thereby allowing these registers (and the property market and court processes which they support) to remain operational during the period of public health restrictions. These applications comprised electronic copies of traditional (i.e. paper) documents.

Measures to place digital submission on a permanent statutory footing will be taken forward as part of a wider bill related to recovery from the Covid pandemic. These regulations are intended to compliment those provisions and will make digital submission the default method of submission to RoS for the Land Register and Register of Sasines applications, subject to limited exceptions. In addition, they will enable the registration of full electronic documents in the Register of Deeds and Probative Writs in the Books of Council and Session as well as a number of technical amendments aimed at clarifying issues in relation to electronic documents that have been identified as a result of the increased use of electronic documents and signatures during the ongoing period of public health guidance.

The text of the proposed legislation/amendment is attached at Annex A.

<justification>

1. Contact and schedule information

1.1	SG department	Registers of Scotland
1.2	Contact email	rossecretariat@ros.gov.uk
1.3	Data protection support email Data protection officer	dpa@gov.scot dataprotectionofficer@gov.scot
1.4	Is your proposal primary legislation, secondary legislation or other form of statutory measure?	secondary
1.5	What stage is the legislative process at? Please indicate any relevant timescales and deadlines.	Anticipated laying date 16 December 2021

2. Introductory information

	Questions	Comments
2.1	Summary of proposal	
2.2	<p>Description of the personal data involved</p> <p>Please also specify if this personal data will be special category data, or relate to criminal convictions or offences</p>	<p>The personal data which is collected is the same as is currently collected by the Keeper of the Registers of Scotland and is for the purposes of fulfilling her public task of compiling and maintaining public registers.</p> <p>The personal data is not sensitive nor does it fall into the special category data or criminal convictions or offences with the exception of documents relating to orders under the Proceeds of Crime (Scotland) Act 1995 or of the Proceeds of Crime Act 2002.</p>
2.3	<p>Will the processing of personal data as a result of the proposal have an impact on decisions made about individuals, groups or categories of persons?</p> <p>If so, please explain the potential or actual impact. This may include, for example, a denial of an individual's rights, or use of social profiling to inform policy making.</p>	<p>No, these proposals will result in no new personal data being collected or processed. While some modifications will be made to the Keeper's system for receiving applications, no change is required to the data held in the property registers, the Register of Inhibitions, or any other public register maintained by the Keeper. The contents of the Land Register, and the basis for the corresponding archive are set out in the Land Registration etc. (Scotland) Act 2012</p>
2.4	<p>Necessity, proportionality and justification</p> <p>What issue/public need is the proposal seeking to address?</p> <p>What policy objective is the legislation trying to meet?</p> <p>Were less invasive or more privacy-friendly options considered, and if so why were these options rejected?</p> <p>Are there any potential unintended consequences with regards to the provisions e.g., would the</p>	<p>These provisions will complement measures being taken forward related to registration of documents in registers maintained by the Keeper and are a well-considered, necessary and proportionate measure with the proposals receiving close to unanimous support from stakeholders who responded to the public consultation.</p> <p>The provisions result in no new data being collected. The personal data which is collected is the same as that which is collected by the Keeper of the Registers of Scotland, and is for the purposes of fulfilling her public</p>

	Questions	Comments
	<p>provisions result in unintended surveillance or profiling?</p> <p>Have you considered whether the intended processing will have appropriate safeguards in place? If so briefly explain the nature of those safeguards and how any safeguards ensure the balance of any competing interests in relation to the processing.</p>	<p>task of compiling and maintaining public registers.</p>
2.5	<p>Will the implementation be accompanied by guidance or by an associated Code of Conduct?</p> <p>If the latter, what will be the status of the Code of Conduct? (statutory or voluntary?)</p>	<p>The Keeper publishes guidance on the means and form of documents to be transmitted to the Keeper on her website to assist stakeholders in engaging with Registers of Scotland. There will not be a code of conduct.</p>

3. Data Controllers

<If there is more than one data controller involved please complete a separate table for each>

Organisation	The Keeper of the Registers of Scotland will be the Data Controller.		
Activities	The provisions result in no new data being collected. The personal data which is collected is the same as that which is collected by the Keeper of the Registers of Scotland, and is for the purposes of fulfilling her public task of compiling and maintaining public registers		
Is the organisation a public authority or body as set out in Part 2, Chapter 2, Section 7 of the Data Protection Act 2018?	Yes		
Lawful basis for processing under UK General Data	The provisions result in no new data being collected. The personal data which	Lawful basis for processing under UK General Data	Registers of Scotland will not be collecting this type of data.

Protection Regulation (UK GDPR) Article 6 for the collection and sharing of personal data – general processing	is collected is the same as that which is already collected by the Keeper of the Registers of Scotland, and is for the purposes of fulfilling her statutory duty of compiling and maintaining public registers	Protection Regulation (UK GDPR) Article 9 – special category data or Article 10 – criminal convictions data Include condition from Schedule 1 or 2 of the Data Protection Act 2018	
Law Enforcement – if any law enforcement processing will take place – lawful basis for processing under Part 3 of the Data Protection Act 2018	RoS do not carry out law enforcement processing as defined in the Data Protection Act. RoS routinely monitors registration activity for suspected or actual fraud, and can share appropriate information with relevant public authorities if necessary and appropriate to do so – this is always conducted within the applicable legislation.	Legal gateway for any sharing of personal data between organisations	No. Information sharing provisions are not required.

4. Consultation

	Questions	Comments
4.1	Have you consulted with the ICO using the Article 36(4) form? (please provide a link to it) If the ICO has provided feedback, please include this.	On the basis no new personal data is being collected or processed consultation with the UK ICO was deemed unnecessary
4.2	Do you need to hold a public consultation and if so has this taken place? What was the result?	Yes. The public consultation ran from 22nd December until 1st February 2021 and was hosted on the Scottish Government's Citizen Space consultation hub as well as

	Questions	Comments
		being published on the RoS website. The results found overwhelming support for proposals with 98.7% of respondents in favour of the digital submission service introduced at the outset of the pandemic being put on a permanent footing.
4.3	Were there any Comments/feedback from the public consultation about privacy, information or data protection?	While not specifically addressing privacy, information or data protection, a very small number of respondents expressed concerns around the potential for fraud arising from the some of the proposals within the consultation. The Keeper currently holds 20 public registers, which hold varying degrees of personal information, such as criminal convictions. As such, Registers of Scotland are used to safeguarding personal data in line with current best practice.

5. Further assessment and risk identification

<Use this section to identify risks which are further detailed in section 6>

	Question	Comments
5.1	Will the proposal require the creation of new identifiers, or require the use of existing ones?	No
5.2	Will the proposal require regulation of: <ul style="list-style-type: none"> • technology relating to processing • behaviour of individuals using technology • technology suppliers • technology infrastructure • information security 	<p>The proposals will involve the Keeper of the Registers of Scotland continuing with the current provision of digital services. The users of the systems will remain the same (e.g. Solicitors acting on behalf of clients, Sheriff Officers, Trustees in Sequestration etc.), as they are currently and the terms and conditions of use will remain the same.</p> <p>The technology, systems and process which RoS currently use include appropriate organisational and technical measures to protect personal data and data subjects' rights. These respect individual rights to privacy and uphold privacy principles, including collection of only necessary data, data minimisation, individual choice and control (if appropriate), and transparency regarding data processing – all in line</p>

	Question	Comments
		<p>with the requirements of current data protection legislation.</p> <p>It is not envisaged that the proposal will require any privacy intrusive use of technology, although the use of some cookies for limited non-commercial purposes (essential site functionality and/or service improvement analytics) is likely, and this will be provided in a compliant way in line with the appropriate legislation.</p>
5.3	<p>Will the proposal require establishing or change to operation of an established public register (e.g. Accountancy in Bankruptcy, Land Register etc.) or other online service/s?</p>	<p>No new personal data is being collected or processed. The digital submission service introduced at the outset of the pandemic involves no new processing activities, rather a change in the way in which customers submit applications to the Keeper (and which applications are processed in exactly the same way as they always have been).</p> <p>No changes are being made that would affect users' registration related rights and no automated decision making has been introduced whilst security controls are in place. Accordingly, we do not perceive that there is any increased risk to the privacy rights of individuals from the move to digital submissions (as compared to hard copy submissions)</p>
5.4	<p>Please provide details of whether the proposal will involve the collection or storage of data to be used as evidence or use of investigatory powers (e.g.in relation to fraud, identify theft, misuse of public funds, any possible criminal activity, witness information, victim information or other monitoring of online behaviour)</p>	<p>Digital submissions will be scanned using malware detection tools to ensure that they do not contain malware payloads, but this is a security enhancing feature and not intrusive to privacy.</p> <p>RoS routinely monitors registration activity for suspected or actual fraud, and can share appropriate information with relevant public authorities if necessary and appropriate to do so – this is always conducted within the applicable legislation.</p>
5.5	<p>Would the proposal have an impact on a specific group of persons e.g. children, vulnerable individuals, disabled persons,</p>	<p>The proposals do not affect a specific group. The proposals do not affect people on the basis of any protected characteristics</p>

	Question	Comments
	persons with health issues, persons with financial difficulties, elderly people? (Please specify) In what way?	
5.6	<p>Is there anything potentially controversial or of significant public interest in the policy proposal as it relates to processing of data? For example, is the public likely to views the measures as intrusive or onerous?</p> <p>Are there any potential unintended consequences with regards to the provisions e.g. would the provisions result in unintended surveillance or profiling.</p> <p>Have you considered whether the intended processing will have appropriate safeguards in place? If so briefly explain the nature of those safeguards and how any safeguards ensure the balance of any competing interests in relation to the processing.</p>	<p>No. The personal data which is collected is the same as is currently collected by the Keeper of the Registers of Scotland, and is for the purposes of fulfilling her public task of compiling and maintaining public registers.</p> <p>The Keeper of the Registers of Scotland is already under an obligation in the Land Registration etc. (Scotland) Act 2012 to take such steps as appear reasonable to the Keeper to protect the register from- (a) interference; (b) unauthorised access; and (c) damage.</p>
5.7	Are there consequential changes to in other legislation that need to be considered as a result of the proposal or the need to make further subordinate legislation to achieve the aim?	Certain provisions within these regulations will only commence on the re-enactment of certain provisions within the Coronavirus (Scotland) 2020. It is planned to make a further order under sections 107 and 117 of the Land Registration etc. (Scotland) Act 2012
5.8	Will this proposal necessitate an associated code of conduct? If so, what will be the status of the code of conduct (statutory, voluntary etc.)?	No

	Question	Comments
5.9	<p>Have you considered whether the intended processing will have appropriate safeguards in place, for example in relation to data security, limitation of storage time, anonymisation? If so briefly explain the nature of those safeguards</p> <p>Please indicate how any safeguards ensure the balance of any competing interests in relation to the processing.</p>	<p>The Keeper of the Registers of Scotland is already under an obligation in the Land Registration etc. (Scotland) Act 2012 to take such steps as appear reasonable to the Keeper to protect the register from- (a) interference; (b) unauthorised access; and (c) damage.</p> <p>Additionally, the Keeper currently holds 20 public registers, which hold varying degrees of personal information, such as criminal convictions. As such, Registers of Scotland are used to safeguarding personal data in line with current best practice.</p>
5.10	<p>Will the processing of personal data as a result of the proposal have an impact on decisions made about individuals, groups or categories of persons? If so, please explain the potential or actual impact. This may include, for example, a denial of an individual's rights or use of social profiling to inform policy making.</p>	No
5.11	<p>Will the proposal include automated decision making/profiling of individuals using their personal data?</p>	No
5.12	<p>Will the proposal require the transfer of personal data to a 'third country'? (Under UK GDPR this is defined as country outside the UK.)</p>	No

6. Risk Assessment

<add extra rows to the table as necessary>

Risk	Solution or mitigation	Likelihood (Low/Med/High)	Severity (Red/Amber Green)	Result
<p>6.1.1 Risk to individual rights</p> <ul style="list-style-type: none"> • right to be informed • right of access • right to rectification • right to erasure • right to restrict processing • right to data portability • right to object • rights in relation to automated decision making and profiling <p>Will this initiative result in any detriment if individuals do not want their personal data to be processed? This is particularly relevant if special category data is being processed</p>	<p>No new personal data is being collected or processed as a result of these provisions.</p>	<p>Low</p>	<p>Green</p>	<p>Eliminated</p>
<p>6.2.1 Privacy risks</p> <p>Purpose limitation</p>	<p>As above</p>	<p>Low</p>	<p>Green</p>	<p>Eliminated</p>

Risk	Solution or mitigation	Likelihood (Low/Med/High)	Severity (Red/Amber Green)	Result
<p>6.2.2 Privacy risks</p> <p>Transparency – data subjects may not be informed about the purposes and lawful basis for the processing, and their rights</p>	<p>The personal data which is collected is the same as is currently collected by the Keeper of the Registers of Scotland, and is for the purposes of fulfilling her public task of compiling and maintaining public registers. Information about their processing activities is outlined in RoS' published privacy statement.</p>	<p>Low</p>	<p>Green</p>	<p>Mitigated</p>
<p>6.2.3 Privacy risks</p> <p>Minimisation and necessity</p>	<p>Only limited personal data of identity and address is available on the property registers and the Register of Inhibitions, necessary for the economic well-being of the country and the protection of the rights and freedoms of others.</p>	<p>Low</p>	<p>Green</p>	<p>Mitigated</p>
<p>6.2.4 Privacy risks</p> <p>Accuracy of personal data</p>	<p>The Keeper currently holds 20 public registers, which hold varying degrees of personal information, such as criminal convictions. As such, Registers of Scotland are used to safeguarding</p>	<p>Low</p>	<p>Green</p>	<p>Mitigated</p>

Risk	Solution or mitigation	Likelihood (Low/Med/High)	Severity (Red/Amber Green)	Result
	personal data in line with current best practice.			
6.3.1 Security risks Keeping data securely Retention	The Keeper has appropriate retention controls built in to her systems and is already under an obligation in the Land Registration etc. (Scotland) Act 2012 to take such steps as appear reasonable to her to protect the register from- (a) interference; (b) unauthorised access; and (c) damage.	Low	Green	Mitigated
6.3.2 Security risks Transfer – data may be lost in transit	As above	Low	Green	Mitigated
6.3.3 Security risks	As above	Low	Green	Mitigated
6.4.1 Other risks <will this impact on children?>	As above The proposals do not affect a specific group. The proposals do not affect	Low	Green	Mitigated

Risk	Solution or mitigation	Likelihood (Low/Med/High)	Severity (Red/Amber Green)	Result
	people on the basis of any protected characteristics			

Data Protection Officer (DPO)

The DPO may give additional advice, please indicate how this has been actioned.

Advice from DPO	Action
NA	NA

I confirm that the <what you are doing> has been sufficiently assessed in compliance with the requirements of the UKGDPR and Data Protection Act 2018

Name and job title of a IAO or equivalent	Date each version authorised
Christopher Kerr Registration and Policy Director	13 December 2021

ANNEX A – copy of/link to proposed legislation

The Register of Scotland (Digital Registration, Etc.) Regulations 2022 to be laid

16 December 2021

Annex B – Copy of/link to accompanying guidance/Code of Conduct

<https://www.ros.gov.uk/coronavirus-covid-19/information-for-legal->

professionals