Executive Note

DRAFT :The Automated Registration of Title to Land (Electronic Communications) (Scotland) Order 2006 (S.S.I. 2006/)

The above instrument is made under powers conferred by sections 8 and 9 of the Electronic Communications Act 2000 and with consent of the Secretary of State for Scotland in accordance with section 9(7)(c) of that Act. The instrument is laid in draft under affirmative resolution procedure.

Policy Objectives

The purpose of the instrument is to amend the Requirements of Writing (Scotland) Act 1995 ("the 1995 Act") and the Land Registration (Scotland) Act 1979 ("the 1979 Act") in order to enable the introduction of Automated Registration of Title to Land ("ARTL"). ARTL will provide an electronic alternative to the current paper process for the registration of land. Under the ARTL system of registration, solicitors and lenders will have online access to the Land Register of Scotland and will be able to create and submit electronic deeds with applications for registration and when requested by the applicant, electronic Certificates of Title may be issued. At present the 1995 Act does not provide for the use of electronic documents and communication for land and property deeds and the 1979 Act does not provide for the issue of Certificates of Title as electronic communications.

ARTL will apply to routine transactions with properties that are already registered in the Land Register, such as transfers of ownership and remortgages. The system will capture and retain a full audit trail of every action and communication made, thus ensuring that records of things done on the system will be at least as satisfactory as at present and thereby meeting the requirements of section 8(3) of the 2000 Act.

ARTL has been developed by Registers of Scotland in conjunction with key stakeholders including the Law Society of Scotland and the Council of Mortgage Lenders. It is planned to introduce the ARTL system in November 2006 and for live operation to be available throughout Scotland by April 2007.

Amendment to the 1995 Act

The 1995 Act governs the form of and means of authenticating a variety of legal documents. These are required to have a tangible form (which in practice is always paper) and to be authenticated by subscription by the person(s) granting the deed. The intention of the Order is to enable electronic documents, authenticated by digital signatures, to be created and submitted within the ARTL system. The new section 2A of the 1995 Act will enable the Keeper of the Registers of Scotland to issue directions setting the requirements for creation of a digital signature. The approach taken here is consistent with that taken in other section 8 orders.

Amendment to the 1979 Act

The amendments proposed in Article 5(1) will enable the Keeper to accept applications for registration by electronic communication in relation to ARTL.

Section 5(2) and (3) of the 1979 Act, requires that the Land and Charge Certificates which the Keeper issues on completion of a registration application must be authenticated by the seal of the register. These certificates therefore need to be in paper form and cannot be issued as electronic communications. The intention of the Order is to permit Land and Charge Certificates to be issued as electronic communications, authenticated by the Keeper, where the applicant for registration so wishes.

Consultation

Consultation has taken place on the draft order. A consultation document was issued to stakeholders including the Law Society of Scotland, the Council of Mortgage Lenders, and the Scottish Consumer Council. Those who responded to the consultation were largely content with the proposed order.

Financial Effects

The instrument has no significant financial effects on the Scottish Executive, local government or on business. Beneficial effects of the introduction of ARTL for Registers of Scotland, and potential benefits for participating solicitors and lenders (and their clients and customers) are discussed in the appended Regulatory Impact Assessment. No adverse effects have been identified.

Registers of Scotland
June 2006

REGULATORY IMPACT ASSESSMENT
THE AUTOMATED REGISTRATION OF TITLE TO LAND (ELECTRONIC COMMUNICATIONS) (SCOTLAND) ORDER 2006

1. Title of proposal

This is the Regulatory Impact Assessment of the Automated Registration of Title to Land (Electronic Communications) (Scotland) Order 2006

2. Purpose and intended effect

(i) Objective

The objective of the Order is to amend the Requirements of Writing (Scotland) Act 1995 ("the 1995 Act") and the Land Registration (Scotland) Act 1979 ("the 1979 Act") in order to permit the introduction of Automated Registration of Title to Land ("ARTL") in the Land Register of Scotland.

(ii) Background

Registers of Scotland ("RoS") proposes to introduce a system for electronic, automated registration of routine property transactions (such as transfers of ownership and remortgages) with properties which are registered in the Land Register of Scotland. Use of ARTL will be optional and will present an alternative to the current process of registering paper deeds.

(iii) Rationale

The requirements for formal validity and authentication of deeds affecting property and the regulation of the Land Registration process, are contained in the 1995 Act and the 1979 Act. The proposed Order does not represent a new regulatory intervention but will allow existing processes to be carried out by electronic communication. This is consistent with policy on the development of e-commerce.

3. Consultation

(i) Within government

Scottish Executive Justice Department and Efficient Government Delivery Group have been consulted. Her Majesty's Land Registry for England and Wales, the Northern Ireland Land Registry and Her Majesty's Revenue and Customs (Stamp Taxes) have been consulted.

(ii) Public consultation

The project to introduce ARTL has the support of key stakeholders' representative bodies including the Law Society of Scotland, the Council of Mortgage Lenders and the Scottish Consumer Council.

The draft order has been put out to public consultation. A consultation document was issued to a range of interested stakeholders and the consultation exercise was also

publicised on the RoS and Scottish Executive websites and in the Journal of the Law Society of Scotland. In total, 152 copies of the document were distributed and there were 483 downloads from the RoS website. 10 responses were received and considered. Respondents were largely content with the draft order.

4. Costs and benefits

The draft Order imposes no new regulatory burdens or penalties. Use of ARTL will be optional and no additional regulatory burden is imposed on continued usage of the existing paper registration process. The economic and practical impacts for the persons and organisations who will use ARTL are described below.

The Citizen

Members of the public involved in property transactions will continue to deal with the solicitor (or independent licensed conveyancer) conducting the transaction and their chosen lender in the same way as at present. The changes will lead to faster and more accurate registration, which benefits those involved in property transactions. It is intended that registration fees for applications processed through the ARTL system will be cheaper.

Solicitors

The development of ARTL has taken place in discussion and consultation with the legal profession through the Law Society of Scotland and bodies such as the Society of Writers to Her Majesty's Signet and the Scottish Law Agents Society. RoS has also delivered presentations on ARTL to local Solicitors' faculties and many individual law firms. The response has been positive and feedback has revealed that ARTL appeals to solicitor firms of all sizes.

Use of ARTL requires a user solicitor to have a PC with Internet access, now normal business tools for most conveyancing practitioners. The ARTL system will be free standing and not introduce any compulsion to operate case management or other in-house systems. RoS will provide digital signatures in the form of smartcards. The only cost to the user is the small cost of providing a smartcard reader.

Research on economic impact for solicitors, and in particular smaller firms, has included seeking the views of the members of the Law Society of Scotland Conveyancing Committee who confirmed that they saw no adverse impact. In addition, a telephone survey of 80 firms was conducted. This concentrated on smaller and medium sized firms and achieved a wide geographical spread. The solicitors contacted were asked to comment on the economic impact for their own businesses. Nearly all anticipated that ARTL would either deliver a small improvement or be neutral. A few saw larger benefits. Of respondents, two appeared at first to identify an adverse impact. However, on consideration their concerns in fact were general in nature about the competitive conveyancing marketplace as opposed to consequences of the introduction of ARTL.

Mortgage Lenders

A major benefit for lenders is that the changes proposed in the order will provide a choice as to whether paper Land Certificates and Charge Certificates are instructed. At present lenders routinely hold paper certificates of title for all the properties they hold loans over.

This involves maintaining large Deeds Stores, which are expensive to run. It is evident from consultation that lenders look forward to a future in which they do not handle paper deeds at all.

Registers of Scotland

Because ARTL is an automated process there will be a reduction in staff required. Staff savings will increase over time as ARTL becomes the norm for registering properties. This will enable redeployment of staff resource.

Her Majesty's Revenue and Customs (HMRC)

Where property worth £120,000 or more is transferred, Stamp Duty Land Tax (SDLT) is payable and certification by HMRC is necessary before registration. In applicable ARTL transactions, the SDLT certification and payment process is automated and combined with the registration process. This creates savings for HMRC and the joined-up approach is also welcomed by solicitors.

5. Small Firms and Micro Business Impact

The majority of conveyancing law practices are small firms. As stated, most of the small solicitor practices surveyed took the view that ARTL would either be economically neutral for their practices or deliver a small benefit. ARTL is not anticipated to have any significant implications for other small and micro businesses.

6. Competition assessment

The proposed Order is not a market regulation and does not have competition implications. It permits an option of making use of electronic communication that will be available equally to all participants in the conveyancing and lending markets.

7. Enforcement and sanctions

The proposed Order does not impose any burden and there are therefore no enforcement implications.

8. Implementation and delivery plan

Implementation and delivery will be achieved as part of RoS' Business Change Programme. Design and build of the ARTL computer system is underway and a stakeholder communication strategy in progress. A phased roll-out of ARTL is planned to commence in November 2006 and to be complete by April 2007.

9. Monitoring and review

The effectiveness of ARTL will be kept under review within RoS' business monitoring and reporting processes.

10. Summary and recommendation

ARTL proposes to make use of electronic communication to provide a cheaper, faster and more accurate land registration process. It has the support of stakeholders. To permit ARTL to be introduced and these benefits to be realised, minor technical changes to the

Requirements of Writing (Scotland) Act 1995 and to the Land Registration (Scotland) Act 1979 are required. The draft Order would make these changes. It is recommended that the draft Order be made.

Summary costs and benefits table

Option	Total benefit per annum: economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
Proceed with ARTL	Faster, cheaper and more accurate land registration E-commerce introduced to land registration; advancement of e-commerce policy Option of electronic deeds and land and charge certificates in place of paper Net savings for RoS permitting fee reductions and redeployment of staff. Potential benefits for participating solicitors and lenders Stakeholder expectations met	No net cost to any sector

12. Declaration

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

Signed …….

Date

Johann M Lamont, Deputy Minister for Communities, SEDD

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