POLICY MEMORANDUM

THE LAND REGISTRATION ETC. (SCOTLAND) ACT 2012 (AMENDMENT) ORDER 2017

SSI 2017/Draft

INTRODUCTION

This Order is made by the Scottish Ministers in exercise of the powers conferred by sections 45(7), 116(1) and 117 of the Land Registration etc. (Scotland) Act 2012 ("the Land Registration Act"), and all other powers enabling them to do so. It is subject to the affirmative procedure.

POLICY OBJECTIVES

The Order makes minor amendments which aim to improve the process for registration of title to land under the Land Registration Act.

Prescriptive claimant process

This Order contains one of two measures to streamline the prescriptive claimant process – a term introduced by section 43 of the Land Registration Act to provide a statutory framework for the acceptance of *a non domino* dispositions (where the granter of the disposition is not the owner) for registration. This is used in practice where the ownership of land is unclear. The current statutory framework provides for a double notification process which requires:

- the prescriptive claimant (the grantee in an *a non domino* disposition and applicant for registration) to notify the proprietor of the land or other appropriate person as specified in section 43(4) of the Act, with regulation 18 of the Land Register Rules etc. (Scotland) Regulations 2014[1] (SSI 2014/150 as amended) ("the Land Register Rules") requiring this to be at least 60 days before submission of the prescriptive claimant application.

- the Keeper to notify the same relevant person(s) in terms of section 45(1) of the Land Registration Act, with section 45(5) allowing that person(s) 60 days in which to object.

No legislative provision allows either of these 60 day clocks to stop ticking in uncontested cases – e.g. where the relevant person confirms in writing that the person does *not* object to the Prescriptive Claimant application.

This results in an unduly cumbersome notification process in some cases, with a 120 day wait for the prescriptive claimant. Article 2 of the Order reduces the 60 day period allowed to

[1] https://www.legislation.gov.uk/ssi/2014/150/contents/made.

object to a *Keeper's* notification to 7 days, but only in the limited instance where a relevant person has *already* provided written confirmation of non-objection as a result of the *applicant's* notification. This 7 day provision allows a previous non-objector to change their mind following a *Keeper's* notification.

This will operate together with regulation 8 of the Registers of Scotland (Digital Registration etc.) (Scotland) Rules 2017 (SSI 2017/Draft) which dispenses with the 60 day non-submission period where written confirmation of non-objection has been received from the relevant person(s) notified by the *applicant* and written evidence of this is received by the Keeper.

Article 2 of the Order ensures that the period for objection following the *Keeper's* notification applies separately to each person who may have to be notified by the Keeper under section 45(1). Where written confirmation of non-objection to an *applicant's* notification has already been received by the Keeper, the shorter 7 day notice period for objection following the Keeper's notification will apply only in relation to the person who previously confirmed non-objection.

Where title sheets could not be known

The Order also uses the ancillary power in the Land Registration Act to create a narrow exception from the requirement in the registration of a deed that it narrates the title number of each title sheet to which it relates where the title number could not have been known to the granter. The requirement currently has the effect, in certain circumstances, of imposing a requirement on applicants which is impossible to meet.

This can in particular occur where the deed is an extract of a deed recorded in the Books of Council and Session (e.g. for variations and assignations of leases). This change is made to the Land Registration Act in consequence of provisions of that Act which provide for registration applications to be made and title to be entered in the land register in respect of registrable deeds within the meaning of the Act (e.g. sections 21(1), (2) and 49 of the Act).

CONSULTATION

The two amendments contained in this Order address practical difficulties which have arisen in the context of the 2012 Act and as such no consultation has been undertaken. These amendments simultaneously streamline registration processes and make these processes less onerous for prospective applicants.

IMPACT ASSESSMENTS

No Business and Regulatory Impact Assessment has been prepared for this Order as no financial effect or impact on the private, voluntary or public sector is foreseen.

No Equality Impact Assessment or Environmental Assessment has been prepared for these Regulations as they will not impact on either environmental or equalities issues.

Registers of Scotland on behalf of the Scottish Government

October 2017