POLICY NOTE

THE LAND REGISTRATION ETC. (SCOTLAND) ACT 2012 (INCIDENTAL, CONSEQUENTIAL AND TRANSITIONAL) ORDER 2014

SSI 2014/XXX

The powers to make these Regulations are conferred by sections 64(1), 116(1) and 117(1) of the Land Registration etc. (Scotland) Act 2012 ("the 2012 Act") and section 81(1) of the Long Leases (Scotland) Act 2012. This instrument is laid before the Scottish Parliament under section 116(3)(e) and (4)(b) of that Act and is subject to the affirmative procedure.

Policy objective

The Act makes provision for land registration in Scotland and provides a new legislative basis for the Land Register.

The purpose of this draft Order is to make a number of incidental and consequential provisions, including amendments of the 2012 Act itself, considered appropriate for the purposes of, in consequence of, and for giving full effect to the Act. It also puts in place further transitional arrangements for the purposes of the 2012 Act.

Policy background

Prescription and Limitation (Scotland) Act 1973 (Article 2 of the Order)
Amendments to Schedule 1 to the Prescription and Limitation (Scotland) Act 1973 by both the 2012 Act and the Long Leases (Scotland) Act 2012 added certain obligations to the list that prescribe after 5 years. As both Acts were in the Parliament at the same time, a numbering issue arose in bringing the amendments into line. This Order makes minor consequential amendments to correct the numbering.

Requirements of Writing (Scotland) Act 1995 (Article 3 of the Order))
Part 10 of the Act includes amendments to the Requirements of Writing (Scotland) Act 1995 to provide for electronic documents and signatures. One of the amendments inserts a new definition of electronic document. Therefore an existing definition in section 1(2A) and (2B)[1] is removed as a consequential repeal.

Advance notices for registered leases (Article 4 of the Order)
Part 4 of the 2012 Act provides for advance notices to cover the "gap risk"[2] prior to registration of title in conveyancing. In that context, section 56(1)(d) of that Act sets out requirements for the related intended deeds, which relate to (1) registered leases or plots of land and (2) unregistered leases and plots of land. An advance notice accepted by the Keeper is either entered in the application record in the Land Register or recorded in the Register of

[1] Currently relevant to the Automated Title to Land (ARTL) system for electronic registration.
[2] The "gap risk" is the period of time between the delivery of a deed at settlement and registration of that deed in the Land Register. In that period, the deed is at risk of a competing deed entering the register first or an entry being made in the Register of Inhibitions that may affect the validity of the deed.

Sasines. The requirement to enter the deed in the application record only refers to "a registered plot of land" and not a registered lease. To allow an advance notice relating to a registered lease to be recorded in the Land Register, section 57 is amended using section 64(1) of the Act to modify the application of Part 4 in relation to registered leases.

Shared and sharing leases (Article 5 of the Order)
Sections 17 to 19 of the 2012 Act provide for the creation of title sheets for "shared plots" of land (owned in common by owners of other plots) and "sharing plots" (the plots whose owners own the shares in a common shared plot). Section 18(2) sets out information the Keeper is to enter in the title sheets, as the shared plot and sharing plot cross-refer to each other. Schedule 1 to the Act makes provision for registered leases tenanted in common similar to the provision made by sections 17 to 19 for plots of land owned in common (as stated in section 20). To create the same effect for shared leases as section 18(2) creates for shared plots, amendments to paragraphs 7(b) and (c) of schedule 1 accordingly correct an error in cross-references to shared and sharing plots incidental to the scheme of the Act.

Transitional provisions (Article 6 of the Order)

- common property
Under the 2012 Act, where a plot of land owned in common is registered in the Land Register, the effect of registration is that the plot of land (comprising all of the shares) is registered on registration of the first share, notwithstanding that the titles of the other shares still remain in the Register of Sasines. Registration of all shares in a plot at the current early stage of completion of the Land Register is problematic for members of the public and lenders—it would be difficult and costly to collect all of the information from the Register of Sasines; also creating difficulties for heritable securities for unregistered properties with a share in the common area. This transitional problem will come to an end when the Register of Sasines is closed by an order under section 48 of the Act. Therefore, transitional provisions which have the effect that only the registered share or right in the plot of land is transferred to the Land Register operate to smooth transition from the 1979 Act regime to the 2012 Act regime.

- assignations of registered leases
Under section 24 of the 2012 Act, where certain circumstances apply, e.g. a grant of lease, assignation of an unregistered lease, sublease, etc., and the subjects of those deeds are unregistered land, the registration of the deed triggers registration of the plot of land. This is to increase coverage of the land in the Land Register. An exception was made in respect of assignation of a registered lease to allow the Keeper to carry out "business as usual" processes for such an application. However, making an exception for such an application means it cannot comply with the specific application conditions in section 26. This transitional problem will come to an end when the Register of Sasines is closed by order. Therefore, such an application needs to have section 26 applied to it for a transitional period.

Register of Sasines (Application Procedure) Rules 2004 (Article 7 of the Order)
The Register of Sasines (Application Procedure) Rules 2004 (S.S.I. 2004/318) prescribe the application form for recording a deed in the Register of Sasines. Under section 57(1) of the 2012 Act, a person may apply for an advance notice to protect an intended deed to be registered. Where the intended deed relates to an unregistered lease or unregistered plot of land, the advance notice must be recorded in the Register of Sasines to comply with the requirement to record the advance notice in that register under section 57(4)(b). Therefore,

consequential amendment is made to those Rules to insert additional forms to record an advance notice and the discharge of a recorded advance notice.

Crofting Register (Transfer of Ownership) (Scotland) Regulations 2012 (Article 8 of the Order)
A number of provisions of the Crofting Reform (Scotland) Act 2012 (S.S.I. 2012/297) require registration of a crofting interest where there is a transfer of ownership of the croft or the land on which it is situated. Those Regulations make provision as to when ownership is treated as transferred for those purposes. Regulations 2(a) and 3(a) of those Regulations refer to the registration of the transfer of an interest in land, consistent with the terms of the Land Registration (Scotland) Act 1979 but require to be made consistent with the 2012 Act, as that Act does not refer to "interests in land" but instead to "plots of land". Additionally, section 48 of the 2012 Act effectively closes the Register of Sasines to transfer deeds; therefore, regulations 2(b) and 3(b) can be omitted. Accordingly the Regulations are amended by consequential provisions to amend the terminology.

Consultation and Impact Assessments

This Order makes provision which is incidental, consequential or transitional to the provisions and policy aims of the 2012 Act. Therefore, no additional consultation has been undertaken in relation to the Order. A full public consultation was carried out on a draft Land Registration (Scotland) Bill in 2010 prior to the Land Registration (Scotland) Bill's Parliamentary passage:
http://www.scotland.gov.uk/Publications/2010/09/landregistrationbill.
There has also been a consultation in 2013 on aspects of implementing the 2012 Act:
http://www.ros.gov.uk/consultation/consultation_lr_act.html

An Equality Impact Assessment (EQIA) has not been considered necessary for this Order as there are no direct impacts on any of the relevant equalities groups. An EQIA was carried before the introduction of the Bill:
http://www.ros.gov.uk/lrbillconsultation/consultation.html

Financial effects

A partial Business and Regulatory Impact Assessment (BRIA) was carried out for the 2012 Act and is available on the Scottish Government's website at:
http://www.scotland.gov.uk/Topics/Business-Industry/support/betterregulation/partial-assessments/full/2011/LandRegistrationBill

No BRIA has been prepared for this Order as no financial effect or impact on the private, voluntary or public sector is foreseen.

Registers of Scotland on behalf of the Scottish Government
May 2014