POLICY NOTE

THE LAND REGISTER RULES ETC. (SCOTLAND) REGULATIONS 2014

SSI 2014/150

These Regulations are made in exercise of the powers conferred by sections 43(7), 56(4), 62(2), 115 and 116(1) of the Land Registration etc. (Scotland) Act 2012 ("the 2012 Act"). They are subject to the negative procedure.

Policy Objectives

The primary purpose of the 2012 Act is to provide a new legislative base for the Land Register and to reform and restate the law on the registration of rights to land. The Act repeals much of the Land Registration (Scotland) Act 1979 ("the 1979 Act") and the Land Registration (Scotland) Rules 2006 and puts in place a new scheme of land registration.

The Regulations form part of a suite of subordinate legislation relating to the implementation of the 2012 Act. The Regulations make rules for the Land Register of Scotland ("the register"): regulating the making and keeping up of the register, regulating the procedure in relation to applications for registration, prescribing forms to be used in relation to the register, requiring the Keeper of the Registers of Scotland ("the Keeper") to enter in the title sheet record certain information, relating to other matters which the 2012 Act provides may or must be provided for and concerning other matters which are necessary or expedient to give full effect to the purposes of the 2012 Act.

Advance Notices

The 2012 Act sets out a new scheme of advance notices, which will provide protection for the grantee of a deed during the time between taking delivery of the deed and registration. In order to keep the process simple and efficient a form has been developed that will comprise both the application form and advance notice in one document.

The policy is that an advance notice relating to the whole of a registered plot, or a discharge of an advance notice, should be sent to the Keeper electronically where possible, but there are exceptions where this is not possible. An advance notice relating to part of a registered plot should be completed electronically before being printed on paper and signed by the applicant or their agent. A plan sufficient to satisfy the Keeper that the boundaries of that part of the plot can be delineated on the cadastral map must also be submitted. The Keeper will send an electronic notification to the applicant when the advance notice has been entered in the application record, but there are exceptions in certain circumstances.

These Regulations prescribe the application forms to be used and the procedures to be followed in order for an advance notice to be accepted by the Keeper. This includes the description to be used in an advance notice over an unregistered plot

of land or lease under section 56(1)(e). The Regulations also prescribe that the period after which the Keeper must remove an advance notice delineation from the cadastral map (where the intended deed is not registered) is 35 days, which is consistent with the protected period after which the advance notice will automatically be removed from the application record.

Registration

In order to reduce the number of applications for registration that are rejected because the wrong application form has been used, and to make the application process more straightforward, these Regulations prescribe a single, universal form to apply for registration of a deed.

Section 113(1) of the 2012 Act clarifies that "land" is to cover the full extent of the seabed in Scottish territorial waters. In order to assist applicants when preparing deeds for registration relating to plots of land comprising seabed, these Regulations make further provision as to what such deeds must contain in order to meet the conditions of registration.

The Keeper may have to consider evidence in connection with certain matters relating to the register. To ensure that the evidence is sufficiently reliable, as under current rules any supporting affidavits must be made before a notary public.

Under sections 2(d) and 15 of the 2012 Act the application record (of all applications for registration in the Land Register and extant advance notices) is given a statutory basis for the first time. These Regulations clarify that the Keeper will allocate an application number and, where appropriate, a provisional title number when entering an application in the application record. There is no duty on the Keeper under the 2012 Act to acknowledge that an application for registration has been entered in the application record[1]. However, applicants place great reliance on this and the Keeper intends to continue to acknowledge applications by email. This will ensure an efficient paperless process. The Regulations also set out the information that an acknowledgement will contain.

Part 1 of the 2012 Act sets out information that must be contained in a title sheet. In order to provide greater continuity between existing 1979 Act title sheets and those created under the 2012 Act, these Regulations prescribe that certain other information will continue to be included. In order to ensure that certain other useful information is available on the face of the title sheet, these Regulations provide that the property section will also contain the area measurement of the cadastral unit (where it is greater than 0.5 hectare) and the coordinates representing the boundaries in relation to plots of land comprising seabed.

Under section 34(1)(b) of the 2012 Act the Keeper may consent to the applicant substituting or amending their application while it is pending for registration, subject to the application first meeting the acceptance criteria in the 2012 Act. Where consent is given, these Regulations prescribe that the period in which an applicant must substitute or amend the application is 42 days. This period reflects

[1] By contrast, section 40 of the Act provides for notification of acceptance, rejection or withdrawal.

business practices common to solicitors firms who submit the great majority of applications for registration.

A cadastral unit is a unit which represents a single registered plot of land on the cadastral map. Under section 13(2)(a) of the 2012 Act the Keeper has the discretion to combine cadastral units. A date of registration must be disclosed in the title sheet, and these Regulations provide that where cadastral units are combined the date of registration to be entered in the resultant title sheet will be the earliest date of registration of those plots (where the dates are different).

Part 6 of the 2012 Act introduces a new statutory system of caveats to warn third parties of ongoing litigation in relation to a title sheet. Under section 76 the Keeper may vary the warranty originally given upon registration. These Regulations prescribe the respective forms to be used when making an application in relation to a caveat, and for requesting the Keeper to vary warranty.

The Keeper's duty to rectify the register under section 80 of the 2012 Act is engaged where she becomes aware of a manifest inaccuracy in a title sheet. "Inaccuracy" is defined in section 65 and includes a misstatement of the position in law or in fact, for example, misstating the terms of the deed that was registered in the resultant title sheet. Whilst minor typographical errors do not constitute inaccuracies that can be rectified, these Regulations provide that the Keeper may correct such errors.

Prescriptive Claimants

The prescriptive claimant provisions of the 2012 Act provide a statutory framework for the acceptance of *a non domino* dispositions for registration. In order for the disposition to be treated as valid, the applicant must show that they have notified the proprietor of the land or other appropriate person as specified in section 43(4). In order to ensure that this notification is sufficient in its terms these Regulations prescribe the form of notification to be used. To give the person notified adequate time to consider their position, these Regulations also prescribe that notification must be made at least 60 days prior to submitting the prescriptive claimant application.

Consultation

On behalf of the Scottish Ministers the Keeper carried out a public consultation on the implementation of the 2012 Act, which took place between 16th September and 9th December 2013. 54 responses were received and they have been taken into account when finalising this instrument. Where respondents gave permission for their responses to be made public, these were published on the Registers of Scotland and Scottish Government websites. The consultation, and a report on the consultation, are available on the Registers of Scotland website[2].

[2] http://www.ros.gov.uk/consultation/consultation_lr_act.html

Impact Assessments

No Business and Regulatory Impact Assessment (BRIA) has been prepared for this Order as no significant financial effect or impact on the private, voluntary or public sector is foreseen. A BRIA accompanied the Land Registration etc. (Scotland) Bill on introduction to the Scottish Parliament.

A pre-screening exercise was carried out and established that the Regulations will have no impact on equality or environmental issues.

Registers of Scotland on behalf of the Scottish Government
May 2014