POLICY NOTE

THE REGISTERS OF SCOTLAND (INFORMATION AND ACCESS, ETC.) MISCELLANEOUS AMENDMENT ORDER 2022

SSI 2022/232

This Order is made by the Scottish Ministers in exercise of the powers conferred by sections 107(1) and 117(1) of the Land Registration etc. (Scotland) Act 2012 ("the 2012 Act"), and all other powers enabling them to do so. It is subject to the affirmative procedure.

Summary

The Order makes complementary provisions to those contained in Registers of Scotland (Digital Registration etc.) Regulations 2022 and the Coronavirus (Recovery and Reform)(Scotland) Bill by:

- Setting out the basis on which the Keeper of the Registers of Scotland must issue extracts of documents registered in the Books of Council and Session, and the default form which these extracts should take; and
- Clarifying that extracts of deeds registered in the Register of Sasines can be issued in electronic form on request.

The Order also makes a number of clarificatory amendments to the Writs Execution (Scotland) Act 1877 in support of the practice of issuing electronic extracts, and to remove reference to legislation that is no longer in force.

POLICY OBJECTIVES

As part of Registers of Scotland's response to the Covid pandemic, a number of registers under the management and control of the Keeper of the Registers of Scotland (including the Land Register and Register of Sasines) have been enabled to allow registration to proceed on the basis of copies of traditional documents transmitted to the Keeper electronically (so-called 'digital submission').

The legislative basis for digital submission was introduced in paragraphs 11 to 14 of schedule 7 of the Coronavirus (Scotland) Act 2020 and paragraph 3 of schedule 4 of the Coronavirus (Scotland) (No. 2) Act 2020. Following positive stakeholder feedback and public consultation, these provisions were included in the Coronavirus (Recovery and Reform)(Scotland) Bill and, if enacted, will be placed on a permanent statutory footing.

However, the Register of Deeds and Probative Writs in the Books of Council and Session ('BCS') was not included in the original suite of emergency digital submission legislation as the registration of copies of deeds was seen as inconsistent with the primary function of this register, namely preservation of documents.

Instead, following the growing use of electronic signatures prompted by the Covid pandemic, and a strong positive response to public consultation on this issue, regulation 7 of the

Registers of Scotland (Digital Registration etc.) Regulations 2022 inserted a new regulation 8 in the Electronic Documents (Scotland) Regulations 2014. This will open the BCS to electronic documents authenticated by way of a qualified electronic signature from 1st October 2022. From that date, both paper and electronic documents will be capable of registration in the BCS.

This Order complements the existing 2022 Regulations, by setting out the basis on which the Keeper must issue BCS extracts, and the default form these extracts should take. Where an electronic document is registered, the default form of extract issued will be an electronic document. Where a paper document is registered, the default form of extract will be a paper document. In both cases, paper/electronic extracts will also be available on request.

In addition, this Order also clarifies that extracts of deeds registered in the Register of Sasines can be issued as electronic documents where the applicant requests. This brings the Register of Sasines into line with the Land Register provision at section 104(7) of the Land Registration etc. (Scotland) Act 2012.

Finally, this Order makes a number of clarificatory amendments to the Writs Execution (Scotland) Act 1877 to reflect that BCS and Register of Sasine extracts issued by Registers of Scotland, and BCS extracts issued by National Records of Scotland, can be issued in electronic form, and to remove reference to legislation which is no longer in force.

CONSULTATION

On behalf of Scottish Ministers, as noted above, the Keeper carried out a public consultation on Digital Submission (including the provision of electronic extracts, and the opening of the BCS to electronic documents) between 22nd December 2020 and 1st February 2021. 223 written responses were received and they have been taken into account when finalising this instrument.

The consultation, and a report on the consultation, are available on the RoS website:

https://www.ros.gov.uk/about/publications/consultations-and-surveys/2020/digital-submissions-2020

IMPACT ASSESSMENTS

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

No other impact assessments have been prepared in respect of this Order. Screening exercises/declarations setting out the basis for this approach are published on the Registers of Scotland website.

Impact assessments for the Registers of Scotland (Digital Registration, etc.) Regulations 2022, to which this Order relates, were carried out and are published on the Registers of Scotland website.

Registers of Scotland on behalf of the Scottish Government