

Draft Order laid before the Scottish Parliament under section 116(3)(e) and (4)(b) of the Land Registration etc. (Scotland) Act 2012 and section 81(3) of the Long Leases (Scotland) Act 2012, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2014 No.

LAND REGISTRATION

The Land Registration etc. (Scotland) Act 2012
(Incidental, Consequential and Transitional) Order 2014

Made - - - - 2014
Coming into force - - 8th December 2014

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 64(1), 116(1) and 117(1) of the Land Registration etc. (Scotland) Act 2012⁽¹⁾ (“the Land Registration Act”), section 81(1) of the Long Leases (Scotland) Act 2012⁽²⁾ (“the Long Leases Act”) and all other powers enabling them to do so.

In accordance with section 64(2) of the Land Registration Act, the Scottish Ministers have consulted the Keeper of the Registers of Scotland.

In accordance with section 116(3)(e) and (4)(b) of the Land Registration Act and section 81(3) of the Long Leases Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Land Registration etc. (Scotland) Act 2012 (Incidental, Consequential and Transitional) Order 2014.

(2) It comes into force on 8th December 2014.

(3) In this Order, “the Land Registration Act” means the Land Registration etc. (Scotland) Act 2012.

(1) 2012 asp 5 (“the 2012 Act”).
(2) 2012 asp 9.

Primary legislation

Amendment of the Prescription and Limitation (Scotland) Act 1973 and consequential repeal

2.—(1) In Schedule 1 to the Prescription and Limitation (Scotland) Act 1973(3) (obligations which, notwithstanding paragraph 1 of the Schedule, are not affected by prescriptive periods of 5 years under section 6 of that Act), in paragraph 2(e), for “to (aca)”(4) substitute “to (ae)”.

(2) In paragraph 18 of schedule 5 to the Land Registration Act (minor and consequential modification of the Prescription and Limitation (Scotland) Act 1973)—

- (a) in sub-paragraph (6), for “sub-paragraph (ac)” substitute “sub-paragraph (aca)”; and
- (b) sub-paragraph (7)(a) is repealed.

Amendment of the Requirements of Writing (Scotland) Act 1995

3. In the Requirements of Writing (Scotland) Act 1995(5), in section 1 (writing required for certain contracts, obligations, trusts, conveyances and wills), subsections (2A) and (2B) are repealed.

Land Registration Act - advance notices for deeds in relation to registered leases

4. The application of Part 4 of the Land Registration Act is modified in relation to registered leases by the insertion in section 57(4)(a)(application for advance notice) after “relates to”, of “a registered lease or”(6).

Land Registration Act - shared and sharing leases

5. In schedule 1 to the Land Registration Act (registered leases tenanted in common)—

- (a) in paragraph 7(b), for “that” substitute “the shared lease”; and
- (b) in paragraph 7(c), for “the shared lease title sheet” substitute “that title sheet”.

Land Registration Act – transitional provisions

6. In schedule 4 (transitional provisions) of the Land Registration Act, after paragraph 11 insert—

“Common areas: Sasine arrangements

11A. For the period beginning with the designated day and ending with the day before the date prescribed by an order under section 48(3)—

- (a) section 7(1)(b) applies only to shares of proprietors whose right is registered,
- (b) in the case of ownership in common, section 8(1) applies only to heritable securities granted by a proprietor whose right is registered,

(3) 1973 c.52. Paragraph 2(e) is prospectively amended by paragraph 18(7)(a) of schedule 5 to the 2012 Act and amended by section 60(b) of the Long Leases (Scotland) Act 2012 (asp 9).

(4) Inserted by the Long Leases (Scotland) Act 2012 (asp 9), section 60(b).

(5) 1995 c.7, amended by the Petroleum Act 1998 (c.17), Schedule 5, Part 1, paragraph 1, the Scotland Act 1998 (c.46), Schedule 8, paragraph 31, S.I. 1999/1820, Schedule 2, Part 1, paragraph 118, the Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), schedule 12, Part 1, paragraph 58, S.I. 2000/2040, Schedule, Part 1, paragraph 17, the Housing (Scotland) Act 2001 (asp 10), schedule 10, paragraph 22, S.S.I. 2001/128, Schedule 4, paragraphs 4 and 5, the Title Conditions (Scotland) Act 2003 (asp 9), schedule 15, paragraph 1, S.S.I. 2006/491, article 3, the Companies Act 2006 (c.46), Schedule 16, paragraph 1, the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), sections 48(1) and 222(2) and (3), S.I. 2008/948, Schedule 1, Part 2, paragraph 199, S.I. 2009/1941, Schedule 1, paragraph 151 and the Land Registration etc. (Scotland) Act 2012 (asp 5) (“the 2012 Act”), sections 96, 97 and 98 and schedule 3. Sections 9B(1)(b) and (2)(c), 9C(2) and 9E(1)(d) are inserted by section 97 of the 2012 Act for limited purposes by, and subject to transitional provision for Automated Registration of Title to Land (“ARTL”) documents in article 3(2) of, S.S.I. 2014/41.

(6) See section 52 of the 2012 Act for the registration of leases in the Land Register.

- (c) section 17(3)(b) applies to such of the plots of land mentioned in section 17(1)(a) as are registered,
- (d) section 27(2) applies also to a person whose right in the plot is registered only as proprietor of a share in the plot, and
- (e) section 48(1)(d) applies as if a registered plot of land means a registered share of a plot of land owned in common.

Assignment of registered leases: Sasine arrangements

11B. For the period beginning with the designated day and ending with the day before the date prescribed by an order under section 48(3), for an application under section 21(1) to register an assignment of a registered lease where the subjects of the lease consist of or form part of an unregistered plot of land, the conditions in section 26 apply with the effect that—

- (a) in subsection (1)(b), “plot of land” is to be read as “lease”,
- (b) in subsection (1)(c), “title sheet” is to be read as “lease title sheet”,
- (c) subsections (1)(d), (3), (4) and (5) do not apply, and
- (d) in subsection (2), “plot” in both places it occurs is to be read as “lease”.

Secondary legislation

Amendment of the Register of Sasines (Application Procedure) Rules 2004

7.—(1) The Register of Sasines (Application Procedure) Rules 2004(7) are amended as follows.

(2) For rule 2 (application form) substitute—

“2. An application for the recording in the Register of Sasines of—

- (a) a deed is made on the form set out in Part 1;
- (b) an advance notice is made on the form set out in Part 2; and
- (c) a discharge of an advance notice is made on the form set out in Part 3,

of the Schedule.”

(3) In rule 5 (information as regards recording fee), for “deed under section 25 of the Land Registers (Scotland) Act 1868(8)” substitute “deed, advance notice or discharge of an advance notice under section 110 of the Land Registration etc. (Scotland) Act 2012”.

(4) In rule 6 (acceptance of a deed for recording), on both occasions after “deed” occurs, insert “, advance notice or discharge of an advance notice”.

(5) In the Schedule(9)—

- (a) before the form set out, insert “Part 1”;
- (b) after that form, insert the forms set out in the Schedule to these Regulations; and
- (c) the heading to the Schedule becomes “Form of application for recording a deed, advance notice or discharge of advance notice in the Register of Sasines”.

(7) S.S.I. 2004/318, amended by S.S.I. 2006/568.

(8) 1868 c.64; section 25 will be repealed from the designated day on 8th December 2014 by paragraph 5 of schedule 5 to the 2012 Act.

(9) Substituted by S.S.I. 2006/568.

Amendment of the Crofting Register (Transfer of Ownership) (Scotland) Regulations 2012

8.—(1) The Crofting Register (Transfer of Ownership) (Scotland) Regulations 2012⁽¹⁰⁾ are amended as follows.

- (2) In regulation 2 (transfer of ownership of owner-occupied croft)—
 - (a) for paragraph (a) substitute—
 - “(a) on the registration in the Land Register of Scotland of a deed transferring—
 - (i) an unregistered; or
 - (ii) a registered,plot of land on which the croft is situated;”;
 - (b) omit paragraph (b).
- (3) In regulation 3 (transfer of ownership of land on which croft or common grazing is situated)—
 - (a) for paragraph (a) substitute—
 - “(a) on the registration in the Land Register of Scotland of a deed transferring—
 - (i) an unregistered; or
 - (ii) a registered,plot of land on which the croft or common grazing is situated;”;
 - (b) omit paragraph (b).

St Andrew’s House
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

SCHEDULE

Article 7(5)(b)

Part 2

Land Registration etc. (Scotland) Act 2012

Form of application for recording an Advance Notice for First Registration

In accordance with section 56(1) of the Land Registration etc. (Scotland) Act 2012 an advance notice is a notice stating that a person (the 'Granter') intends to grant a deed ('Intended Deed') to another person (the 'Grantee').

Agent Details

Agent's reference

Agent's telephone number

Agent's email address

Agent's name and address

Payment Details

FAS Number

Payment method

Deed Details

Intended deed

County

Subjects

Whole subjects

Part of subjects

(Please note that an executed plan requires to be appended to the Advance Notice)

Search Sheet number (if known)

Description of subjects affected by protected deed

(Please note the description must be in accordance with the Land Register of Scotland etc. (Rules) Regulations 2014)

Granter Details

Individual

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument:
The Land Registration etc. (Scotland) Act 2012 (Incidental, Consequential and Transitional) Order 2014 No. 190

Prefix

Forename

Surname

Property name

Property number

Street name

Town

Postcode

Country

Non-natural person

Prefix

Name

Allocated number (if any, e.g. company number)

Property name

Property number

Street name

Town

Postcode

Country

Grantee Details

Individual

Prefix

Forename

Surname

Property name

Property number

Street name

Town

Postcode

Country

Non-natural person

Prefix

Name

Allocated number (if any, e.g. company number)

Property name

Property number

Street name

Town

Postcode

Country

Applicant Statement and Declarations

I/We apply for an advance notice in terms of section 57 of the Land Registration etc. (Scotland) Act 2012 in respect of a registrable deed which I/we intend to grant. By making such application I/we confirm that (i) I/we may validly grant such a deed (or) (ii) I/we has the consent of a person who may validly do so, in accordance with section 57(2)(a) or (b) respectively, of the Land Registration etc. (Scotland) Act 2012.

I/We apply for recording of the aforementioned notice to which this application relates in the County/ies and on behalf of the Granter(s) specified above.

I/We certify that the information supplied on this Form is complete and correct to the best of my/our knowledge and belief.

Signature

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Part 3

Land Registration etc. (Scotland) Act 2012

Form of application for recording a Discharge of an Advance Notice in the Register of Sasines

Agent Details

Agent's reference

Agent's telephone number

Agent's email address

Agent's name and address

Payment Details

FAS Number

Payment method

Deed Details

Recording date of advance notice to be discharged

Intended deed

County

Subjects

Description of subjects

Search Sheet number (if known)

Grantor Details

Individual

Prefix

Forename

Surname

Property name

Property number

Street name

Town

Postcode

Country

Non-natural person

Prefix

Name

Allocated number (if any, e.g. company number)

Property name

Property number

Street name

Town

Postcode

Country

Grantee Details

Individual

Prefix

Forename

Surname

Property name

Property number

Street name

Town

Postcode

Country

Non-natural person

Prefix

Name

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: The Land Registration etc. (Scotland) Act 2012 (Incidental, Consequential and Transitional) Order 2014 No. 190

Allocated number (if any, e.g. company number)

Property name

Property number

Street name

Town

Postcode

Country

Applicant Statement and Declarations

I/We hereby certify that the person to whom the intended deed would be granted consents to this application to discharge the advance notice relating to that deed in accordance with section 63(3)(a) of the Land Registration etc. (Scotland) Act 2012.

I/We certify that the information supplied on this Form is complete and correct to the best of my/our knowledge and belief.

Signature

Date

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision for the purposes of the Land Registration etc. (Scotland) Act 2012 (“the 2012 Act”).

Article 2 amends the 5-year negative prescriptive period for obligations relating to land in the Prescription and Limitation (Scotland) Act 1973, with consequential repeal in schedule 5 to the 2012 Act, for the purposes of, in consequence of, or for giving full effect to the provisions on compensation in the 2012 Act and in connection with the Long Leases (Scotland) Act 2012.

Article 3 repeals section 1(2A) and (2B) of the Requirements of Writing (Scotland) Act 1995 to remove provisions relating to the registration of electronic documents in the Automated Registration of Title to Land system operated by the Keeper of the Registers of Scotland, in consequence of their replacement by section 99 of the 2012 Act (and other provisions of Part 10 of the 2012 Act).

Article 4 modifies the procedure to make advance notices for leases registered in the Land Register of Scotland registrable in the land register, in accordance with the power in section 64 of the 2012 Act to modify the application of Part 4 in relation to specified deeds.

Article 5 makes a minor correction to the 2012 Act to clarify the entries in the title sheets for shared and sharing leases, in line with the provision for shared and sharing plots in sections 18 and 20 of the 2012 Act.

Article 6 makes provision transitional upon the closing to new deeds of the Register of Sasines. They provide firstly for the treatment of land owned in common where the plot is registered yet some of the rights of the proprietors are not registered; and secondly for the registration of an assignation of a registered lease where the subjects of the lease are not registered.

Article 7 and the Schedule make consequential amendments to the Register of Sasines (Application Procedure) Rules 2004 to update those rules for the 2012 Act and insert provisions for application forms for advance notices and discharges of advance notices.

Article 8 makes consequential amendments to the Crofting Register (Transfer of Ownership) (Scotland) Regulations 2012 to make the terms used to describe a transfer to land registered in the Land Register consistent with the 2012 Act and to take account of the operation of section 48 of that Act.