

## **Automated Registration of Titles to Land (“ARTL”) Legal status of electronic documents and digital signatures.**

ARTL is a web-based system that will allow solicitors and lenders to submit applications for registration relating to properties on the Land Register on-line using electronic deeds validated by a digital signature. Following registration applicants will be given the option of receiving their Land Certificate and Charge Certificate in electronic form.

### ***Current law***

In Scotland the law presently requires that all conveyancing deeds, including standard securities and discharges, must be in paper format and be signed and witnessed by handwritten signatures. These requirements are set by the Requirements of Writing (Scotland) Act 1995 (“the 1995 Act”). The law as it stands does not permit electronic deeds or use of digital signatures to authenticate deeds.

It is not just conveyancing deeds that have to be in paper format. Land Certificates and Charge Certificates currently must be issued by the Keeper in paper format. This requirement is set by the Land Registration (Scotland) Act 1979 (“the 1979 Act”), which stipulates that certificates are to be sealed with the seal of the Register.

The terms of the existing legislation thus present barriers to electronic documents both in respect of format and means of authentication of deeds and in relation to Registers of Scotland (“RoS”) ability to issue electronic Certificates.

### ***Proposed legislation***

RoS is addressing this by seeking an Order under Section 8 of the Electronic Communications Act 2000 (“the 2000 Act”). Section 8 allows Ministers to amend primary legislation by order to facilitate the use of electronic communication. A copy of the draft Order as already consulted upon is attached as Annex B.

The aims of the Order as regards the 1995 Act are:

- ◆ To enable electronic documents created within ARTL to be valid conveyancing deeds;
- ◆ To enable digital signature to be a valid means of authenticating ARTL electronic documents; and

- ◆ To confer on such digitally signed electronic documents the same legal status as is accorded to paper deeds which have been signed in ink by the grantor and witnesses.

Not all types of electronic signature are sufficiently robust for use on land deeds. The Order contains provisions to ensure that only highly secure types of electronic signature will be permissible. In order to keep the legislation technology neutral and future proof, the Order proposes to delegate the setting and any necessary updating of technical standards to RoS. In practice, at least until an effective market in electronic signatures develops, RoS will provide digital signatures for use in ARTL.

The aims of the order as regards the 1979 Act are:

- To permit RoS to issue either paper or electronic certificates at the option of the applicant for registration. In the case of standard securities, the applicant will always be the lender.
- To disapply the requirement for sealing and permit that electronic certificates can be authenticated by electronic means (for example by the Keeper's digital signature.)

This change will not just affect registrations under ARTL. The Order will allow for a choice to be made to receive an electronic certificate in any Land Register application, whether made as at present on paper or via ARTL in electronic form.

Changes to the Land Registration (Scotland) Rules 1980 are also intended. The Rule which currently requires Land and Charge Certificates to be resubmitted to RoS with the next registration application will be revoked. This will mean that storage of these certificates is no longer forced by the registration process and instead becomes a matter of choice for proprietors and lenders.

If a certificate is not kept, an evidentially valid Office Copy can be obtained from the register at a later date if this is needed, for example in the event of a lender instigating possession proceedings.

### **Summary**

The proposed amending legislation will ensure that all parties may rely upon electronic documents ("e-docs") and digital signatures within ARTL in the same way as they currently do upon paper deeds signed by handwritten signature.

The protections given and main changes made by the draft Order are as shown in Annex A.

## ANNEX A

<b>Article of Order</b>	<b>Re.1995 Act section</b>	<b>Effect of change</b>
3(1) &(2)	1(2)	Excepts electronic deed from requirement for paper writing
3(7)(a)(iii)	12	Excludes insecure approaches to electronic signature
3(7)(a)(iv)	12	Limits definition of electronic document to ARTL
3(3)	1(3)	Applies personal bar provisions to electronic deeds
3(4)	new 2A	Adds new section 2A which provides: <ul style="list-style-type: none"> <li>• e-docs valid as regards formalities of execution if authenticated,</li> <li>• e-docs authenticated by digital signature of granter according to RoS directions and certified</li> <li>• digital signature to be certified in accordance with section 7 2000Act</li> </ul>
3(4)	new 2C	e-docs which are valid in respect of formalities of execution to have same effect as written documents for the purposes of other enactments
3(5)	new 3At	Authenticated e-docs to have “self-proving status”
	<b>Re.1979 Act section</b>	
5(2)	5	Permits Land & Charge Certificates to be issued as electronic communications authenticated by RoS