

## Excerpt from LSS Journal - January 2006

# Back to the future

by James Ness

## In just over a year's time automated registration of title to land will be a reality, and solicitors should start preparing now or be left at a disadvantage

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The oldest title deed which I have personally examined, was handwritten on vellum in 1746. It was a thing of considerable beauty, featuring wonderful calligraphy and a wax and lead seal with ribbon. It probably still hangs framed in my old office. In fact that title was still relatively speaking a youngster given that the original Register of Sasines was created by Act of Parliament in 1617.

As an apprentice in 1978 I marvelled at the new "golfball" typewriters but continued to compare an original document with a draft. By the early 1980s word processors had arrived and with them the promise of "the paperless office". That promise as we all know turned out to be a sick joke, as an unforeseen consequence of word processing is that it is just as easy to create a 50 page document as a two-page document and we have all suffered at the hands of the prevailing view that it is "easier to leave irrelevant clauses in than to take them out".

### Prepare to dematerialise

Things are however about to change in a material way. In fact they are about to dematerialise. Automated Registration of Title to Land (ARTL), which has been discussed not quite since 1617 but certainly over the last few years, will become a reality in 2007. ARTL brings with it several truly significant changes.

- The conveyancing transaction becomes truly paperless other than the missives and a mandate signed by the client, of which I will speak later. I don't just mean that the process becomes paperless: I mean that there will be no paper disposition and no paper-based land certificate (unless you really want one).
- The paperless disposition and/or standard security will be electronically signed by the solicitor and not by the client.
- Discharges will be executed electronically by the lender (in some cases by the agent on behalf of the lender).
- The process will include a paperless SDLT process, and again by that I mean truly paperless in that there will be no certificate and therefore no delay.
- Once the various parties have applied their digital signatures and each pressed the button to approve the completion of the transaction, the register will effectively be amended within 24 hours with minimal intervention by the Keeper's staff. Clearly this will drastically reduce the period during which the profession is exposed to letters of obligation.

ARTL will only be available for applications for registration of "dealings with whole", which applies to transactions involving properties already registered in the Land Register. This will include transfers of property, discharges, the creation of new securities and remortgages. I understand from the Keeper that although just over half of all the titles in Scotland are now registered in the Land Register, dealings with whole account for over 70% of the total volume of transactions. Accordingly it is not unreasonable to assume that by spring 2007 nearly three transactions in four will be ARTL-enabled. First registrations, sasine transactions and transfers of part are excluded. The user group is restricted to solicitors, institutions and other registered bodies. For the avoidance of doubt it is also entirely voluntary.

### A modern thing of beauty

Essentially, to use ARTL both the purchaser's and seller's agents will require to be signed up for the ARTL facility. The conveyancing is carried out by each of them logging into the Keeper's computers on the internet and completing the electronic equivalent of a registration application and electronic documents comprising the disposition, standard security, discharge etc. The solicitor acting for the other party will assist in creating/revising these documents and forms online. One of the beauties of the system is that the parties do not have to be online simultaneously, so work can be structured as and when it suits each party. There are however points beyond which parties cannot go without the other side doing their bit.

I have seen the demonstration and would certainly commend it to any member of the profession who is considering taking up the ARTL initiative when it is available. The Keeper and his team are happy to arrange demonstrations

and will be touring faculties and larger firms in the coming months. The system itself is intuitive, simple to operate and as I will mention later there is the facility to give different levels of access to other subordinate staff. The complex issues involved in the project have been challenging and the Keeper has employed two key stakeholder representatives, Tom Drysdale and David Preston to liaise with the Society, institutions and others within the user group. The Society's ARTL Implementation Group formed in early 2005 has been in steady consultation with the Keeper's team regarding ARTL issues, and a range of issues are being investigated by a variety of committees to establish what rules and guidance might require to be promulgated by the Society for the safe and secure operation of ARTL. A flavour of these issues will be raised prior to the AGM in a consultation/discussion paper to collate the thoughts and views of the profession on the matter.

One key issue is the subject of mandates mentioned earlier. Because the general public in Scotland do not yet have digital signatures, a compromise solution has been required and following on the professors' opinion on legal issues connected with ARTL, the principle being adopted is that the instructing client will sign a mandate authorising the solicitor to apply a digital signature to the relevant document. The form of this mandate is currently in the final stages of approval between the Society and the Keeper and I would hope to let the profession have sight of a formal agreed version shortly. Clearly a difficult balance has to be struck between fraud prevention and avoiding creating a mandate so complex and voluminous that it might actually be easier to sign the traditional document.

## **What's in it for me?**

Those of you who are still reading will be wondering "why on earth would I bother with ARTL?" This is a fair question, and speaking personally rather than on behalf of the Society I would make the following points:

The Keeper is currently undertaking a review of registration fees and is looking at the scope for reducing registration fees for the streamlined ARTL registration process. Given that clients only really consider the bottom line in any estimate of charges, this will make ARTL users' fees more competitive.

ARTL will provide a daily data feed to the lending institutions, confirming to them precisely what securities were created that day and discharged that day. From a risk management point of view this must be attractive to them and through time it seems clear that they will prefer ARTL-enabled transactions. There is little doubt that the institutions will also find paperless transactions where they do not have to store titles attractive.

Given that the Land Register will be amended virtually live in ARTL transactions, solicitors can significantly reduce their exposure to 21-day letters of obligation and the risks associated with that. The Keeper's analysis and research suggest that ARTL is "risk neutral". I believe this may well be because although on one view there may be additional opportunities for fraud, that is offset against greater security in other ways and the reduction in letter of obligation exposure. Hopefully the Keeper will be proved to be right.

Firms with case management systems will find that they can readily pre-populate many of the ARTL fields, streamlining transactions significantly. Even firms who enter the data manually will find that it is quicker than preparing a traditional disposition and registration forms. If you don't believe me I would commend the demo to you.

## **Project milestones to spring 2007**

- Now – The working demonstrator is currently available and the Keeper is happy to demonstrate it to faculties and firms.
- Now – The technical specifications of the PC required to use ARTL are available and published in the note that follows this article.
- Now – The Keeper has consulted with the Society on the draft order under section 8 of the Electronic Communications Act 2000, which facilitates both electronic signature of dematerialised deeds and dematerialised land and charge certificates. This should now go before ministers for approval.
- Early 2006 – The Keeper's terms and conditions should be available as a draft for consultation with the profession through the ARTL Implementation Group.
- Spring 2006 – The Society through the ARTL Implementation Group intends to issue a discussion paper on possible rules and guidelines in connection with the operation of ARTL, to be put before the AGM in spring 2006.
- September 2006 – Following consultation over the summer of 2006, formal rules and guidelines are likely to be approved at the special general meeting.
- Autumn 2006 – The pilot project will commence.
- Spring 2007 – ARTL will be rolled out across the country.

## **Things for you to do**

Consider the technical specification with these papers. Decide which members of your professional and support staff require access to ARTL. Effectively you have 12 months to ensure that their PCs meet the basic specification suggested. For my part, my personal view is that subject to budget and other issues, ideally you would want each party who is likely to be an active user of ARTL to have:

- A broadband internet connection;
- A reasonably modern well specified machine running Windows XP fully updated from the Microsoft Windows website. See the Keeper's technical note for the specification of other operating systems;
- Anti-virus and firewall protection;
- Software including Adobe Acrobat 7 or higher. This is freely available from the Adobe website and widely used;
- The one item you might actually have to purchase is a smartcard reader, which is likely to cost under £15. The Keeper is testing units and should be able to provide a compatibility list shortly.

For the avoidance of doubt the Keeper intends to provide the smartcard itself and the digital signature free of charge. Consider which of your staff require ARTL access and at what level. Firms will have to appoint a person responsible for authorising subordinates. There seems little doubt that the firm will be fully responsible for the actions of those authorised by it. Full details of authorisation levels are not yet available, but likely levels are:

- full access including access to a digital signature;
- limited access facilitating preparation of documents only.

If you have case management systems you might speak to your supplier to ensure that they will be able to integrate these with ARTL. The ARTL team at the Keeper's office are happy to advise and consult.

## How far paperless?

Since I began this article by discussing the paperless office it seems appropriate to end on that note. Clearly institutions will not want the ancillary paper such as building warrants, planning permissions, rising damp guarantees, double glazing warranties etc when they won't have a land certificate and prior titles to store any more. Firms should consider what they intend to do with this material and it seems to me they have two choices. They can either incorporate in their terms of business that the client will be given that material or they can offer to store it themselves. Having practised in a small rural community where there was considerable client loyalty, there are significant attractions in storing this material for clients. Accordingly the paperless office may well remain as far in the future as it was back in the early 1980s.

I intend to write further on the subject in the spring, particularly to report on the Keeper's proposed terms and conditions and the discussion issues for the AGM. In the meantime I would encourage you to embrace ARTL because I have no doubt that it is the future. Whether or not it leads to the paperless office I certainly have my doubts!

## Useful contacts

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