

Reply to: Edinburgh Office
Department: Legal Services
Contact: Diane McLennan
Telephone: 0131 659 6111
Fax: 0131 479 3675
Email: consultation@ros.gov.uk
DX: 555400, Edinburgh 15
Legal Post: LP - 54, Edinburgh 5
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Dear Consultee,

CONSULTATION: DRAFT LAND REGISTRATION (SCOTLAND) RULES 2006

I am writing to seek any comments which you may have on proposed new Registration Rules for the Land Register of Scotland. Our intention is to revoke the existing Rules in their entirety and substitute new Land Registration (Scotland) Rules 2006. The new Rules will restate many of the current Rules but include changes necessary for the introduction of Automated Registration of Title to Land and modernisation of the registration process.

Annex A discusses the more significant aspects of the changes that are proposed and includes a table which notes all of the differences between the current Rules and the proposed new Rules. A draft of the proposed new Rules, including the updated versions of the various prescribed Forms, is attached

The consultation process

The Keeper of the Registers of Scotland is a statutory office holder in the Scottish Administration. This consultation is being conducted in line with the Good Practice Guidance issued by the Scottish Executive. We have attached at Annex B a list of consultees who have been alerted to this consultation exercise.

Responding to this consultation paper

We are inviting responses to this consultation by 1 September 2006. **Please send your response together with your Respondent Information Form to:**

consultation@ros.gov.uk

or

Diane McLennan
Registers of Scotland Executive Agency
Room 1.05 EHO
Meadowbank House
153 London Road
Edinburgh
EH8 7AU

If you wish to access this consultation online, please go to www.ros.gov.uk/solicitor/rulesconsultation.html. You can telephone Freephone 0800 77 1234 to find out the location of your nearest public internet access point.

Handling your response

We need to know how you wish your response to be handled and, in particular, whether you agree to your response being made public. Please complete and return the **Respondent Information Form** as this will ensure that we treat your response appropriately. If you indicate that you do not wish all or part of your response to be published, its confidentiality will be respected.

All respondents should be aware that Registers of Scotland Executive Agency is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under that Act for information relating to responses made to this consultation exercise.

Access to consultation responses

We will make all responses available to the public in the Scottish Executive library and on the Registers of Scotland website by 29 September 2006, unless confidentiality is requested. All responses not marked confidential will be checked for any potentially defamatory material before being logged in the library or placed on the website.

If you have any comments about how this consultation has been conducted, or if you have any other queries, please contact Diane McLennan on 0131 659 6111, extension 5786 or email diane.mclennan@ros.gov.uk.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Ian A Davis', written in a cursive style.

Ian A Davis
Director of Legal Services

Proposed changes to current Rules

1. The Land Registration (Scotland) Rules 1980 came into effect at the commencement of the Land Register in April 1981. Despite piecemeal amendments they remain substantially in their original terms. Our intention is to consolidate the existing Rules with various modifications. The changes relate to Automated Registration of Title to Land (ARTL) and also proposed improvements to the registration process for paper applications.

2. The Rules are made under a power conferred by section 27(1) of the Land Registration (Scotland) Act 1979 and regulate the making up and keeping of the Land Register and the procedures applying to applications for registration. They also prescribe a number of statutory forms used in connection with registration. The changes proposed include provision in respect of electronic registration applications made through the ARTL system. Changes are also proposed to application procedures and forms which will increase efficiency in the handling of paper applications.

Changes to Land Registration Forms

3. Certain stylistic changes are proposed to the prescribed registration application forms and the forms prescribed for applying for reports from the Register. These are to enable details entered onto these forms to be captured into the Agency's computer system by digital scanning. This will enable applications for registration and for reports to be processed more efficiently and accurately. We intend to make equivalent changes to the statutory Sasine Application Form by separate Scottish Statutory Instrument.

4. Two changes of substance are proposed to the registration application forms (Forms 1, 2 and 3) in order to reduce unnecessary duplication of work and thus increase efficiency. Firstly, applicants will be asked to confirm whether a search has been carried out in the Register of Inhibitions and Adjudications (ROI) and whether that search has disclosed entries in that register which adversely affect the validity of the transmission. In the great majority of conveyancing transactions, the applicant's solicitor has checked such a search. Currently Registers of Scotland (RoS) then duplicate the search when processing the registration application. The proposed new question will remove this duplication of effort. In a minority of cases, such as gifts of property, the applicant's agent does not have the relevant information. In these cases RoS will continue to conduct a ROI search.

5. The second significant change is to an existing application form question regarding occupancy rights of non-entitled spouses. Where one spouse is sole owner of the matrimonial home, the non-owning spouse has certain rights as to occupation. Under the Civil Partnership Act 2004, non-entitled civil partners in registered civil partnerships also now have equivalent occupancy rights. Currently, applicants may provide additional documentation with a registration application evidencing that there are no occupancy rights. Failure to do so does not result in an invalid title, but instead the Keeper does not include a statement as to occupancy rights on the title sheet. The existing question asks the applicant's solicitor to confirm that all necessary documentation is being submitted and current practice is for RoS to re-check the documents. It is proposed that in future the applicant's solicitor simply confirm the position and that RoS would not replicate the examination of the documents.

ARTL

6. A new Rule is proposed to permit authorised users to make registration applications using the ARTL system. The draft Rules also include provision for the ARTL system to capture data and certifications equivalent to those given on the Form 2 registration application form in paper dealing with whole applications. The Keeper's reliance upon certifications does not affect his power under section 4(1) of the Land Registration (Scotland) Act 1979 to require production of documents and evidence pertinent to applications. As at present, the Keeper will usually rely upon certifications made by solicitors but may call for additional evidence in abnormal cases.

7. Under ARTL, two additional certifications may be required from authorised users. As members of the public do not have digital signatures, it is proposed that solicitors should sign digitally electronic documents on their clients' behalf. Clients will authorise their solicitors to so sign by mandate. Procedures have been agreed with the Law Society of Scotland to ensure that these mandates are retained. However the mandate will not be examined by RoS staff prior to the updating of the Register in response to an ARTL application. Accordingly a certification is required from the ARTL user that the client did authorise the digital signing.

8. In addition, there will be some ARTL applications where the grantor of the electronic deed is, or appears to be, a different party from the person appearing from the register as entitled. This may be for a number of valid reasons, such as a change of name on marriage or because the right to the property now legally vests in another party, such as the executor of a deceased proprietor. In a paper application, the reason for a change would be evidenced by paper documentation but such evidence cannot be submitted with an ARTL application. Instead, the ARTL system will seek confirmation from the user of the reason for the difference in a series of questions designed to allow valid instances of a different (or apparently different) party granting the deed to proceed under ARTL but to exclude cases where there is no valid reason.

Certificates of Title - Issue and Storage

9. Land and Charge certificates are the certificates of title issued on completion of registration to owners and heritable creditors respectively. The Automated Registration of Title to Land (Electronic Communications) (Scotland) Order 2006 proposes to make the amendments required to the Land Registration (Scotland) Act 1979 to allow these certificates to be issued as electronic communications where the applicant so wishes. Minor consequential changes to the Land Registration Rules are also required and are included in the draft.

10. Title flows from the Land Register itself and a Land Certificate is simply a copy of the particular Title Sheet as at its date of issue. The Title Sheet may subsequently change without the Land Certificate being updated. Accordingly when transacting with the property at a later date one cannot rely on the Land Certificate without also checking the register. The Rules currently require (subject to significant exceptions) the Land Certificate issued after the last registration to be ingiven to the Keeper with the next registration application. This forces that Land Certificates be stored and presents a disincentive to acceptance of electronic Certificates. Insofar as the current Rule has a rationale, it lies in the paper based procedures which were devised in the 1970s. Now that the register is fully computerised and searchable online *via* Registers Direct, the Rule only hinders more efficient approaches. The draft new Rules propose to revoke the current Rule without replacement.

Other changes

11. The table below notes all of the differences between the current Rules and the draft new Rules.

Rule	Comment
1	
2	Similar to current Rule 2 with added definitions of “ARTL system” and “authorised user.”
3	Replicates current Rule 3
4	Replicates current Rule 4 with minor stylistic changes.
5	Rule 5(j) amended to treat occupancy rights of civil partners similarly to those of spouses.
6	Replicates current Rule 6 with minor stylistic changes.
7	Replicates current Rule 7 with minor stylistic changes.
8	Replicates current Rule 8 with minor stylistic changes.
9	Amended so as not to apply in ARTL applications and current Rule 9(3) omitted.
10	New Rule making provision for the making of registration applications using the ARTL system
11	Replicates current Rule 10.
12	Replicates current Rule 11
13	Replicates current Rule 12
14	Replicates current Rule 13
15	Similar to current Rule 14 with requirement that Land Certificates be sealed with the seal of the Register omitted.
16	Similar to current Rule 15 with requirement that Charge Certificates be sealed with the seal of the Register omitted.
17	Replicates current Rule 20
18	Replicates current Rule 21 with minor stylistic change
19	Replicates current Rule 22
20	Replicates current Rule 23.
21	Replicates current Rule 24.
22	Replicates current Rule 24A.
23	Replicates current Rule 25.
24	<p>Revokes the Instruments listed in Schedule 4. The result is that the following current Rules are revoked without replacement:-</p> <p>Current Rule 16 (application for Certificate of Title to be made to correspond with Title Sheet.)</p> <p>Current Rule 17 (amendment or cancellation of Certificate of Title by Keeper.)</p> <p>Current Rule 18 (circumstances where Certificate of Title need not be produced to Keeper.)</p> <p>Current Rule 19 (issue by Keeper of Substitute Certificate of Title.)</p>
Schedule 1	<p>Replicates current Schedule A subject to omission of Form 8 and the changes described below. Forms 9 to 15 are not renumbered as their existing numbers are in settled usage in the conveyancing process and to alter them would create confusion and force changes to standard form documents such as letters of obligation.</p> <p><i>Changes to all Forms other than Forms 6 and 7</i></p> <ul style="list-style-type: none"> • Addition of marks to facilitate data capture by scanning. • Insertion of field for agent’s email address. • Modification of format of address fields to conform to current

	<p>standards.</p> <p><i>Changes to registration applications Forms (Forms 1, 2 and 3)</i></p> <ul style="list-style-type: none"> • New questions added regarding search in the Register of Inhibitions. • Modifications to questions on occupancy rights of non-entitled spouse and civil partners. • Clarifications to wording of other questions and inclusion of checkboxes for 'not applicable' answers. • Addition of checkboxes to indicate residential/commercial/land only cases. • Selection of electronic or paper Certificate of Title added. <p><i>Change to Form of Inventory of Writs (Form 4)</i></p> <ul style="list-style-type: none"> • Text requiring completion in duplicate omitted. <p><i>Changes to Form of Land Certificate (Form 6)</i></p> <ul style="list-style-type: none"> • Current general information paragraph 4 omitted. • Text and table relating to updating of Land Certificate to agree with Title Sheet omitted. • Definition of overriding interest updated. <p><i>Changes to Form of Charge Certificate (Form 7)</i></p> <ul style="list-style-type: none"> • Current text regarding submission of Charge Certificate with future transactions omitted. • Text and table relating to updating of Charge Certificate to agree with Title Sheet omitted. • Clarifications to wording of certification page.
Schedule 2	New Schedule detailing information required in ARTL applications and questions applying to such applications. The questions are equivalent to Form 2 subject to addition of questions 9 and 10.
Schedule 3	Replicates current Schedule B
Schedule 4	New Schedule listing revocations

List of consultees

Citizens Advice Scotland
COSLA
Council of Mortgage Lenders
HM Revenue and Customs (Stamp Taxes)
Law Society of Scotland ARTL Implementation Group
Law Society of Scotland Conveyancing Committee
Legal Software Suppliers Association
Lord President of the Court of Session
Scottish Consumer Council
Scottish Law Agents Society
Society for Computers and the Law
Society of Local Authority Lawyers and Administrators in Scotland
Society of Scottish Searchers
Society of Solicitors in the Supreme Courts
Society of Writers to Her Majesty's Signet