

POLICY NOTE

THE LAND REGISTRATION ETC. (SCOTLAND) ACT 2012 (COMMENCEMENT NO. 3) ORDER 2021

SSI 2021/472 (C. 34)

This Order is made by the Scottish Ministers in exercise of the powers conferred by sections 116(1) and 123(3) of the Land Registration etc. (Scotland) Act 2012 (“the 2012 Act”). It is laid but not subject to further procedure.

Summary

This Order brings into force section 97 of the Land Registration etc. (Scotland) Act 2012 on 1st April 2022 for the limited purpose of inserting section 9G(6) into the Requirements of Writing (Scotland) Act 1995.

This brings into force exemptions from the rules for authentication before documents can be recorded or registered in registers under the control of the Keeper of the Registers of Scotland.

Policy Objectives

The 2012 Act makes provision for land registration in Scotland and provides a legislative basis for the Land Register of Scotland. Part 10 of the 2012 Act in particular makes provision about electronic documents, electronic conveyancing and the electronic registration of documents relating to land and certain other documents.

This Order brings into force section 97 of the 2012 Act on electronic documents on 1st April 2022 for the limited purpose of inserting section 9G(6) into the Requirements of Writing (Scotland) Act 1995. This brings into force exemptions from the rules on the registration and recording of electronic documents, in particular the rules requiring certain forms of authentication before documents can be recorded or registered electronically in registers under the control of the Keeper of the Registers of Scotland. The exceptions cover, among other circumstances, where an enactment requires or expressly permits recording or registration notwithstanding that the document is not presumed to have been authenticated, or recording or registering a court decree in the Register of Sasines, the Land Register, the Books of Council and Session or any separate register maintained for that purpose. This reflects the fact that electronic registration is now possible in certain circumstances¹.

Part 10 of the 2012 Act is still not in force in respect of section 1(2)(c) of the Requirements of Writing (Scotland) Act 1995, so as not yet to permit any will, testamentary disposition and settlement or codicil to take electronic form.

¹ Provision is made under s.9G(3) of the Requirements of Writing (Scotland) Act 1995 in regs. 6 and 7 of the Electronic Documents (Scotland) Regulations 2014 (S.S.I. 2014/83) as amended by S.S.I. 2014/347 and S.S.I. 2018/72.

Consultation

A public consultation was carried out on the draft Land Registration (Scotland) Bill in 2010:

<http://www.scotland.gov.uk/Publications/2010/09/landregistrationbill>

There was also a consultation in 2013 on aspects of implementing Part 10 of the 2012 Act:

<http://www.scotland.gov.uk/Publications/2013/07/6800>

Impact Assessments

A Business and Regulatory Impact Assessment, an Equalities Impact Assessment and a pre-screening report for Strategic Environmental Assessment were carried out before the introduction of the Bill.

The Bill had Accompanying Documents in the usual way

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/44469.aspx>

Financial Effects

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

Registers of Scotland on behalf of the Scottish Government

December 2021