



The Scottish Parliament
Pàrlamaid na h-Alba

ECONOMY, ENERGY AND TOURISM COMMITTEE

AGENDA

8th Meeting, 2014 (Session 4)

Wednesday 19 March 2014

The Committee will meet at 10.00 am in Committee Room 4.

- 1. Scotland's Economic Future Post-2014:** The Committee will take evidence from—
 - Elsbeth Orcharton, Director of Taxation, Institute of Chartered Accountants of Scotland;
 - Michael Clancy, Director of Law Reform, Law Society of Scotland;
 - David Glen, Partner and Head of Tax Scotland, PricewaterhouseCoopers LLP;
 - Moira Kelly, Chairman, Scottish Technical Sub-Committee, Chartered Institute of Taxation.
- 2. Subordinate legislation:** The Committee will take evidence on the Renewables Obligation (Scotland) Amendment Order 2014 [draft] from—
 - Fergus Ewing, Minister for Energy, Enterprise and Tourism, Fiona Hepplewhite, Policy Manager: Electricity Market Reform, Neal Rafferty, Deputy Head, Energy Policy Unit, and Olive Hogg, Solicitor, Directorate for Legal Services, Scottish Government.
- 3. Subordinate legislation:** Fergus Ewing, Minister of Energy, Enterprise and Tourism to move—S4M-9335—That the Economy, Energy and Tourism Committee recommends that the Renewables Obligation (Scotland) Amendment Order 2014 [draft] be approved.
- 4. Subordinate legislation:** The Committee will consider the following negative instrument - Land Registration etc. (Scotland) Act 2012 (Commencement No. 2 and Transitional Provisions) Order 2014 (SSI 2014/41 C.4))

5. **Scotland's Economic Future Post-2014 - Review of Evidence Heard (in private):** The Committee will review evidence heard at today's meeting.

Stephen Imrie
Clerk to the Economy, Energy and Tourism Committee
Room T2.60
The Scottish Parliament
Edinburgh
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The papers for this meeting are as follows—

Scotland's economic future post-2014

Paper by the clerk

EET/S4/14/8/1

PRIVATE PAPER

EET/S4/14/8/2 (P)

**Renewables Obligation (Scotland) Amendment Order 2014
[draft]**

Paper by the clerk

EET/S4/14/8/3

**Land Registration etc. (Scotland) Act 2012 Commencement
Order 2014**

Paper by the clerk

EET/S4/14/8/4

Economy, Energy and Tourism Committee

8th Meeting, 2014 (Session 4), Wednesday, 19 March 2014 2013

Scotland's Economic Future Post-2014

Introduction

1. This paper provides background information for the Committee's fifth evidence session of its [inquiry into Scotland's economic future post 2014](#). The theme for this session is 'taxation, spending, borrowing, debt'.

2. The remit and call for evidence for this inquiry can be found online: [www.scottish.parliament.uk/S4_EconomyEnergyandTourismCommittee/Inquiries/Economic Future Inquiry - Remit and Call for Evidence.pdf](http://www.scottish.parliament.uk/S4_EconomyEnergyandTourismCommittee/Inquiries/Economic_Future_Inquiry_-_Remit_and_Call_for_Evidence.pdf)

3. The Committee will hear from witnesses as below:

- Elspeth Orcharton, Institute of Chartered Accountants of Scotland
- Michael Clancy, Law Society of Scotland
- David Glen, PWC
- Moira Kelly, Chartered Institute of Taxation

4. Written submissions from the witnesses are attached (Annex A). A briefing by the Financial Scrutiny Unit (FSU) is also attached (Annex B). The FSU has published wider briefings of relevance to the inquiry. Links to these, for information, are below:

- Scotland's economy: recent developments
www.scottish.parliament.uk/parliamentarybusiness/72299.aspx
- Scotland's economy: future developments
www.scottish.parliament.uk/parliamentarybusiness/72297.aspx
- The currency of an independent Scotland
www.scottish.parliament.uk/parliamentarybusiness/74067.aspx

5. For information, a list of the agreed further sessions is attached (Annex C).

Fergus D. Cochrane
Senior Assistant Clerk to the Committee

Annex A

Written submissions from the witnesses are available via the link below:

www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/72692.aspx

Annex B

Briefing by the Financial Scrutiny Unit:

14 March 2014		
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Economy, Energy & Tourism Committee

Scotland's Economic Future Post-2014: Evidence Session on Tax Administration and Fiscal Policy

Background briefing

The briefing provides an overview of some of the key issues raised in written submissions by witnesses on the subjects of taxation, spending, borrowing and debt for the inquiry into Scotland's economic future post-2014.

The current system of taxation

Although just 8.4% of Scottish onshore tax revenues came from devolved taxes in 2012-13, the additional financial powers that will be brought about by the Scotland Act 2012 will increase this percentage. When these powers come into effect, it is estimated that 18.1% of Scottish onshore tax revenues will come from devolved taxation.

In its written submission the Chartered Institute of Taxation (CIOT) expresses some frustration with the current UK Government approach to taxation citing the example of the cash accounting scheme for small businesses. It states that the UK Government "ignored many of the practical views of tax specialists and resulted in a far more complex scheme". The Institute for Chartered Accountants Scotland (ICAS) also highlights ways that the UK Government approach could be improved, for example, by the provision of a "Business Tax Roadmap" providing a clear long-term strategy for the tax system and by addressing the inconsistencies between the taxation of incorporated and unincorporated businesses and employed and self-employed individuals. ICAS states that "these differences increasingly appear to drive avoidance behaviours and create further complexity in the tax system".

There have also been concerns expressed about the challenges that arise as a result of the devolution of tax to Scotland and the implications of having a tax border

between Scotland and the rest of the UK. For example, the CIOT warns that “cross-border issues will need to be considered”. The Law Society of Scotland (LSS) states that “individuals and businesses will require certainty that the provisions they have made will either still be effective or will be effectively transitioned in the event that additional taxes are devolved.” It also highlights the challenges associated with different tax rates in Scotland and the rest of the UK, for example stating:

“If Scottish rates of tax were markedly lower than the rest of the UK, it raises the question of whether Scotland would be able to raise sufficient revenue to maintain adequate public services, including health, welfare and education services. Whereas if they were much higher, Scotland may no longer seem like a desirable place in which to live compared with other parts of the UK and businesses may be discouraged from investing in Scotland if the rates were viewed as anti-competitive”.

Despite the challenges of devolving tax powers to Scotland, the LSS “welcomes the cross-cutting approach to the administration and collection of both LBTT [Land and Buildings Transactions Tax] and the Scottish Landfill Tax” describing it as “an example of a practical and simple approach to the reduction of compliance effort and cost for both the Government and the taxpayer”.

If there is a ‘no’ vote at the Referendum then there may well be a debate about whether more tax powers should be devolved. The Prime Minister David Cameron has indicated that he is prepared to devolve more powers in this situation (BBC [2012](#)). The issue of further devolution in the event of a No vote is currently being considered by groups such as the Scottish Labour Devolution Commission and the Scottish Conservative Strathclyde Commission. The LSS state in their written submission that “the electorate deserve to know as far as possible the consequences of a ‘no’ vote”.

Tax policy in an independent Scotland

The Fiscal Commission Working Group published their report [Principles for a Modern and Efficient Tax System in an Independent Scotland](#) (2013) suggesting that independence offers an opportunity to re-examine the tax system and design one that is more robust and efficient following the principles of simplicity, neutrality, stability and flexibility.

In the event of independent, the Scottish Government proposes a transitional period during which the current functions of HMRC are continued in Scotland and the rest of the UK on a shared services basis. Taxpayers will therefore see no immediate change to their current arrangements for paying tax. Furthermore, it proposes that a new tax system is developed for Scotland with initial improvements in place within the period of the first independent Parliament. Proposals for the new tax system include; simplifying the tax system to reduce compliance costs, streamlining reliefs and reducing tax avoidance. The Scottish Government also notes the opportunity to better link the welfare and tax system.

Although detailed policies on tax and spending will be set out in party manifestos for the 2016 election, the Scottish Government states and that “there is no requirement

to increase taxes to pay for the services we currently enjoy in Scotland”. It also highlights six priorities, including:

- Increasing personal allowance and tax credits by inflation,
- Ending UK Government proposals for tax allowances for some married couples,
- Examining the case for increasing National Insurance employment allowance for small businesses,
- Designing a more efficient tax system with a target revenue gain of £250 million,
- Reducing Air Passenger Duty by 50 per cent, and
- Reducing corporation tax by up to three percentage points ([2013](#)).

The LSS “welcomes the ambition of a modern and effective Scottish tax system” and agrees that new tax law for Scotland (in the context of independence or additional devolution) “could result in simplification and a creative system designed to assist taxpayers.” However, witnesses have also indicated a number of concerns with the Scottish Government proposals.

For example, in its written submission ICAS raise a number of concerns about the proposals regarding the reduction in corporation tax (either under independence, or if corporation tax was devolved). These include:

- That if corporation tax rates are too low then this means lower revenues which are “not affordable without cutting public spending”. ICAS suggests that the extension of certain tax reliefs might be more affordable.
- That job creation might only be achievable if Scotland has a differential tax rate from its competitors, and this is questionable when Scotland has no control over other jurisdictions tax decisions.
- That Scotland is already successful at attracting inward investment, so the tax rate cut might not be necessary.
- That because no records exist for the corporate tax base of Scotland, it is difficult to estimate the impact of corporation tax changes.
- That a separate tax regime would bring about administrative burdens and costs, even if corporation tax did not vary significantly from the UK rate.

The CIOT also state in their written submission that they “are concerned” about the stated policy of reducing corporation tax because it could produce a ‘race to the bottom’ with the UK Government. They went on to say:

“Another concern is that it does not appear to tie in with other visions set out by the Scottish Government, such as building social cohesion, sustaining public services and joining up tax and welfare benefits policy.”

The CIOT also highlight the impact that EU membership might have on tax autonomy, pointing out that VAT, Customs Duty and Excise Duties are subject to specific EU legislation and other taxes are constrained by the principles of EU law.

The timescale for achieving a new tax system may also be a challenge, with the LSS stating that “Setting up a new tax system in Scotland could take years to achieve (if it is done properly) and the practicalities require considerable thought.” It goes on to report that “Some tax advisers have suggested that the best approach is to keep things the same for a number of years”, explaining that “it would be vital to maintain certainty for individuals and businesses while giving the Scottish Government sufficient time to consult on a new system of taxes and implement it systematically.”

Scherie Nicol
SPICe Research
14 March 2014

Note: Committee briefing papers are provided by SPICe for the use of Scottish Parliament committees and clerking staff. They provide focused information or respond to specific questions or areas of interest to committees and are not intended to offer comprehensive coverage of a subject area.

Annex C

Future Committee evidence sessions:

Date/theme	Witnesses
2 April 2014 Economic sectors, trade, regulatory issues, labour market	<u>Panel 1</u> <ul style="list-style-type: none"> • Iain McMillan, CBI Scotland • Owen Kelly, Scottish Financial Enterprise • David Watt, Institute of Directors • Colin Borland, Federation of Small Businesses Scotland • Garry Clarke, Scottish Chambers of Commerce <u>Panel 2</u> <ul style="list-style-type: none"> • Stephen Boyd, STUC • Robin McAlpine, Jimmy Reid Foundation • Professor Mike Danson, Heriot-Watt University
23 April 2014 Welfare/equality	
28 April 2014 (Aberdeen) Energy: oil and gas	
30 April 2014 Energy: Renewables	
7 May 2014 International, lessons from abroad	
14 May 2014 Civic Scotland	
21 May 2014 Campaign groups	<u>Panel 1</u> Better Together

	<u>Panel 2</u> Yes Scotland
11 June 2014 Closing session UK and Scottish governments	<u>Panel 1</u> UK Government <u>Panel 2</u> Scottish Government

Economy, Energy and Tourism Committee

8th Meeting, 2014 (Session 4), Wednesday, 19 March 2014

Renewables Obligation (Scotland) Amendment Order 2014 [draft]

Purpose

The purpose of this paper is to invite the Committee to consider and agree the [above affirmative statutory instrument](#), laid by the Scottish Government before the Parliament on 19 February 2014. **The deadline for the Committee to report on the instrument is 30 March 2014.**

Background

An extract from the Scottish Government's policy note is set out below:

'Scottish Ministers are committed to the promotion of renewable energy in Scotland; as part of this, they have set a target that the equivalent of 100% of the electricity generated in Scotland (as a proportion of gross consumption) should come from renewable sources by 2020, with an interim target of 50% by 2015. This commitment is an important part of a package of initiatives aimed at tackling climate change. The Renewables Obligation (Scotland) Order (ROS) is a key measure in terms of increasing the amount of renewable electricity generating capacity in Scotland.

The ROS was first made in 2002 under powers in the Electricity Act 1989 which were executively devolved (as regards Scotland) to the Scottish Ministers. The Order imposes an obligation on electricity suppliers to provide an increasing percentage of their supply to customers in Scotland from qualifying renewable energy sources.

In line with the wishes of the energy sector subject to the Order and those affected by its provisions, the ROS was introduced in almost identical terms to the Renewables Obligation Order 2002 (the ROO), covering England and Wales, which also came into force on April 1 2002. Following reviews of its operation and to accommodate the introduction of a number of changes, the ROS has been revised and replaced or amended each April from 2004 through to 2013 (with the exception of 2012).

The UK Renewables Obligations work by awarding to generators of electricity from eligible renewable sources a number of Renewable Obligation Certificates, or ROCs, for each MWh (megawatt hour) of electricity they generate. "Banding" of support, allowing different technologies to receive different levels of support, was introduced in April 2009 to drive greater and more rapid deployment of renewable electricity generation. This means that support levels vary depending on the way in which the renewable electricity has been generated (wind, solar PV etc) and depending on when the generating station was accredited under the ROS, or when additional generating capacity was added to the station.

The market for ROCs is created by imposing an annual and increasing obligation on licensed electricity suppliers to provide a number of ROCs. Suppliers can demonstrate compliance with their Obligation by providing Ofgem with either the requisite number of ROCs, or by paying the buyout price, or by a combination of the

two methods. The buy-out price is a fixed sum payable to Ofgem in lieu of providing ROCs; payments thus made constitute the buy-out fund. The monies paid into the buyout fund are shared between those suppliers who have provided ROCs, and in proportion to the number of certificates they produce. This means that those suppliers who are unable to produce ROCs effectively reward their competitors, driving the market value of ROCs and thus providing income for renewable generators.

Policy objectives

RO transition

The UK Government is introducing a new financial support mechanism for large-scale low-carbon electricity generation. This will replace the Renewables Obligation (RO) across the UK with a new system of support known as Contracts for Difference (CfDs) under its Electricity Market Reform package. The Renewables Obligation Scotland (Amendment) Order 2014 implements a number of transitional arrangements between the RO and the new CfDs, and includes the following (which are consistent with those being introduced across the UK):

- A number of new definitions from the Energy Act 2013
- Measures to prevent duplication of support for the same electricity, by ensuring that electricity supported under CfDs is not eligible for ROCS
- New apportionment rules for input and output electricity to allow a generating station to have some of its generating capacity supported under the RO and some outside the RO
- New requirements to ensure that new stations can't obtain preliminary accreditation or accreditation under the RO if they have entered into a CfD (subject to various exceptions)
- New rules to the effect that once a station has applied for a CfD in respect of any of that station's existing or additional capacity, it will not be able to register any further additional capacity under the RO.

Biomass sustainability

The amendment Order also includes provisions on biomass sustainability criteria and reporting arrangements under the RO, including the following (which are again consistent with those being introduced across the UK):

- Amendments to information that must be provided to Ofgem in respect of electricity generated by biomass
- A new sustainability audit report requirement for biomass stations of 1MW and above which have to report against GHG and land criteria/ timber procurement standards
- Amendments to the requirements for bioliquid sustainability audit report

- Amendments to land criteria so that energy crops grown under the Energy Crops Regulations 2000 or an equivalent scheme are automatically treated as meeting the land criteria for solid and gaseous biomass
- Amendments to greenhouse gas (GHG) criteria for solid and gaseous biomass to make clear that residues from forestry, arboriculture, aquaculture and fisheries can be treated as having GHG emissions at the point of their collection.

CHPQA definition

This amendment Order also refers to the latest Combined Heat and Power Quality Assurance Standard. The qualification criteria for biomass, bioliquid and biogas and waste combined heat and power scheme in the CHPQA standard and accompanying Guidance Note 44 have been tightened to reflect improvements in the efficiency of such schemes since the criteria were first developed.

Following scrutiny of the Renewables Obligation (Scotland) Amendment Order 2013, the Scottish Government gave an undertaking to the Subordinate Legislation Committee to correct Article 22C to amend the reference to “qualifying combined heat and power station” to “qualifying combined heat and power generating station” to remedy the omission of the word “generating”. The amendment is reflected in this Order

Offshore wind

This amendment Order also introduces two new bands which will apply to Scotland only i.e. they will not be mirrored within the other UK amendment Orders. These are:

- a band set at 2.5 ROCS aimed at supporting generation from offshore test and demonstration sites deploying innovative, new to market turbines; and
- a band set at 3.5 ROCS for pilot projects consisting of turbines which are not fixed directly to the seabed – e.g. floating turbines or those deploying ‘tension’ deployment systems.

Consultation

A number of consultations took place on the changes contained in the 2014 amendment Order

- Biomass sustainability criteria were consulted on between 5 October 2012 and 11 January 2013.
- Innovative offshore wind banding was consulted on between 13 December 2012 and 7 March 2013.

We also held a number of discussions with interested stakeholders.

The consultation on biomass elicited 25 responses and the Scottish Government's response was published on 7 November 2013¹. The [consultation on innovative offshore wind](#) elicited 20 responses and the Scottish Government's response was published on 12 June 2013.

Both the UK and Scottish Governments consulted on the transition from the Renewables Obligation to the Contract for Difference during 2013. Following an amendment to the Energy Act 2013 giving UK ministers additional powers over all UK ROs, the UK Government carried out a further more detailed consultation between 7 and 28 November 2013 on the arrangements for grace periods to apply at the RO closure date (March 2017). Consequently, the UK Government will publish a combined response to both consultations in February 2014.

In addition, the UK Government issued a number of consultations on the proposals to amend the calculation of CHP Quality Index for renewable CHP schemes. The UK Government's [response was published](#) in July 2013.

European Directive

The ROS, in tandem with the other UK Obligations, forms an important part of the UK's compliance with the European Directive on the promotion of energy produced from renewable sources (Directive 2009/28/EC, which amended Directive 2001/77/EC).

State aid

All UK Renewables Obligation Orders require State Aid clearance as the recycling buyout funds to compliant suppliers is deemed by the Commission to constitute State Aid.

The relevant applications relating to the new provisions and bands for offshore wind contained in the 2014 amendment Order have been submitted to the commission for approval. The Commission's response is expected shortly. The amendment Order will not be made, subject to its approval by the Scottish Parliament, until and unless the Commission's approval is received.

The rest of the instrument does not make any changes that affect the state aid approval.

Financial impacts

RO transition

The additional administrative processes will impose costs on the Authority, and on the generators applying to accredit under the RO or adding additional capacity to accredited generating stations. However, this is considered justified in order to enable generators to have a choice between the two schemes. Generating stations opting to have some capacity supported under each scheme will face the costs of complying with the rules of each scheme.

Biomass sustainability

The requirement to provide information on the biomass used, and to provide a sustainability audit report, will impose costs on generators using biomass. The Authority will incur costs in monitoring and enforcing the new information and audit requirements. The Authority is able to recover its costs from the buyout fund, which reduces the amount that is recycled back to electricity suppliers

CHPQA

The tighter qualification criteria under the CHPQA Standard and Guidance Note 44 will impact on operators and developers of new renewable combined heat and power schemes. They may receive fewer ROCs under the RO where they do not fully meet the new qualification criteria.

Offshore wind

The Renewables Obligation creates additional costs for electricity suppliers which they can then pass through to industrial, business and domestic consumers as part of their electricity bills. We estimate that the cost of the RO across the UK during 2012/13 was £1.9 billion, adding around £27 to the average annual household electricity bill. The Department for Energy and Climate Change estimates this will increase to around £63 in 2020.

We estimate that, if expected potential under the enhanced ROC bands for offshore wind is fully met, the additional annual cost to the RO will be £26.5 million per year.'

Procedure

As the Order is subject to affirmative procedure, a session with the Minister is required followed by formal consideration of the motion seeking the Committee's recommendation for approval. To inform the debate on the motion it has become normal practice to have a separate agenda item on the instrument so as to take evidence from the Minister and officials prior to the debate (this is because officials cannot speak in the debate on the consideration of the motion and because the debate itself is limited to a maximum of 90 minutes).

Once the Committee has considered the motion, it must report to the Parliament. If the Committee recommends approval, the Parliamentary Bureau will lodge a motion inviting the Parliament to approve the instrument, which is then moved in the Chamber. If the Committee disagrees to the motion, it is up to the Scottish Government to either withdraw the instrument or invite the Bureau to schedule time for a debate on a motion to approve it.

Delegated Powers and Law Reform Committee

The Delegated Powers and Law Reform Committee considered this instrument [and agreed that no points arose](#) in relation to the instrument.

Conclusion

The Committee is invited to decide whether it wishes to agree/disagree the motion below and to report its decision to the Parliament.

S4M-9335: Fergus Ewing: Renewables Obligation (Scotland) Amendment Order 2014 [draft]—That the Economy, Energy and Tourism Committee recommends that the Renewables Obligation (Scotland) Amendment Order 2014 [draft] be approved. (supported by: John Swinney, Derek Mackay)

The Committee is also invited to delegate responsibility for the drafting and publication of a short, factual report to the Convener and clerk.

Fergus D. Cochrane, Senior Assistant Clerk

Economy, Energy and Tourism Committee

8th Meeting, 2014 (Session 4), 19 March 2014

SSI cover note

SSI title and number:	Land Registration etc. (Scotland) Act 2012 (Commencement No. 2 and Transitional Provisions) Order 2014 (SSI 2014/41 (C.4))
Type of Instrument:	Negative – Standing Orders Rule 10.4
Coming into force:	22 March 2014
Economy, Energy and Tourism Committee deadline to consider SSI:	31 March 2014
Motion for annulment lodged:	No
SSI drawn to Parliament's attention by Delegated Powers and Law Reform Committee:	No

Purpose of the instrument

1. The [Land Registration etc. \(Scotland\) Act 2012 \(Commencement No. 2 and Transitional Provisions\) Order 2014 \(SSI 2014/41 \(C.4\)\)](#) makes provision in relation to bringing into force Part 10 of, and schedule 3 to, the Land Registration etc. (Scotland) Act 2012 (“the 2012 Act”) on electronic documents, electronic conveyancing and electronic registration. Schedule 3 makes consequential amendments to the Requirements of Writing (Scotland) Act 1995 (“the 1995 Act”) in relation to bringing electronic documents into operation.

Economy, Energy and Tourism Committee consideration

2. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds). Under Standing Orders Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument. If the motion is agreed to, the Parliamentary Bureau must then lodge a motion to annul the instrument for consideration by the Parliament. If that is also agreed to, Scottish Ministers must revoke the instrument.

3. Each negative instrument appears on a committee agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the

instrument can usually be continued to a later meeting to allow correspondence to be entered into or a Minister or officials invited to give evidence. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

4. A copy of the Policy Note, which provides more information on the policy intent of the regulations is attached at Annex A.

Consultation

5. A public consultation was carried out on a 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

6. 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:

<http://www.scotland.gov.uk/Topics/Business-Industry/support/better-regulation/partial-assessments/full/2011/LandRegistrationBill>
<http://www.ros.gov.uk/lrbillconsultation/consultation.html>

Delegated Powers and Law Reform Committee report

7. The Delegated Powers and Law Reform Committee considered this instrument at its meeting on 4 March 2014 and agreed that no points arose in relation to the instrument.

Action

8. **The Committee is invited to decide whether it wishes to make any recommendation (i.e. content to see the instrument come into force or proposal to lodge a motion to annul) on the instrument and to report its decision to Parliament no later than 31 March 2014.**

**Diane Barr
Assistant Clerk**

ANNEX A - POLICY NOTE

THE LAND REGISTRATION ETC. (SCOTLAND) ACT 2012 (COMMENCEMENT NO. 2 AND TRANSITIONAL PROVISIONS) ORDER 2014 SSI 2014/41 (C. 4)

1. The powers to make this instrument are conferred by sections 116(1), 117(1) and 123(3) of the Land Registration etc. (Scotland) Act 2012 (“the 2012 Act”). It is subject to the negative procedure, combining powers under section 116(2) of the 2012 Act and those laid with no further procedure under section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010 by virtue of section 33 of that Act.

Policy Objectives

2. The 2012 Act makes provision for land registration in Scotland and provides a new 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.

3. This Order brings into force provisions in the 2012 Act including amendments to the Requirements of Writing (Scotland) Act 1995 (“the 1995 Act”) that allow formal writing used for the creation of contracts, obligations, trusts and conveyances to be created in an electronic format. Regulations can be made under the new provisions setting out requirements for electronic documents to be valid, and to be electronically signed or authenticated, for those purposes.

The Requirements of Writing (Scotland) Act 1995

4. The 1995 Act sets out in section 1(2) legal transactions which require to be in writing to be effective. These include contracts and obligations in relation to land, trusts, other deeds in relation to real rights in land and wills. When first brought into force, the 1995 Act allowed only paper documents for these purposes.

5. The 1995 Act was amended by the Automated Registration of Title to Land (Electronic Communications) (Scotland) Order 2006 (S.S.I 2006/491) to permit the Keeper of the Registers of Scotland to operate the Automated Registration of Title to Land (ARTL) system within which electronic deeds are created and registered. Therefore the 1995 Act already permits a narrow class of electronic ARTL documents created within this system by virtue of section 1(2A).

Provisions brought into force

6. From 22 March 2014, provisions are brought into force to allow new Electronic Documents (Scotland) Regulations to set the requirements for new electronic documents to have equivalent status and standards of validity as paper documents and to enable electronic registration. They will also allow the Keeper to run an automated registration system, and to make regulations for that system.

7. From 11 May 2014, the new class of electronic document will be able to be used, in addition to those on paper, and ARTL documents, in line with the requirements put in place by those Electronic Documents (Scotland) Regulations. The new electronic documents will not be created in the ARTL system or immediately capable of registration in the Keeper’s registers. The legislation will therefore allow

two classes of 'electronic document' for a transitional period, until the designated day when the main provisions of the 2012 Act come into force.

8. From the designated day, the legislative basis for the ARTL system will be replaced by the powers in section 99 of the 2012 Act, and regulations made under it. The need for a separate definition of electronic document for ARTL documents will be superseded and the provisions of the 1995 Act which provide for ARTL documents will be repealed.

Transitional arrangements

9. From when the new class of electronic documents become usable on 11 May 2014 until the designated day, this Order also contains transitional arrangements. These provisions will enable the Keeper to continue to operate the current ARTL system, including the directions which apply to the making of ARTL documents, on the same basis at present, and allow the new class of documents to operate alongside that system.

10. By way of illustration, the **Annex** to this Note sets out and explains the application of section 1(2), (2A) and (2B) of the 1995 Act as amended by the provisions brought into force by article 2(1)(b) of this Order during that period, subject to the transitional provisions explained further in the **Annex**.

Wills etc. and electronic registration

11. The amendments made by Part 10 of the 2012 Act are not yet brought into force in respect of section 1(2)(c) of the 1995 Act, so as not yet to permit any will, testamentary trust disposition and settlement or codicil to take an electronic form. The Scottish Government is working with the Scottish Courts and the Registers of Scotland, respectively, to develop policy with regard to enabling the Courts and the Books of Council and Session to accept electronic wills and other testamentary documents.

12. In addition, section 9G(6) inserted into the 1995 Act by the 2012 Act is not yet commenced as it provides for electronic registration, as an exception to deeds which cannot be accepted for electronic registration unless they meet the requirements in regulations made under section 9G(3) of the 1995 Act. Until regulations are made under that section and section 100 of the 2012 Act, no deeds under section 9G(6) may be registered electronically.

Consultation

13. A public consultation was carried out on a draft Land Registration (Scotland) Bill in 2010: <http://www.scotland.gov.uk/Publications/2010/09/landregistrationbill> There has also been 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

14. 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:

<http://www.scotland.gov.uk/Topics/Business-Industry/support/better-regulation/partial-assessments/full/2011/LandRegistrationBill>

<http://www.ros.gov.uk/lrbillconsultation/consultation.html>

15. The Bill had Accompanying Documents in the usual way

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

Financial Effects

16. 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
February 2014

Annex

Position from 11 May 2014 to the designated day, and transitional arrangements

For the period from 11 May 2014 to the designated day, section 1 of the Requirements of Writing (Scotland) Act 1995 as amended by the provisions of the 2012 Act brought into force by article 2(1)(b) of this Order and transitional arrangements will apply as follows —

In relation to ARTL documents

“1. (1) Subject to subsection (2) below and any other enactment, writing shall not be required for the constitution of a contract, unilateral obligation or trust.

(2) Subject to subsections 2A and (3) below, a written document complying with section 2 of this Act shall be required for—

(a) the constitution of—

(i) a contract or unilateral obligation for the creation, transfer, variation or extinction of a real right in land;

(ii) a gratuitous unilateral obligation except an obligation undertaken in the course of business; and

(iii) a trust whereby a person declares himself to be sole trustee of his own property or any property which he may acquire;

(b) the creation, transfer, variation or extinction of a real right in land otherwise than by the operation of a court decree, enactment or rule of law; and

(c) the making of any will, testamentary trust disposition and settlement or codicil.

(2A) An **electronic document** complying with section 2A shall be valid for—

(a) the constitution of a contract or unilateral obligation for the creation, transfer, variation or extinction of a real right in land;

(b) the constitution of a gratuitous unilateral obligation; and

(c) the creation, transfer, variation or extinction of a real right in land.

(2B) In this section, “electronic document” means a document created as an electronic communication within the ARTL system.”

Note that the reference to an “electronic document” in section 1(2A) relates to ARTL documents as defined in section 1(2B). The transitional provision in article 3(3) of the Order disapplies both of those subsections from the new class of electronic documents – see below.

In relation to the new class of electronic documents

“1. (1) Subject to subsection (2) below and any other enactment, writing shall not be required for the constitution of a contract, unilateral obligation or trust.

(2) Subject to subsection (3) below, a written document which is a traditional document complying with section 2 or an **electronic document** complying with section 9B of this Act shall be required for—

(a) the constitution of—

(i) a contract or unilateral obligation for the creation, transfer, variation or extinction of a real right in land;

(ii) a gratuitous unilateral obligation except an obligation undertaken in the course of business; and

(iii) a trust whereby a person declares himself to be sole trustee of his own property or any property which he may acquire;

(b) the creation, transfer, variation or extinction of a real right in land otherwise than by the operation of a court decree, enactment or rule of law; and

(c) the making of any will, testamentary trust disposition and settlement or codicil.”

Note that the reference to an electronic document in section 1(2) relates to the new class of electronic documents. The transitional provision in article 3(2) of the Order disapplies this reference from ARTL documents – see below.

Articles 3 and 4 of the Order - transitional arrangements

From when the new class of electronic documents become usable on 11 May 2014 until the designated day, this Order contains transitional provisions. They enable the Keeper to continue to operate the current ARTL system, including the relevant directions which the Keeper has made for the operation of the ARTL system, and also allow the provisions for the new class of electronic documents to operate alongside the ARTL system.

- Article 3(1) confirms the transitional period for which the transitional provisions in Article 3 apply – they apply from 11 May 2014 and end at the beginning of the “designated day” under section 122 of the 2012 Act.
- Article 3(2) provides that none of the amendments made to the 1995 Act by commencing Part 10 of the 2012 Act apply to ARTL documents, so they only apply to the new class of electronic documents outwith the ARTL system, and do not confuse the operation of the existing ARTL provisions.
- Article 3(3) provides that certain sections of the 1995 Act apply only to ARTL documents and not to the new class of electronic documents generally.

- A definition of “traditional document” is added by article 3(4). This allows certain provisions to operate until paragraph 2 of schedule 3 to the 2012 Act is brought into force to provide that nothing in what will become Part 2 of the 1995 Act applies to electronic documents. This is needed because at present what will become that Part 2 of the 1995 Act contains ARTL provisions.

Article 4 of the Order applies Schedule 2 to the 1995 Act (subscription and signing: special cases) to the new class of electronic documents generally created outwith the ARTL system for the same transitional period. These arrangements will be replaced by regulations making provision as to presumptions with regard to authentication of such electronic documents made under section 9E(1)(b) of the 1995 Act, to come into force on the designated day. The reference to “authentication” will be to the definition in new section 12(4) of the 1995 Act as added by paragraph 19(b) of schedule 2 to the 2012 Act, in force during the transitional period.