

Economy and Fair Work Committee

SSI cover note

16th Meeting 2022, (Session 6), 15 June 2022

Title of Instrument:	Registers of Scotland (Information and Access, etc.) Miscellaneous Amendment Order 2022
Laid Date:	25 May 2022
Reporting deadline:	6 September 2022
Type of instrument:	Affirmative

Parliamentary procedure:

The affirmative procedure means that an instrument cannot be made and come into force unless the Parliament has voted to approve it (rule 10.6.1 of standing orders).

Affirmative instruments are first looked at by the DPLR Committee before being considered by the lead committee (usually the committee which examined the Bill for the Act that the SSI is made under or whose remit is most aligned).

It is usual practice for the lead committee to take evidence from the relevant Scottish minister and officials in advance of formally considering the motion to approve the instrument. During the evidence session, the committee can ask the minister and any officials questions about the instrument.

The next step is that the Minister proposes, by motion, that the lead committee recommend that the instrument or draft instrument be approved. The committee has up to 90 minutes to debate the motion. Officials are not allowed to speak in any debate.

The lead committee must report its decision on the motion to Parliament within 40 days of the instrument being laid. If the Committee agrees the motion and recommends that the instrument should be approved, that recommendation is put to a vote in the Chamber. If the lead committee does not approve the motion to approve an instrument, it reports that fact to the Parliament and it is then for the Parliamentary Bureau to decide whether MSPs should vote on it in the Chamber.

Purpose

1. The Policy Note for the regulations is attached at **Annex A** and the regulations are attached at **Annex B**.
2. The Order complements provisions contained in [Registers of Scotland \(Digital Registration etc.\) Regulations 2022](#) and the [Coronavirus \(Recovery and Reform\)\(Scotland\) Bill](#) by:
 - Setting out the basis on which the Keeper of the Registers of Scotland must issue extracts of documents registered in the Books of Council and Session, and the default form these should take; and
 - Clarifying that extracts of deeds registered in the Register of Sasines can be issued in electronic form on request.
3. The Order also makes a number of clarificatory amendments to the [Writs Execution \(Scotland\) Act 1877](#) .

Delegated Powers and Law Reform Committee consideration

4. The Delegated Powers and Law Reform Committee considered the instrument at its [meeting on 07 June](#) and made no recommendations.

For decision

5. The Committee must decide whether or not to agree the motion and then report to Parliament by 06 September 2022.

Economy and Fair Work Committee Clerks
10 June 2022

POLICY NOTE**The Registers of Scotland (Information and Access, etc.) Miscellaneous Amendment Order 2022****SSI 2022/Draft**

This Order is made by the Scottish Ministers in exercise of the powers conferred by sections 107(1) and 117(1) of the [Land Registration etc. \(Scotland\) Act 2012](#) (“the 2012 Act”), and all other powers enabling them to do so. It is subject to the affirmative procedure.

Summary

The Order makes complementary provisions to those contained in [Registers of Scotland \(Digital Registration etc.\) Regulations 2022](#) and the [Coronavirus \(Recovery and Reform\)\(Scotland\) Bill](#) by:

- Setting out the basis on which the Keeper of the Registers of Scotland must issue extracts of documents registered in the Books of Council and Session, and the default form which these extracts should take; and
- Clarifying that extracts of deeds registered in the Register of Sasines can be issued in electronic form on request.

The Order also makes a number of clarificatory amendments to the [Writs Execution \(Scotland\) Act 1877](#) in support of the practice of issuing electronic extracts, and to remove reference to legislation that is no longer in force.

POLICY OBJECTIVES

As part of Registers of Scotland’s response to the Covid pandemic, a number of registers under the management and control of the Keeper of the Registers of Scotland (including the Land Register and Register of Sasines) have been enabled to allow registration to proceed on the basis of copies of traditional documents transmitted to the Keeper electronically (so-called ‘digital submission’).

The legislative basis for digital submission was introduced in paragraphs 11 to 14 of schedule 7 of the [Coronavirus \(Scotland\) Act 2020](#) and paragraph 3 of schedule 4 of the [Coronavirus \(Scotland\) \(No. 2\) Act 2020](#). Following positive stakeholder feedback and public consultation, these provisions were included in the [Coronavirus \(Recovery and Reform\)\(Scotland\) Bill](#) and, if enacted, will be placed on a permanent statutory footing. However, the Register of Deeds and Probative Writs in the Books of Council and Session (‘BCS’) was not included in the original suite of emergency digital submission

legislation as the registration of copies of deeds was seen as inconsistent with the primary function of this register, namely preservation of documents.

Instead, following the growing use of electronic signatures prompted by the Covid pandemic, and a strong positive response to public consultation on this issue, regulation 7 of the [Registers of Scotland \(Digital Registration etc.\) Regulations 2022](#) inserted a new regulation 8 in the [Electronic Documents \(Scotland\) Regulations 2014](#). This will open the BCS to electronic documents authenticated by way of a qualified electronic signature from 01 October 2022. From that date, both paper and electronic documents will be capable of registration in the BCS.

This Order complements the existing 2022 Regulations, by setting out the basis on which the Keeper must issue BCS extracts, and the default form these extracts should take. Where an electronic document is registered, the default form of extract issued will be an electronic document. Where a paper document is registered, the default form of extract will be a paper document. In both cases, paper/electronic extracts will also be available on request.

In addition, this Order also clarifies that extracts of deeds registered in the Register of Sasines can be issued as electronic documents where the applicant requests. This brings the Register of Sasines into line with the Land Register provision at section 104(7) of the [Land Registration etc. \(Scotland\) Act 2012](#).

Finally, this Order makes a number of clarificatory amendments to the [Writs Execution \(Scotland\) Act 1877](#) to reflect that BCS and Register of Sasine extracts issued by Registers of Scotland, and BCS extracts issued by National Records of Scotland, can be issued in electronic form, and to remove reference to legislation which is no longer in force.

CONSULTATION

On behalf of Scottish Ministers, as noted above, the Keeper carried out a public consultation on Digital Submission (including the provision of electronic extracts, and the opening of the BCS to electronic documents) between 22 December 2020 and 01 February 2021. 223 written responses were received and they have been taken into account when finalising this instrument.

The consultation, and a report on the consultation, are available on the RoS website: <https://www.ros.gov.uk/about/publications/consultations-and-surveys/2020/digital-submissions-2020>

IMPACT ASSESSMENTS

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

No other impact assessments have been prepared in respect of this Order. Screening exercises/declarations setting out the basis for this approach are published on the Registers of Scotland website.

Impact assessments for the [Registers of Scotland \(Digital Registration, etc.\) Regulations 2022](#), to which this Order relates, were carried out and are published on the Registers of Scotland website.

Draft Order laid before the Scottish Parliament under section 116(3)(k) and 116(4)(b) of the Land Registration etc. (Scotland) Act 2012 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2022 No.

ELECTRONIC COMMUNICATIONS

LAND REGISTRATION

REGISTERS AND RECORDS

The Registers of Scotland (Information and Access, etc.)
Miscellaneous Amendment Order 2022

Made - - - - 2022

Coming into force - - 1st October 2022

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 107(1) and 117(1) of the Land Registration etc. (Scotland) Act 2012(a), and all other powers enabling them to do so.

In accordance with sections 116(3)(k) and 116(4)(b) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1. This Order may be cited as the Registers of Scotland (Information and Access, etc.) Miscellaneous Amendment Order 2022 and comes into force on 1 October 2022.

Extracts of deeds

2. After article 4 of the Registers of Scotland (Information and Access) Order 2014(b) (public access to a register under the management and control of the Keeper) insert—

“Extracts of deeds registered in the Books of Council and Session

5.—(1) Where a person applies to the Keeper for an extract of a deed registered in the Books of Council and Session the Keeper must issue the extract, if—

- (a) such fee as is payable(c) for issuing it is paid, or
- (b) arrangements satisfactory to the Keeper are made for payment of that fee.

(a) 2012 asp 5.

(b) S.S.I. 2014/189.

(c) Under the Registers of Scotland (Fees) Order 2014, schedule 1, Parts 4 and 7 (S.S.I. 2014/188) amended by S.S.I. 2021/139.

(2) In the case of a deed registered in the Books of Council and Session in accordance with regulation 8 of the Electronic Documents (Scotland) Regulations 2014^(a) (registration of other electronic documents), the Keeper—

- (a) must issue the extract as an electronic document, but
- (b) may, if the applicant requests that it be issued as a paper document, issue the extract in that form instead.

(3) In all other cases, the Keeper—

- (a) must issue the extract as a paper document, but
- (b) may, if the applicant requests that it be issued as an electronic document, issue the extract in that form instead.

Extracts of deeds registered in the Register of Sasines

6. Where a person applies to the Keeper for an extract of a deed registered in the Register of Sasines, the Keeper may issue the extract as an electronic document if (and only if) the applicant requests that it be issued in that form.”

Writs Execution (Scotland) Act 1877

3.—(1) The Writs Execution (Scotland) Act 1877^(b) is amended in accordance with paragraphs (2) and (3).

(2) In section 5 (extracts of deeds registered in the Books of Council and Session, and Register of Sasines)—

- (a) for “be impressed with” substitute “bear”,
- (b) omit “to be kept in the respective offices”.

(3) In section 7 (extracts and transmission of records of Books of Council and Session)—

- (a) omit “, in terms of the twelfth section of the Public Records (Scotland) Act 1809,”,
- (b) for “be impressed with” substitute “bear”,
- (c) omit “to be kept in the office”.

Name

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
Date

(a) S.S.I. 2014/83 relevantly amended by S.S.I. 2022/65.

(b) 1877 c. 40. The functions of Keeper of the General Register of Sasines and of the Lord Clerk Register as Keeper of the Records, Registers and Rolls for Scotland are now exercisable by the Keeper of the Registers of Scotland by virtue of the Lord Clerk Register (Scotland) Act 1879 (c. 44), section 6; the Reorganisation of Offices (Scotland) Act 1928 (c. 34), section 5 and the Public Registers and Records (Scotland) Act 1948 (c. 57), section 1(2). Section 7 was amended by the Conveyancing (Scotland) Act 1924 (c. 57), section 10(7).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision in relation to the form in which extracts of deeds registered in the Books of Council and Session and in the Register of Sasines are to be issued.

Article 2 amends the Registers of Scotland (Information and Access) Order 2014.

- New article 5 provides that, upon payment of the appropriate fee or appropriate arrangements for payment of such fee, an extract of a deed registered in the Books of Council and Session must be issued by the Keeper of the Registers of Scotland (“the Keeper”) as a paper document. This is unless the deed was an electronic document registered in accordance with regulation 8 of the Electronic Documents (Scotland) Regulations 2014, in which case the extract must be issued by the Keeper as an electronic document. The Keeper may issue the extract in a different form (as an electronic document instead of a paper document or a paper document instead of an electronic document) if this is requested by the person applying for the extract.
- New article 6 provides that the Keeper may issue an extract of a deed registered in the Register of Sasines as an electronic document if this is requested by the person applying for the extract.

Article 3 makes clarificatory and consequential amendments to update sections 5 and 7 of the Writs Execution (Scotland) Act 1877.