

2014 No. 83

ELECTRONIC COMMUNICATIONS

The Electronic Documents (Scotland) Regulations 2014

Made - - - - *25th March 2014*

Laid before the Scottish Parliament *27th March 2014*

Coming into force - - *11th May 2014*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 9B(2)(c), 9C(2) and 9E(1)(d) of the Requirements of Writing (Scotland) Act 1995(a) and all other powers enabling them to do so.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Electronic Documents (Scotland) Regulations 2014 and come into force on 11th May 2014.

(2) In these Regulations—

“the 1995 Act” means the Requirements of Writing (Scotland) Act 1995;

“the 2002 Regulations” means the Electronic Signatures Regulations 2002(b);

“advanced electronic signature” means an advanced electronic signature as defined in regulation 2 of the 2002 Regulations; and

“electronic document” has the meaning given in section 9A of the 1995 Act(c).

Requirements of formally valid electronic document

2. For an electronic document required by section 1(2) of the 1995 Act(d) to be valid the electronic signature of a granter incorporated into or logically associated with that document must be an advanced electronic signature.

(a) 1995 c.7, amended by the Petroleum Act 1998 (c.17), Schedule 5, Part 1, paragraph 1, the Scotland Act 1998 (c.46), Schedule 8, paragraph 31, S.I. 1999/1820, Schedule 2, Part 1, paragraph 118, the Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), schedule 12, Part 1, paragraph 58, S.I. 2000/2040, Schedule, Part 1, paragraph 17, the Housing (Scotland) Act 2001 (asp 10), schedule 10, paragraph 22, S.S.I. 2001/128, Schedule 4, paragraphs 4 and 5, the Title Conditions (Scotland) Act 2003 (asp 9), schedule 15, paragraph 1, S.S.I. 2006/491, article 3, the Companies Act 2006 (c.46), Schedule 16, paragraph 1, the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), sections 48(1) and 222(2) and (3), S.I. 2008/948, Schedule 1, Part 2, paragraph 199, S.I. 2009/1941, Schedule 1, paragraph 151 and the Land Registration etc. (Scotland) Act 2012 (asp 5) (“the 2012 Act”), sections 96, 97 and 98 and schedule 3. Sections 9B(2)(c), 9C(2) and 9E(1)(d) are inserted by section 97 of the 2012 Act for limited purposes by, and subject to transitional provision for Automated Registration of Title to Land (“ARTL”) documents in article 3(2) of, S.S.I. 2014/41.

(b) S.I. 2002/318.

(c) Section 9A is inserted by the 2012 Act, section 97 for limited purposes by, and subject to transitional provision for ARTL documents in article 3(2) of, S.S.I. 2014/41.

(d) Section 1(2) is amended by the 2012 Act, section 96(2)(a) for limited purposes by, and subject to transitional provision for ARTL documents in article 3(2) of, S.S.I. 2014/41.

Requirements of self-proving electronic document

3. For an electronic document to be presumed authenticated by a granter under section 9C of the 1995 Act(a) the electronic signature incorporated into or logically associated with that document must be—

- (a) an advanced electronic signature; and
- (b) certified by a qualified certificate as defined in regulation 2 of the 2002 Regulations.

Annexations to electronic documents

4. For an annexation to an electronic document to be regarded as incorporated in that document it must be—

- (a) referred to in the document;
- (b) identified on its face as being the annexation referred to in the document; and
- (c) annexed to the document before the electronic signature under regulation 2 is incorporated into or logically associated with the document and the annexation.

FERGUS EWING

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
25th March 2014

(a) Section 9C is inserted by the 2012 Act, section 97, for limited purposes by, and subject to transitional provision for ARTL documents in article 3(2) of, S.S.I. 2014/41.

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Land Registration etc. (Scotland) Act 2012 (“the 2012 Act”) amends the Requirements of Writing (Scotland) Act 1995 (“the 1995 Act”) to permit electronic documents to have equivalent status and standards of validity and authenticity to paper documents.

Sections 9B and 9C of the 1995 Act inserted by section 97 of the 2012 Act contain powers to prescribe requirements for electronic documents and electronic signatures, including the type of signature required for such documents to be valid or self-proving.

Those provisions are brought into force by the Land Registration etc. (Scotland) Act 2012 (Commencement No. 2 and Transitional Provisions) Order 2014 (S.S.I. 2014/41) except for the purposes of any will, testamentary trust disposition and settlement or codicil. Transitional provisions in that Order also maintain the current arrangements for electronic documents under the Automated Registration of Title to Land (ARTL) system run by Registers of Scotland before the designated day under section 122 of the 2012 Act.

Regulation 2 of these Regulations provides that the relevant electronic documents - contracts, obligations, trusts and conveyances where formal writing is required under section 1(2) of the 1995 Act (including those altering real rights in land) - must have an advanced electronic signature to be valid.

Regulation 3 provides that an electronic signature applied to those electronic documents in order to make the document self-proving must be certified by a qualified certificate.

Regulation 4 makes provision for annexations to electronic documents.

A Business Regulatory Impact Assessment has been prepared and placed in the Scottish Parliament Information Centre. Copies can be obtained from Registers of Scotland, Meadowbank House, 153 London Road, Edinburgh EH8 7AU.

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