

Draft Order laid before the Scottish Parliament under section 9(4) and (7)(d) of the Electronic Communications Act 2000, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2006 No.

ELECTRONIC COMMUNICATIONS

The Electronic Communications (Scotland) Order 2006

Made - - - - 2006

Coming into force in accordance with article 1(1)

The Scottish Ministers, considering that the authorisation of the use of electronic communications or electronic storage for any purpose is such that the extent (if any) to which records of things done for that purpose will be available will be no less satisfactory in cases where use is made of electronic communications or electronic storage than in other cases, in exercise of the powers conferred by sections 8 and 9 of the Electronic Communications Act 2000(1), and with the consent of the Secretary of State in accordance with section 9(7)(c) of that Act, make the following Order, a draft of which has been laid before and approved by resolution of the Scottish Parliament:

Citation, commencement and extent

1.—(1) This Order may be cited as the Electronic Communications (Scotland) Order 2006 and comes into force on the day after the day on which it is made.

(2) This Order extends to Scotland only.

Animals

Amendment to the Zoo Licensing Act 1981

2. After section 19A (directions) of the Zoo Licensing Act 1981(2), insert—

“Electronic communications

19B.—(1) Subject to subsection (2), any reference in this Act to any document, notice, notification or statement in writing shall include a reference to that document, notice,

(1) 2000 c. 7 (“the 2000 Act”). By virtue of the modifications for Scotland in section 9(7) of the 2000 Act, the reference to the appropriate Minister in section 8 is to be read as a reference to the Secretary of State, and the powers of the Secretary of State may be exercised by the Scottish Ministers, with the consent of the Secretary of State. Section 15 contains a definition of “enactment” relevant to the exercise of the powers in this Order.

(2) 1981 c. 37. Section 19A was inserted by S.S.I. 2003/174, regulation 25.

notification or statement being an electronic communication (as defined in section 15(1) of the Electronic Communications Act 2000 (c. 7)), which has been recorded and is consequently capable of being reproduced.

(2) Any notice which a local authority requires to send may be given to or served on a person by such an electronic communication only if—

- (a) the person consents in writing to the receipt of a notice of the kind in question from the sender by electronic communication sent to a specified number or address; and
- (b) the communication is sent to the number or address in question.

(3) In any legal proceedings, an electronic communication sent to any person under this Act shall, unless the contrary is proven, be regarded as having been received by that person on the second working day after the day on which it was sent.

(4) In subsection (3), “working day” means a day which is not—

- (a) a Saturday;
- (b) a Sunday;
- (c) Christmas Eve;
- (d) a bank holiday in Scotland under the Banking and Financial Dealings Act 1971 (c. 80);
- (e) a day appointed for public thanksgiving or mourning; or
- (f) a day which is a local or public holiday in the area in which the electronic communication is to be sent.”.

Amendments to the Deer (Scotland) Act 1996

3.—(1) The Deer (Scotland) Act 1996(3) is amended in accordance with paragraphs (2) to (8).

(2) After section 10(4) (emergency measures to prevent damage by deer), insert—

“(4A) For the purposes of subsections (2) and (4) above, a request or authorisation may be by electronic communication (as defined in section 15(1) of the Electronic Communications Act 2000 (c. 7)), which has been recorded and is consequently capable of being reproduced.

(4B) Any request to a person under subsection (2) above may be made by such an electronic communication only if—

- (a) the person consents in writing to the receipt of a request of the kind in question from the sender by electronic communication sent to a specified number or address, and
- (b) the communication is sent to the number or address in question.”.

(3) In section 15 (power to enter on land)—

(a) after subsection (2), insert—

“(2A) For the purposes of subsections (1) and (2) above, an authorisation may be by electronic communication (as defined in section 15(1) of the Electronic Communications Act 2000 (c. 7)), which has been recorded and is consequently capable of being reproduced.”;

(b) in subsection (4), after “written document” insert—

“, or a copy of a record of authority in terms of subsection (2A) above.”.

(4) In section 16 (service of notices)—

- (a) in subsection (1), after “post” insert–
“or, where subsection (1A) below applies, sent to him at a specified number or address”;
- (b) after subsection (1) insert–
“(1A) Any notice for the purposes of sections 10(7) and (8), 15(2)(a) and 40(1) of this Act, may be by electronic communication (as defined in section 15(1) of the Electronic Communications Act 2000 (c. 7)), which has been recorded and is consequently capable of being reproduced.
(1B) Any notice to which subsection (1A) above applies may be given to or served on a person by such an electronic communication only if–
 - (a) the person consents in writing to the receipt of a notice of the kind in question from the sender by electronic communication sent to a specified number or address, and
 - (b) the communication is sent to the number or address in question.”.
- (5) After section 26(2) (right of occupier in respect of deer causing serious damage to crops etc. on certain ground), insert–
“(2A) For the purposes of subsection (2)(d) above, an approval may be by electronic communication (as defined in section 15(1) of the Electronic Communications Act 2000 (c. 7)), which has been recorded and is consequently capable of being reproduced.”.
- (6) In section 34 (records kept by venison dealers)–
 - (a) after subsection (2), insert–
“(2A) For the purposes of subsection (2) above, an authority may be by electronic communication (as defined in section 15(1) of the Electronic Communications Act 2000 (c. 7)), which has been recorded and is consequently capable of being reproduced.”.
 - (b) in subsection (3), after “written authority” insert–
“, or a copy of a record of authority in terms of subsection (2A) above,”.
- (7) After section 37(2) (restrictions on granting of certain authorisations), insert–
“(2A) For the purposes of subsection (2) above, an authorisation may be by electronic communication (as defined in section 15(1) of the Electronic Communications Act 2000 (c. 7)), which has been recorded and is consequently capable of being reproduced.”.
- (8) After section 40(2) (power of Commission to require return of number of deer killed), insert–
“(2A) For the purposes of subsection (2) above, a notice may be by electronic communication (as defined in section 15(1) of the Electronic Communications Act 2000 (c. 7)), which has been recorded and is consequently capable of being reproduced.
(2B) A notice may be served on a person by such an electronic communication only if–
 - (a) the person consents in writing to the receipt of a notice of the kind in question from the sender by electronic communication sent to a specified number or address, and
 - (b) the communication is sent to the number or address in question.”.

Education

Amendment to the Education (Scotland) Act 1980

- 4. After section 28K (information as to pupils) of the Education (Scotland) Act 1980(4), insert–

(4) 1980 c. 44. Section 28K was inserted by the Education (Schools) Act 1992 (c. 38), section 17.

“Use of electronic communications

28L.—(1) This section applies for the purposes of doing anything in writing under—

- (a) section 28A(1) or (4)(5);
- (b) section 28E(3) or (5);
- (c) section 28H(3); or
- (d) regulations made under section 28A(5), 28D(3) or 28H(5),

of this Act.

(2) Subject to subsection (3) below, any request, information, notification or other thing which must be in writing may be done by means of a document—

- (i) transmitted by electronic means;
- (ii) received in legible form; and
- (iii) capable of being used for subsequent reference.

(3) An education authority shall be bound to accept receipt of a request made under section 28A(1) of this Act by way of electronic communication only if that authority—

- (a) has passed a resolution to accept receipt of requests so transmitted; and
- (b) has, under section 28B(1)(a) of this Act, published or otherwise made that resolution available.”.

Amendment to the Education (Student Loans) (Scotland) Regulations 2000

5. In regulation 6(11) (applications for loans) of the Education (Student Loans) (Scotland) Regulations 2000(6), omit “signed”.

Water

Amendment to the Water (Fluoridation) Act 1985

6. After section 1(2) (fluoridation of water supplies at request of health authorities) of the Water (Fluoridation) Act 1985(7), insert—

“(2A) An application or the withdrawal of it may be made or done by electronic communication (within the meaning of section 15(1) of the Electronic Communications Act 2000 (c. 7)), which has been recorded and is consequently capable of being reproduced.”.

Gaelic Language

Amendment to the Gaelic Language (Scotland) Act 2005

7. After section 10(1) (interpretation) of the Gaelic Language (Scotland) Act 2005(8), insert—

“(1A) Any reference in this Act to anything done in writing or produced in written form includes a reference to an electronic communication (as defined in section 15(1) of the Electronic Communications Act 2000 (c. 7)), which has been recorded and is consequently capable of being reproduced.”.

(5) Sections 28A, 28B, 28D, 28E and 28H were inserted by the Education (Scotland) Act 1981 (c. 58), section 1(1).

(6) S.S.I. 2000/200, amended by S.S.I. 2001/311, 2004/469 and 2005/217, 341 and 572.

(7) 1985 c. 63.

(8) 2005 asp 7.

Fire and Rescue Services

Amendment to the Fire (Scotland) Act 2005

8. After section 24 (notice of works affecting water supply and fire hydrants) of the Fire (Scotland) Act 2005⁽⁹⁾, insert—

“Use of electronic communication

24A.—(1) In section 24(1) and (3), the reference to the giving of notice in writing shall include the giving of notice by means of a document, the text of which—

- (a) is received in legible form;
- (b) is capable of being used for subsequent reference; and
- (c) is sent by an electronic communication within the meaning of section 15(1) of the Electronic Communications Act 2000 (c. 7).”.

St Andrew’s House,
Edinburgh
2006

Authorised to sign by the Scottish Ministers

I consent

Scotland Office Department of Constitutional
Affairs
2006

Parliamentary Under Secretary of State

(9) 2005 asp 5.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision to enable electronic communications in a number of enactments.

It amends the Zoo Licensing Act 1981 to enable electronic communications to be used where there is a requirement in that Act to use writing, under the conditions in section 19B of that Act to be inserted by article 2.

It amends the Deer (Scotland) Act 1996 to enable things to be done electronically (article 3).

It inserts a new section into the Education (Scotland) Act 1980 to provide that: school placing requests made by parents; decisions and notifications made or issued by an education authority or by the education appeal committee; and representations made by a parent to an education appeal committee, in relation to placing requests, may be made or issued by means of electronic communications (article 4). Education authorities may refuse to accept placing requests submitted electronically until they have passed and published a resolution to accept them.

It amends regulation 6(11) of the Education (Student Loans) (Scotland) Regulations 2000 to remove a requirement for a declaration made by a student applying to borrow additional amounts to be signed, to facilitate the entire loan application process being available by electronic means (article 5).

It amends section 1(2) (fluoridation of water supplies at request of health authorities) of the Water (Fluoridation) Act 1985 to allow a health authority to write electronically to a statutory undertaker as an alternative to a paper based process (article 6).

It amends section 10(1) of the Gaelic Language (Scotland) Act 2005 to provide that anything required to be done in writing under that Act may be done by electronic communications (article 7).

It amends the Fire (Scotland) Act 2005 at section 24, to provide that the giving of notice in writing under section 24(1) and (3) may be by means of a document containing text that is received in a legible form, capable of being used for subsequent reference and sent by an electronic communication (article 8).