
SCOTTISH STATUTORY INSTRUMENTS

2006 No. 491

**The Automated Registration of Title to Land
(Electronic Communications) (Scotland) Order 2006**

Amendment of the Requirements of Writing (Scotland) Act 1995

3.—(1) In section 1(2) (writing required for certain contracts, obligations, trusts, conveyances and wills), for “subsection (3)” substitute, “subsections (2A) and (3)”.

(2) After section 1(2) insert—

“(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.”.

(3) In section 1 (writing required for certain contracts, obligations, trusts, conveyances and wills)—

- (a) in subsection (3), after “section 2”, insert “or, as the case may be, an electronic document complying with section 2A,”;
- (b) in subsections (3) and (5) for “subsection (2)(a)”, substitute “subsections (2)(a) or (2A)”.

(4) After section 2 (type of writing required for formal validity of certain documents) insert—

“Formalities of execution of electronic documents

2A.—(1) An electronic document shall be valid in respect of the formalities of execution if that document has been authenticated by the granter, or if there is more than one granter by each granter, in accordance with subsection (2).

(2) An electronic document is authenticated by a person if the digital signature of that person—

- (a) is incorporated into or logically associated with the electronic document;
- (b) was created by the person by whom it purports to have been created;
- (c) was created in accordance with such requirements as may be set out in directions made by the Keeper of the Registers of Scotland; and
- (d) is certified in accordance with—
 - (i) subsection (3); and
 - (ii) such requirements as may be set out in directions made by the Keeper of the Registers of Scotland.

(3) For the purpose of this section a digital signature incorporated into or logically associated with an electronic document is certified by any person if that person (whether before or after the creation of the electronic document) has made a statement confirming that—

- (a) the signature;
- (b) a means of producing, communicating or verifying the signature; or
- (c) a procedure applied to the signature,

is (either alone or in combination with other factors) a valid means of establishing the authenticity of the document, the integrity of the document or both.

Directions by the Keeper of the Registers of Scotland

- 2B** A direction made by the Keeper of the Registers of Scotland under section 2A—
- (a) shall be published in such manner as the Keeper considers appropriate for the purpose of bringing it to the attention of the persons affected by it;
 - (b) may make different provision for different purposes;
 - (c) may include incidental, supplementary, saving and transitional provisions; and
 - (d) may be varied or revoked by a subsequent direction.

Authentication of an electronic document by a person granting in more than one capacity

2C Where a person grants an electronic document in more than one capacity authentication of that document by that person in accordance with this Act shall be sufficient to bind that person in all such capacities.”.

(5) After section 3 (presumption as to the granter’s subscription or date or place of subscription) insert—

“Presumption as to the authentication of electronic documents

3A Where an electronic document bears to have been authenticated by the granter and nothing in the document or in the authentication indicates that it was not so authenticated the document shall be presumed to have been authenticated by the granter.”.

(6) In section 5 (alteration to documents: formal validity and presumptions) at the end insert—

“(9) This section shall have no application as regards an electronic document.”.

(7) In section 12 (interpretation)—

(a) in subsection (1)—

(i) after the definition of “annexation” insert—

““ARTL System” means the computer system managed and controlled by the Keeper of the Registers of Scotland to enable creation of electronic documents and the electronic generation and communication of an application for registration of a dealing affecting an interest in land registered in the Land Register of Scotland and automated registration in respect of that interest;”;

(ii) after the definition of “company” insert—

““dealing” means a transaction or event capable of affecting the title to an interest in land registered in the Land Register of Scotland;”;

(iii) after the definition of “decree” insert—

““digital signature” means data in electronic form which serves as a method of authentication and which is—

- (i) uniquely linked to the signatory;
- (ii) capable of identifying the signatory;

- (iii) created using a signature-creation device that the signatory can maintain under the signatory's sole control; and
 - (iv) linked to the data to which it relates in such a manner that any subsequent change of data is detectable;";
- (iv) after the definition of "document" insert–
 - ““electronic communication” has the same meaning as in the Electronic Communications Act 2000;
 - “electronic document” has the meaning given by section 1(2B);”;
- (v) after the definition of "secretary" insert–
 - ““signature-creation data” means unique data (including, but not limited to, codes or private cryptographic keys) which are used by the signatory to create an electronic signature; and
 - “signature-creation device” means configured software or hardware used to implement the signature-creation data.”
- (b) after subsection (2) insert–
 - “(3) In a case where a person is authenticating an electronic document on behalf of a granter, any reference in this Act to authentication by a granter of an electronic document shall be construed as a reference to authentication by that person.”.