

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

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2006 No.

LAND REGISTRATION

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

Made - - - - 2006

Coming into force in accordance with article 1

The Scottish Ministers, considering in accordance with section 8(3) of the Electronic Communications Act 2000(1) that authorisation made by this Order for the use of electronic communications and electronic storage is such that the extent to which records will be available will be no less satisfactory in cases where use is made of electronic communications and electronic storage than in other cases, in exercise of the powers conferred by sections 8 and 9(5) and (6) of that Act and all other powers enabling them in that behalf, and with the consent of the Secretary of State in accordance with section 9(7)(c) of that Act, hereby 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 Automated Registration of Title to Land (Electronic Communications) (Scotland) Order 2006 and shall come into force on the day after the day on which it is made.

(2) This Order extends to Scotland only.

Amendment of the Requirements of Writing (Scotland) Act 1995

2. The Requirements of Writing (Scotland) Act 1995(2) is amended in accordance with article 3.

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—

(1) 2000 c. 7. All by virtue of the modifications for Scotland in sections 8 and 9(7), the reference to the appropriate Minister 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.

(2) 1995 c. 7.

- “(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(3) (writing required for certain contracts, obligations, trusts, conveyances and wills)—

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

Amendment of the Land Registration (Scotland) Act 1979

4. The Land Registration (Scotland) Act 1979(3) is amended in accordance with article 5.

5.—(1) In section 4 (applications for registration)—

(a) in subsection (1) for “subsection (2)” substitute “subsections (2) and (2A)”;

(b) after subsection (2) insert—

“(2A) An application for registration made by electronic communication within the ARTL System shall not be accepted by the Keeper unless the application is made—

(a) in respect of land situated in a designated area; and

(b) in respect of an authorised dealing with that land.

(2B) For the purpose of subsection (2A)—

(a) a “designated area” is an area designated by the Keeper, by direction, for that purpose; and

(b) an “authorised dealing” is a dealing which is of a kind authorised by the Keeper, by direction, for that purpose.

(2C) A direction made by the Keeper under this section—

(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.”.

(2) In section 5 (completion of registration)—

(a) in subsection (2) after “register” insert, “or, where such copy is issued as an electronic communication, authenticated in such manner as the Keeper thinks fit”; and

(b) in subsection (3) after “register” insert, “or, where such copy is issued as an electronic communication, authenticated in such manner as the Keeper thinks fit”.

(3) In section 28(1) (interpretation)—

(a) before the definition of “deed” insert—

““ARTL System” means the computer system managed and controlled by the Keeper of the Registers of Scotland to enable creation of documents as electronic communications within the ARTL System 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;

“dealing” means a transaction or event capable of affecting the title to a registered interest in land;” and

(b) after the definition of “deed” insert—

““electronic communication” has the same meaning as in the Electronic Communications Act 2000;”.

Edinburgh
2006

Authorised to sign by the Scottish Ministers

I consent

2006

Minister of State,

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Requirements of Writing (Scotland) Act 1995 (c. 7) (“the 1995 Act”) to permit electronic documents created within the Automated Registration of Title to Land (“ARTL”) system, and authenticated by means of digital signature, to be valid for the creation, transfer, variation or extinction of interests in land or for the constitution of contracts or obligations in relation to such creation, transfer, variation or extinction or the constitution of gratuitous unilateral obligations. It also amends the Land Registration (Scotland) Act 1979 (c. 33) (“the 1979 Act”) to introduce conditions upon which electronic applications for registration may be made and to permit that certificates of title may be issued as electronic communications.

The ARTL system will enable electronic registration of routine transactions affecting subjects registered in the Land Register of Scotland. Article 3(7) of the Order inserts a definition of the ARTL system into section 12 of the 1995 Act.

Article 3(1) and (2) of the Order modifies section 1(2) of the 1995 Act and inserts a new provision as section 1(2A) to permit that in the cases where subsection (2) previously required a written document, an electronic document created as an electronic communication within the ARTL system may also be used.

Article 3(3) modifies section 1(3) of the 1995 Act to apply the provisions governing personal bar to electronic documents.

Article 3(4) adds new sections 2A, 2B and 2C to the 1995 Act.

Section 2A provides that an electronic document is to be valid in respect of the formalities of execution if it is authenticated. To be authenticated the digital signature of each person by whom the document purports to be authenticated must be incorporated into or logically associated with the document, be created by the signatory in accordance with such conditions as the Keeper may direct and be certified.

By virtue of new section 2A(3) a digital signature is certified by a statement confirming that the signature, the means used to create, communicate or verify the signature or the procedure applied to the signature are a valid means of establishing the authenticity or integrity of the document. This reflects the meaning of certification used in section 7 of the Electronic Communications Act 2000.

New section 2B makes provision in relation to the content and publication of directions by the Keeper under section 2A.

New section 2C provides that a person who is party to an electronic document in more than one capacity need only authenticate it once to bind all capacities.

Article 3(5) of the Order adds a new section 3A to the 1995 Act. This provides that where an electronic document appears to have been authenticated by the grantor the authentication shall be presumed to have been done by that person. The result is that electronic documents which are authenticated will have “self-proving status” equivalent to that conferred on certain (e.g. witnessed) written documents by section 3(1) of the 1995 Act.

Article 3(6) disapplies section 5 of the 1995 Act, which concerns alterations to documents, in relation to electronic documents. No alternative provision is required as in the proposed ARTL system it will not be possible to alter an electronic document after authentication.

Article 3(7) introduces new definitions to the interpretation section of the 1995 Act. The definitions in relation to signatures are similar to the terms of the Electronic Signatures Regulations 2002.

Article 5, read with article 4, amends the 1979 Act. Paragraph (1) inserts new subsections (2A), (2B) and (2C) in section 4 of that Act. These permit the Keeper, by directions, to define the types of land dealing which may be subject of electronic registration applications, and to define the geographical areas in respect of which electronic applications for registration may be made.

Article 5(2) amends section 5 of the 1979 Act to permit Land and Charge Certificates to be issued as electronic communications, authenticated in such manner as the Keeper thinks fit.