
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations alter the arrangements for registering certain documents in the registers under the management and control of the Keeper of the Registers of Scotland.

They make provision for registration in the Land Register of Scotland and the Register of Sasines as part of changes enabling digital copies of traditional (e.g. paper) documents sent electronically to be registered in the Land Register on a permanent basis, a change to be proposed by forthcoming provision by a bill in the Scottish Parliament. These changes would have effect in practice from the re-enactment of the temporary measures in schedule 7 of the Coronavirus (Scotland) Act 2020 and schedule 4 of the Coronavirus (Scotland) (No. 2) Act 2020 which have similar effect.

- Regulation 2 accordingly amends the Land Register Rules etc. (Scotland) Regulations 2014 to require deeds to be registered in the Land Register by electronic means in circumstances set out in the Regulations. Deeds in the form of traditional documents (e.g. on paper) may still be registered if the computer system is unavailable, the applicant has no computer system with access to the internet, or the Keeper is otherwise satisfied that exceptional circumstances make electronic registration impractical (which includes applications to register deeds submitted by natural persons not engaging the services of a solicitor or other legal advisor).
- Regulation 3 makes similar provision for registration in the Register of Sasines in the Register of Sasines (Application Procedure) Rules 2004.

Regulation 4 provides explicitly that the rules on annexations for electronic documents in the Electronic Documents (Scotland) Regulations 2014 apply only where an electronic signature is required for the purposes of the electronic document requirements in the Requirements of Writing (Scotland) Act 1995 (“the 1995 Act”). It also creates presumption for annexations to other electronic documents similar to those for traditional documents (inserted regulation 4(1) and (3) to (5)), and makes consequential changes to definitions including updating the provision on self-proving electronic signatures.

Regulation 5 adjusts the introductory provision about the rules in the 1995 Act for authentication of electronic documents in special cases, e.g. partnerships, companies and office-holders, to follow more closely schedule 2 of the 1995 Act which applies to traditional documents.

Regulation 6 updates the minimum standard required by reference to in the Cabinet Office Good Practice Guide No. 45 from the requirements for registration of fully electronic documents in the Land Register or the Register of Sasines, and makes a minor correction.

Regulation 7 provides for the registration of fully electronic documents (within the meaning of the 1995 Act) in the register of deeds and probative writs in the Books of Council and Session, and makes a minor correction. This provision will come into force on 1 October 2022.

Save as indicated above, the Regulations otherwise come into force on 1 April 2022. Regulations 2 and 3 come into force on the day on which paragraph 12 of schedule 7 of the Coronavirus (Scotland) Act 2020 is re-enacted by Act of the Scottish Parliament.

A business and regulatory impact assessment has not been provided for this instrument as no significant impact on the private or voluntary sectors is foreseen.