

Draft Regulations laid before the Scottish Parliament under section 116(3)(j) of the Land Registration etc. (Scotland) Act 2012 and section 9E(4) of the Requirements of Writing (Scotland) Act 1995, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2022 No.

ELECTRONIC COMMUNICATIONS

LAND REGISTRATION

REGISTERS AND RECORDS

**The Registers of Scotland (Digital Registration, etc.)
Regulations 2022**

Made - - - - 2021

Coming into force in accordance with regulation 1(2) to (4)

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 99(3), 100, 115 and 116(1) of the Land Registration etc. (Scotland) Act 2012(a) (“the 2012 Act”) and sections 9C(2), 9E(1)(b) and (d) and 9G(3) and (5)(a) of the Requirements of Writing (Scotland) Act 1995(b) (“the 1995 Act”), and all other powers enabling them to do so.

In accordance with sections 99(4) and 115(2) of the 2012 Act and the 1995 Act, they have consulted the Keeper of the Registers of Scotland (“the Keeper”).

In accordance with section 100(4) of the 2012 Act and section 9G(4) of the 1995 Act, they have consulted the Keeper, the Keeper of the Records of Scotland and the Lord President of the Court of Session.

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- (a) 2012 asp 5, (“the 2012 Act”) amended by S.S.I. 2015/265, S.I. 2013/1575, the Co-operative and Community Benefit Societies Act 2014 (c. 14), section 151(4) and schedule 7, paragraph 1 and S.S.I. 2014/190 and S.S.I. 2014/346.
- (b) 1995 c. 7 (“the 1995 Act”) 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, the Housing (Scotland) Act 2001 (asp 10), schedule 10, paragraph 22, S.S.I. 2001/128, the Title Conditions (Scotland) Act 2003 (asp 9), schedule 15, paragraph 1, S.S.I. 2006/491, 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, S.I. 2009/1941 and the 2012 Act, sections 96 to 98 and schedule 3. Sections 9E(1)(b) and 9G(3) and (5)(a) were inserted by section 97 of the 2012 Act for limited purposes by, and subject to transitional provision for Automated Registration of Title to Land documents in article 3(2) of S.S.I. 2014/41.

In accordance with section 116(3)(j) of the 2012 Act and section 9E(4) of the 1995 Act, a draft of the Regulations has been laid before and approved by resolution of the Scottish Parliament(a).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Registers of Scotland (Digital Registration, etc.) Regulations 2022.

(2) Subject to paragraphs (3) and (4), they come into force on 1 April 2022.

(3) 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 (with or without modification).

(4) Regulation 7 comes into force on 1 October 2022.

(5) In these Regulations, “the E-Documents Regulations” means the Electronic Documents (Scotland) Regulations 2014(b).

Submission of digital copy traditional documents in the Land Register

2.—(1) The Land Register Rules etc. (Scotland) Regulations 2014(c) are amended as follows.

(2) In regulation 7 (procedure and form to apply for registration in the Land Register)(d)—

(a) at the end of the heading, add “- **deeds or voluntary registration**”,

(b) in paragraph (1)(a) after “Act”, insert “(other than by submission of a copy of the deed)”.

(3) After regulation 7, insert—

“Procedure and form to apply for registration in the Land Register – copy deeds

7A.—(1) An application for registration by submission by electronic means of a copy of a deed which is a traditional document must be sent to the Keeper in accordance with paragraphs (2) and (3).

(2) The application must be sent using a computer system under section 99 of the Act unless—

(a) the computer system notifies the applicant who attempts to use it that it is unavailable for a period of 48 hours or longer,

(b) the applicant has no computer facilities with access to the internet, or

(c) the Keeper is otherwise satisfied that exceptional circumstances make it impractical to do so.

(3) In particular, paragraph (2)(c) is met—

(a) if the applicant is a natural person who granted the deed, or to whom the deed is granted, and

(b) the application is not made by a person who, in connection with the grant, acts as a solicitor or other legal adviser to the person.

(4) In this regulation “traditional document” bears the meaning it has in the Requirements of Writing (Scotland) Act 1995.”.

(a) The powers in these Regulations are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10). These Regulations are subject to the affirmative procedure by virtue of section 33(3) of that Act.

(b) S.S.I. 2014/83 amended by S.S.I. 2014/347, S.I. 2016/696, and S.S.I. 2018/72.

(c) S.S.I. 2014/150 amended by S.S.I. 2014/347 and S.S.I. 2018/72.

(d) Regulation 7 was substituted by S.S.I. 2018/72.

Submission of digital copy traditional documents in the Register of Sasines

3. At the end of rule 4 of the Register of Sasines (Application Procedure) Rules 2004(a) (signing of application for recording), insert—

“(3) An application must be sent in electronic form using a computer system under the Keeper’s management and control unless—

- (a) the computer system notifies the applicant who attempts to use it that it is unavailable for a period of 48 hours or longer;
- (b) the applicant has no computer facilities with access to the internet; or
- (c) the Keeper is otherwise satisfied that exceptional circumstances make it impractical to do so.

(4) In particular, paragraph (3)(c) is met—

- (a) if the applicant is a natural person who granted the deed, or to whom the deed is granted; and
- (b) the application is not made by a person who, in connection with the grant, acts as a solicitor or other legal adviser to the person.

(5) Where an application must be sent in electronic form, the deed must be—

- (a) a copy of a writ which is a traditional document submitted under section 6A of the Land Registers (Scotland) Act 1868(b), or
- (b) an electronic document(c).”.

Annexations to electronic documents

4.—(1) The E-Documents Regulations are amended as follows.

(2) In regulation 1(2) (interpretation), after the definition of “private key”, insert—

““qualified electronic signature” means a qualified electronic signature as defined in Article 3(12) of Regulation (EU) No 910/2014 of the European Parliament and of the Council on electronic identification and trust services for electronic transactions in the internal market(d).”.

(3) In regulation 3 (requirements of self-proving electronic document), for the words from “must be” to the end of paragraph (b) substitute “must be a qualified electronic signature”.

(4) For regulation 4 (annexations to electronic documents), substitute—

“4.—(1) Subject to paragraphs (2) and (3) and except where an enactment expressly otherwise provides, any annexation to an electronic document is to be regarded as incorporated in the document if it is—

- (a) referred to in the document, and
- (b) identified on its face as being the annexation referred to in the document,

without the annexation having to be authenticated.

(2) Where writing is required under section 1(2) of the 1995 Act for an electronic document, an annexation to it is to be regarded as incorporated in the document if and only if it is—

- (a) referred to in the document,
- (b) identified on its face as being the annexation referred to in the document, and

(a) S.S.I. 2004/318 amended by S.S.I. 2006/568, S.S.I. 2014/190 and S.S.I. 2018/72.

(b) Section 6A was inserted by S.S.I. 2018/72.

(c) See regulation 6(2) of S.S.I. 2014/83.

(d) EUR 2014/910, amended by S.I. 2019/89.

- (c) annexed to the document before an electronic signature under regulation 2 or 3 is incorporated into or logically associated with the document and the annexation.

(3) Where writing is not required under section 1(2) of the 1995 Act for an electronic document which relates to land and an annexation to it describes or shows all or any part of the land to which the document relates, the annexation is to be regarded as incorporated in the document if and only if it—

- (a) is referred to in the document,
- (b) is identified on its face as being the annexation referred to in the document, and
- (c) meets one of the conditions in paragraph (4)(a) or (b).

(4) Those conditions are that—

- (a) the annexation is annexed to the document before an advanced electronic signature or a qualified electronic signature is incorporated into or logically associated with the document and the annexation, or
- (b) the annexation is authenticated with an electronic signature which is neither an advanced electronic signature nor a qualified electronic signature, on—
 - (i) each page, where it is a plan, drawing, photograph or other representation, or
 - (ii) the last page, where it is an inventory, appendix, schedule or other writing.

(5) In respect of any annexation referred to in paragraph (4)(b)—

- (a) if it bears to have been authenticated by a granter of the document it is presumed to have been authenticated by the person who authenticated the document as that granter,
- (b) it is competent to sign it at any time before the document is founded on in legal proceedings,
- (c) where there is more than one granter, the requirement under paragraph (4)(b)(ii) of signing on the last page is complied with (provided that at least one granter signs at the end of the last page) if any other granter signs on an additional page.”.

(5) In regulation 6(1)(b) (registration of electronic documents in the Land Register and Register of Sasines)—

- (a) omit “the type of electronic signature”,
- (b) at the beginning of head (i), insert “the type of electronic signature”, and
- (c) for head (ii), substitute—
 - “(ii) a qualified electronic signature;”.

Authentication of electronic documents: special cases

5. For regulation 5(1) (authentication of electronic documents: special cases) of the E-Documents Regulations, substitute—

“(1) Any reference in the 1995 Act or these Regulations to authentication by a granter of an electronic document, in a case where the granter is a person to whom any of paragraphs (2) to (7) applies, is to be construed as a reference to authentication by a person in accordance with that paragraph, unless the context otherwise requires.”.

Requirements for registration of electronic documents in the Land Register and Register of Sasines

6. In regulation 6 (registration of electronic documents in the Land Register and Register of Sasines) of the E-Documents Regulations—

- (a) for “An digital”(a) substitute “A digital”,

(a) “digital” was inserted by S.S.I. 2018/72.

- (b) in regulation 6(1)(c)(ii), for “a level 3 Identity as specified in” substitute “having regard to”.

Digital registration procedure in the Books of Council and Session

7.—(1) The E-Documents Regulations are amended as follows.

(2) In regulation 7(1) (registration of electronic standard securities for preservation and execution), for “an digital”(a) substitute “a digital”.

(3) After regulation 7 insert—

“Registration of other electronic documents for preservation and execution

8.—(1) An electronic document may be registered for preservation or execution (or both) in the register of deeds and probative writs in the Books of Council and Session if it is—

- (a) in the form of a PDF(b), and
- (b) authenticated by a qualified electronic signature.

(2) This regulation does not apply to an extract of an electronic standard security.”.

St Andrew’s House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

(a) “digital” was inserted by S.S.I. 2018/72.
(b) Portable document format – ISO 32000.

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.

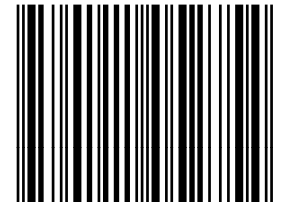
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