

Land Registration etc. (Scotland) Act 2012 asp 5 (Scottish Act)
Part 10 ELECTRONIC DOCUMENTS, ELECTRONIC CONVEYANCING AND ELECTRONIC
REGISTRATION
Electronic documents

96 Where requirement for writing satisfied by electronic document

(1) The Requirements of Writing (Scotland) Act 1995 (c.7) (the "1995 Act") is amended as follows.

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

(a) in subsection (2)—

(i) for "subsections (2A) and" substitute "subsection",

(ii) after "written document" insert "which is a traditional document",

(iii) after "section 2" insert "or an electronic document complying with section 9B",

(iv) after paragraph (b) insert—

"(ba) the constitution of an agreement under section 66(1) of the Land Registration etc. (Scotland) Act 2012 (asp 5),",

(b) in subsection (3)—

(i) for "subsections (2)(a) or (2A)" substitute "subsection (2)(a)",

(ii) repeal "written",

(iii) for "an electronic document complying with section 2A," substitute "section 9B",

(c) in subsection (5), for "subsections (2)(a) or (2A)" substitute "subsection (2)(a)".

(3) The provisions of section 1 as amended by subsection (2) become Part 1 of the Act.

(4) The title of Part 1 is "When writing is required".

97 Electronic documents

(1) The 1995 Act is further amended as follows.

(2) After section 9 insert—

Part 3 ELECTRONIC DOCUMENTS

9A Application of Part 3

This Part applies to documents which, rather than being written on paper, parchment or some similar tangible surface are created in electronic form ("electronic documents").

9B Validity of electronic documents

(1) No electronic document required by section 1(2) is valid in respect of the formalities of execution unless—

(a) it is authenticated by the granter, or if there is more than one granter by each granter, in accordance with subsection (2), and

(b) it meets such other requirements (if any) as may be prescribed by the Scottish Ministers in regulations.

(2) An electronic document is authenticated by a person if the electronic 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, and

(c) is of such type, and satisfies such requirements (if any), as may be prescribed by the Scottish Ministers in regulations.

(3) A contract mentioned in section 1(2)(a) may be regarded as constituted or varied (as the case may be) if—

(a) the offer is contained in one or more electronic documents,

(b) the acceptance is contained in another electronic document or in other such documents, and

(c) each of the documents is authenticated by its granter or granters.

(4) Where a person grants an electronic document in more than one capacity, authentication by the person of the document, in accordance with subsection (3), is sufficient to bind the person in all such capacities.

(5) Nothing in this section prevents an electronic document which has not been authenticated by the granter or granters of it from being used as evidence in relation to any right or obligation to which the document relates.

(6) Regulations under subsection (1)(b) or (2)(c) are subject to the negative procedure.

9C Presumption as to authentication of electronic documents

(1) Where—

(a) an electronic document bears to have been authenticated by the granter,

(b) nothing in the document or in the authentication indicates that it was not so authenticated, and

(c) the conditions set out in subsection (2) are satisfied,

the document is to be presumed to have been authenticated by the granter.

(2) The conditions are that the electronic signature incorporated into, or logically associated with, the document—

(a) is of such type and satisfies such requirements as may be prescribed by the Scottish Ministers in regulations, and

(b) (either or both)—

(i) is used in such circumstances as may be so prescribed,

(ii) bears to be certified,

and that if the electronic signature bears to be certified (and does not conform with paragraph (b)(i)) the certification is of such type and satisfies such requirements as may be so prescribed.

(3) Regulations under subsection (2) are subject to the negative procedure.

9D Presumptions as to granter's authentication etc. when established in court proceedings

(1) Where—

(a) an electronic document bears to have been authenticated by a granter of it, and

(b) there is no presumption under section 9C that the document has been authenticated by that granter,

the court must, on an application being made to it by any person who has an interest in the document, if satisfied that the document was authenticated by that granter, grant decree to that effect.

(2) Where—

(a) an electronic document bears to have been authenticated by a granter of it, and

(b) there is no presumption by virtue of section 9E(1) as to the time, date or place of authentication,

the court must, on an application being made to it by any person who has an interest in the document, if satisfied as to that time, date or place, grant decree to that effect.

(3) On an application under subsection (1) or (2), evidence is, unless the court otherwise directs, to be given by affidavit.

(4) An application under subsection (1) or (2) may be made either as a summary application or as incidental to, and in the course of, other proceedings.

(5) The effect of a decree—

(a) under subsection (1), is to establish a presumption that the document has been authenticated by the granter concerned, or

(b) under subsection (2), is to establish a presumption that the statement in the decree as to time, date or place is correct.

(6) In this section, "the court" means—

(a) in the case of a summary application—

(i) the sheriff in whose sherriffdom the applicant resides, or

(ii) if the applicant does not reside in Scotland, the sheriff at Edinburgh, or

(b) in the case of an application made in the course of other proceedings, the court before which those proceedings are pending.

9E Further provision by Scottish Ministers about electronic documents

(1) The Scottish Ministers may, in regulations, make provision as to the effectiveness or formal validity of, or presumptions to be made with regard to—

- (a) any alteration made, whether before or after authentication, to an electronic document,
 - (b) the authentication, by or on behalf of the granter, of such a document,
 - (c) the authentication, by or on behalf of a person with a disability, of such a document, or
 - (d) any annexation to such a document,
- (including, without prejudice to the generality of this subsection, presumptions to be made with regard to the time, date and place of authentication of such a document).
- (2) Regulations under subsection (1) may make such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient for the purposes of, or in consequence of the regulations.
- (3) Subject to subsection (4), regulations under subsection (1) are subject to the negative procedure.
- (4) Regulations which—
- (a) make provision of the kind mentioned in subsection (1)(b), or
 - (b) add to, replace or omit any part of an Act (including this Act),
- are subject to the affirmative procedure.

9F Delivery of electronic documents

- (1) An electronic document may be delivered electronically or by such other means as are reasonably practicable.
- (2) But such a document must be in a form, and such delivery must be by a means—
- (a) the intended recipient has agreed to accept, or
 - (b) which it is reasonable in all the circumstances for the intended recipient to accept.

9G Registration and recording of electronic documents

- (1) Subject to subsection (6), it is not competent—
- (a) to record an electronic document in the Register of Sasines,
 - (b) to register such a document in the Land Register of Scotland,
 - (c) to register such a document for execution or preservation in the Books of Council and Session, or
 - (d) to record or register such a document in any other register under the management and control of the Keeper of the Registers of Scotland,
- unless both subsection (2) and subsection (3) apply in relation to the document.
- (2) This subsection applies where—
- (a) the document is presumed under section 9C or 9D or by virtue of section 9E(1) to have been authenticated by the granter, or
 - (b) if there is more than one granter, the document is presumed by virtue of any of those provisions to have been authenticated by at least one of the granters.
- (3) This subsection applies where—
- (a) the document,
 - (b) the electronic signature authenticating it, and
 - (c) if the document bears to be certified, the certification,
- are in such form and of such type as are prescribed by the Scottish Ministers in regulations.
- (4) Before making regulations under subsection (3), the Scottish Ministers must consult with
- (a) the Keeper of the Registers of Scotland,
 - (b) the Keeper of the Records of Scotland, and
 - (c) the Lord President of the Court of Session.
- (5) Regulations under subsection (3)—
- (a) may make different provision for different cases or classes of case, and
 - (b) are subject to the negative procedure.
- (6) Subsection (1) above does not apply in relation to—
- (a) a document's—
 - (i) being recorded in the Register of Sasines,
 - (ii) being registered in the Land Register of Scotland or in the Books of Council and Session, or

- (iii) being recorded or registered in any other register under the management and control of the Keeper of the Registers of Scotland, if an enactment requires or expressly permits such recording or registration notwithstanding that the document is not presumed to have been authenticated by the granter or by at least one of the granters,
- (b) the recording of a court decree in the Register of Sasines or the registering of such a decree in the Land Register of Scotland,
- (c) the registering in the Books of Council and Session of—
 - (i) a document registration of which is directed by the Court of Session,
 - (ii) a document the formal validity of which is governed by a law other than Scots law, provided that the Keeper of the Registers of Scotland is satisfied that the document is formally valid according to that other law,
 - (iii) a court decree granted under section 9D, or by virtue of section 9E(1), of this Act in relation to a document already registered in the Books of Council and Session, or
 - (d) the registration of a court decree in a separate register maintained for that purpose.
- (7) An electronic document may be registered for preservation in the Books of Council and Session without a clause of consent to registration.

98 Amendment of Requirements of Writing (Scotland) Act 1995

Schedule 3, which contains modifications of the 1995 Act consequential on sections 96 and 97, has effect.

Schedule 3 AMENDMENT OF REQUIREMENTS OF WRITING (SCOTLAND) ACT 1995

1

The 1995 Act is amended as follows.

2

After section 1 insert—

“PART 2 TRADITIONAL DOCUMENTS

1A Application of Part 2

This Part of this Act applies to documents written on paper, parchment or some similar tangible surface (“traditional documents”).”.

[end of Schedule 3 extract]