



Contract and Commercial Law (Electronic Transactions) Regulations 2017

Patsy Reddy, Governor-General

Order in Council

At Wellington this 14th day of August 2017

Present:

Her Excellency the Governor-General in Council

These regulations are made under section 239 of the Contract and Commercial Law Act 2017 on the advice and with the consent of the Executive Council.

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Regulations

1 Title

These regulations are the Contract and Commercial Law (Electronic Transactions) Regulations 2017.

2 Commencement

These regulations come into force on 1 September 2017.

3 Transitional, savings, and related provisions

The transitional, savings, and related provisions (if any) set out in Schedule 1 have effect according to their terms.

4 Prescribed conditions in order to meet legal requirement by electronic means

- (1) The conditions prescribed in Schedule 2 for each legal requirement that is specified in Schedule 2 must be complied with in order to meet that legal requirement by electronic means.
- (2) The conditions prescribed in Schedule 2 are in addition to any requirement that is specified in Part 4 of the Contract and Commercial Law Act 2017.

5 Time when legal requirement of disclosure satisfied by electronic communication

A legal requirement to make disclosure that is specified in Schedule 3 is treated as satisfied by an electronic communication at the time specified in Schedule 3 for that legal requirement.

6 Meaning of express consent

In Schedule 2, **express consent** means a positive indication of consent that is specific to the matter consented to.

Example 1

Person X checks a box to select the option of receiving information in electronic form. Person X expressly consents to receiving information in that form.

Example 2

Person Y fails to check a box to select the option of receiving information in non-electronic form by post. Person Y does not expressly consent to receiving information in electronic form.

Example 3

Person Z signs an agreement that, among its other terms, provides that person Z agrees to receiving information in electronic form. Person Z does not expressly consent to receiving information in that form.

7 Condition relating to requirement that instrument or document be filed or presented under Land Transfer Act 1952

- (1) An instrument or document, other than an electronic instrument, required to be lodged or filed with the Registrar-General of Land for registration or deposit under the Land Transfer Act 1952 may be lodged or filed by electronic means if it is provided for in an electronic workspace facility approved by the Registrar-General of Land under section 22 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.
- (2) In subclause (1), **electronic instrument** has the same meaning as in section 4 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.

8 Condition relating to requirement that instrument or document be lodged or filed under Land Transfer Act 2017

- (1) An instrument or a document, other than a certified electronic instrument, that is required to be lodged or filed with the Registrar-General of Land for registration, notation, or deposit under the Land Transfer Act 2017 may be lodged or filed by electronic means if that is provided for in an electronic workspace facility as defined by section 5(1) of that Act.
- (2) In subclause (1), **certified electronic instrument** means an electronic instrument that is required by section 27 of the Land Transfer Act 2017 to be certified in order to be lodged.

Schedule 1
Transitional, savings, and related provisions

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Part 1
Provisions relating to these regulations as made

There are no transitional, savings, or related provisions relating to these regulations as made.

Schedule 2
**Prescribed conditions in order to meet legal requirement by
electronic means**

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**1 Conditions for legal requirement of certificate under Burial and
Cremation Act 1964**

A legal requirement under section 46A of the Burial and Cremation Act 1964 for a signed, written certificate may be met by information that is in electronic form and signed by means of an electronic signature only if—

- (a) the means of creating the electronic signature is a digital certificate for authentication of users; and
- (b) the signatory uses a public key cipher (asymmetric encryption) with a minimum key length of 2048 bits; and
- (c) any alteration to the information or the electronic signature after the time of signing is detectable.

**2 Conditions for legal requirement of written notice under Conservation Act
1987**

A legal requirement to give written notice under section 26ZZM(2)(b)(ii) of the Conservation Act 1987 may be met by giving the required information in electronic form, whether by means of an electronic communication or otherwise, only if the person to whom the notice must be given—

- (a) has been given the option of receiving the notice in either electronic or non-electronic form; and
- (b) has expressly consented to the notice being given in electronic form and, if applicable, by means of an electronic communication.

**3 Conditions for legal requirement of disclosure under section 16, 16A, 17,
or 18 of Credit Contracts Act 1981**

- (1) A legal requirement under section 16, 16A, 17, or 18 of the Credit Contracts Act 1981 to make disclosure may be met by giving the required information in electronic form, whether by means of an electronic communication or otherwise, only if the person to whom the disclosure must be made—

- (a) has been given the option of receiving the disclosure in either electronic or non-electronic form; and
- (b) has expressly consented to the disclosure being made in electronic form and, if applicable, by means of an electronic communication.

- (2) Subclause (1) applies in so far as section 16, 16A, 17, or 18 of the Credit Contracts Act 1981 continues to apply under section 143 of the Credit Contracts and Consumer Finance Act 2003.

4 **Conditions for legal requirements to retain records under Inland Revenue Acts**

- (1) A legal requirement under the Inland Revenue Acts to retain a record that is initially in paper or other non-electronic form may be met by retaining an electronic form of the record only if—
 - (a) the record retained in electronic form is readily able to be produced in paper form; and
 - (b) that paper form is a duplicate image of the original paper or other non-electronic form.
- (2) For the purposes of subclause (1), it does not matter that annotations, indexing references, or other additional information are included in the record retained in electronic form, provided that they—
 - (a) do not obscure any of the original information contained in the record; and
 - (b) are distinguishable as additions to the original record.
- (3) A legal requirement under the Inland Revenue Acts to retain a record that is generated in electronic form and is provided to another person in paper or other non-electronic form (for example, an invoice generated electronically and printed for sending to a customer) may be met by retaining the record in its electronic form.
- (4) Despite subclause (1), if a record is received from a person in both paper or other non-electronic form and in electronic form (for example, a bank statement sent by a bank in paper form and also provided in electronic form), a legal requirement to retain the record may be met by retaining the record in its electronic form.
- (5) In this clause, **Inland Revenue Acts** has the same meaning as in section 3(1) of the Tax Administration Act 1994.

5 **Conditions for legal requirement of written notice under section 56G(2)(b)(ii) or 62(3)(a) of National Parks Act 1980**

A legal requirement to give written notice under section 56G(2)(b)(ii) or 62(3)(a) of the National Parks Act 1980 may be met by giving the required information in electronic form, whether by means of an electronic communication or otherwise, only if the person to whom the notice must be given—

- (a) has been given the option of receiving the notice in either electronic or non-electronic form; and
- (b) has expressly consented to the notice being given in electronic form and, if applicable, by means of an electronic communication.

Schedule 3
**Time when legal requirement of disclosure satisfied by electronic
communication**

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**1 Time when electronic disclosure made under section 22, 24, or 24A of
Credit Contracts Act 1981**

- (1) For the purposes of sections 22, 24, and 24A of the Credit Contracts Act 1981, when disclosure is made by sending the disclosure documents to a person by means of an electronic communication, the disclosure is made to that person on the second working day after the day on which the documents were sent.
- (2) Subclause (1) applies in so far as section 22, 24, or 24A of the Credit Contracts Act 1981 continues to apply under section 143 of the Credit Contracts and Consumer Finance Act 2003.

**2 Time when electronic disclosure made under sections 25 to 28 of Credit
Contracts Act 1981**

- (1) For the purposes of sections 25 to 28 of the Credit Contracts Act 1981, when disclosure is made by sending the disclosure documents to a person by means of an electronic communication, the disclosure is made to that person on the day on which the documents were sent.
- (2) Subclause (1) applies in so far as any of sections 25 to 28 of the Credit Contracts Act 1981 continues to apply under section 143 of the Credit Contracts and Consumer Finance Act 2003.

Michael Webster,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 1 September 2017, are an adjunct to Part 4 of the Contract and Commercial Law Act 2017 (the **Act**), which comes into force on the same date. They continue the requirements that were formerly in place under the Electronic Transactions Regulations 2003, which are revoked on the same date by section 346 of the Act. *Regulation 8* is newly added to deal with lodgement and filing of instruments and documents under the Land Transfer Act 2017.

These regulations have 2 effects. First, they set out certain conditions that must be complied with if certain steps are taken electronically (such as making disclosure or giving written notice) and those steps are to meet the legal requirement of disclosure, notice, etc, under certain provisions specified in *Schedule 2*. For section 46A of the

Burial and Cremation Act 1964 (certificate in respect of stillborn child), one of the conditions is adjusted so that a public key cipher (asymmetric encryption) with a minimum key length of 2048 bits must be used.

Secondly, these regulations specify when, for the purposes of certain provisions of the Credit Contracts Act 1981 specified in *Schedule 3*, disclosure by electronic means is treated as having been made.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 17 August 2017.

These regulations are administered by the Ministry of Business, Innovation, and Employment.