



Electronic Transactions Regulations 2003

Silvia Cartwright, Governor-General

Order in Council

At Wellington this 20th day of October 2003

Present:

Her Excellency the Governor-General in Council

Pursuant to section 36 of the Electronic Transactions Act 2002, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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Regulations

- 1 Title**
These regulations are the Electronic Transactions Regulations 2003.

2 Commencement

These regulations come into force on 21 November 2003.

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

- (1) The conditions prescribed in Schedule 1 for each legal requirement that is specified in Schedule 1 must be complied with in order to meet that legal requirement by electronic means.
- (2) The conditions prescribed in Schedule 1 are in addition to any requirement that is specified in the Electronic Transactions Act 2002 itself.

4 Time when legal requirement of disclosure satisfied by electronic communication

A legal requirement to make disclosure that is specified in Schedule 2 is treated as satisfied by an electronic communication at the time specified in Schedule 2 for that legal requirement.

5 Meaning of express consent

In Schedule 1, **express consent** means a positive indication of consent that is specific to the matter consented to.

Example 1

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

Example 2

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

Example 3

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

Schedule 1

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Prescribed conditions in order to meet legal requirement by electronic means**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 1024 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, section 16A, section 17, or section 18 of Credit Contracts Act 1981

A legal requirement under section 16, section 16A, section 17, or section 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.

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 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 only.
- (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 only.
- (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 section 62(3)(a) of National Parks Act 1980

A legal requirement to give written notice under section 56G(2)(b)(ii) or section 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.
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Schedule 2**Time when legal requirement of disclosure satisfied
by electronic communication**

- 1 Time when electronic disclosure made under section 22, section 24, or section 24A of Credit Contracts Act 1981**
For the purposes of section 22, section 24, and section 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 Time when electronic disclosure made under sections 25 to 28 of Credit Contracts Act 1981**
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.

Diane Morcom,
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 21 November 2003, are an adjunct to the Electronic Transactions Act 2002, which comes into force on the same date (by a separate order).

The 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 specified provisions. Those provisions are:

- Burial and Cremation Act 1964, section 46A (certificate in respect of still-born child); and

- Conservation Act 1987, section 26ZZM(2)(b)(ii) (written notice to owner of seized dog); and
- Credit Contracts 1981, sections 16, 16A, 17, and 18 (disclosure); and
- Inland Revenue Acts, provisions relating to the retention of records under those statutes; and
- National Parks Act 1980, sections 56G(2)(b)(ii) and 62(3)(a) (written notice in respect of seized dogs or trespassing animals).

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

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 23 October 2003.

These regulations are administered in the Ministry of Economic Development.
