

## **Briefing for the Citizen Participation and Public Petitions Committee on petition [PE2076](#): Require original wills made outside Scotland to be accepted into safe custody, by Registers of Scotland or other safe custody providers, without prior mailing around, lodged by Maurice Frank**

### **An overview of issues raised by the petition**

This petition seems to relate to the petitioner's attempts to register a will, which was made outside Scotland, in Scotland.

#### **Registering a will in Scotland: an overview**

At present, prior to a person's death, there is no requirement in Scotland to register a will with a public body.

However, a person might choose to register their will for safekeeping in the [Register of Deeds](#) (RoD), a register which has the full title 'The Register of Deeds and Probative Writs in the Books of Council and Session'.

The Register of Deeds is kept and maintained by the public body, [Registers of Scotland](#), as one of 21 registers it manages. The RoD is a register of original documents, and wills are a common form of document registered in it. The RoD is publicly searchable for a fee and both copy deeds or 'extracts' (that is, official copies, which can be relied on in court) [can be ordered for a fee](#).

After someone has died, the 'executor', the person responsible for managing a person's estate, is usually required to obtain 'confirmation' from the court. Confirmation gives the executor the legal authority to gather in, manage and distribute the deceased person's estate.

When making an application for confirmation, the will (or an extract of it) is lodged with the court. After confirmation is granted, a copy of the will can be obtained for a fee from the court.

Separately, the executor might also choose to register the will in the RoD. Again, via this route, a copy or extract of the will could be ordered for a fee.

#### **The RoD and wills made outside Scotland**

It is competent to register a will made under another legal system in the RoD. This typically happens when a person is resident in Scotland when they die, however, they drafted the will when they previously resided in another country or part of the UK (such as England or Wales).

The [Requirements of Writing \(Scotland\) Act 1995](#) ('the 1995 Act') makes specific provision on the requirements for this. Section 6(3)(c)(iii) says that a document whose formal validity is governed by a law other than Scots law can be registered in the RoD if the Keeper is satisfied that the document is formally valid according to the law governing such validity.

The long-standing approach of [Registers of Scotland](#) to this provision is to insist that any application to register a will made outside of Scotland is accompanied by evidence from someone qualified to practice in that jurisdiction that the will is valid.

Given that the documents are submitted physically, this evidence typically takes the form of a letter from a solicitor qualified to practice in the relevant jurisdiction.<sup>1</sup>

## **Routes to registration in the RoD**

At present, there are two routes to registration in the RoD. Both routes permit only registration of original documents, not copies. That is because the RoD is primarily about preservation of original documents and permitting registration of copies is considered inconsistent with that principle.

In most circumstances, two types of original document may be submitted to the RoD: paper documents, and documents satisfying the statutory definition of 'electronic documents.' The latter are signed by way of a special type of secure signature known as a 'qualified electronic signature'.

However, the law on electronic documents (contained in Part 3 of the 1995 Act) has not been brought into force for 'testamentary documents'<sup>2</sup>, a class of documents that only take effect on death, such as wills. Consequently, RoS currently only receives wills for registration as paper documents.

Registers of Scotland has commented to SPICe as follows:

"The vast majority of deeds we receive to the Register of Deeds come via the postal system, but if a customer insisted on making an in-person delivery to our Edinburgh office, we could accommodate that via an appointment."<sup>3</sup>

## **Registers of Scotland: complaints process**

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<sup>1</sup> Email from Registers of Scotland to SPICe, dated 23 January 2024.

<sup>2</sup> See the schedule to The Land Registration etc. (Scotland) Act 2012 (Commencement No. 2 and Transitional Provisions) Order 2014 for the relevant exclusions.

<sup>3</sup> Email from Registers of Scotland to SPICe, dated 23 January 2024.

Registers of Scotland has a two-stage complaints process, with the details of the process set out on its website:

<https://www.ros.gov.uk/support/contact-us/making-a-complaint>

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24/1/24

The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at [spice@parliament.scot](mailto:spice@parliament.scot)

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