

ISSUED ON BEHALF OF THE SCOTTISH LAW COMMISSION
NOT FOR PUBLICATION OR BROADCAST
BEFORE 0001 HOURS 15 MAY 2014

SCOTTISH PARLIAMENT TO BRING FORMATION OF CONTRACTS INTO THE MODERN ERA

The Scottish Government has introduced the Legal Writings (Counterparts and Delivery) (Scotland) Bill into the Scottish Parliament. It will implement the recommendations contained in our recent Report on Formation of Contract: Execution in Counterpart (SLC No 231), published just over a year ago in April 2013.

We welcome the speed with which the Bill has been introduced. It is the first Bill to be considered for the new process for implementing Scottish Law Commission Reports, a procedure involving the Delegated Powers and Law Reform Committee of the Scottish Parliament. We were involved in the creation of the procedure and are very pleased to assist in its inaugural use for the present Bill.

The Bill will make two major innovations to Scots law and practice, both of which were warmly welcomed when we consulted prior to publishing our Report. First, it will clarify that a document which is to be signed by two or more parties can be “executed in counterpart”, i.e. that each party can sign its own copy of the document, which will then be delivered to the other party or parties (or their nominee where there are several of them). Secondly, the Bill will permit delivery of paper legal documents by electronic means, meaning that the document will take legal effect upon such delivery. This will resolve the current doubt as to whether faxing or emailing a copy of a signed paper document can make it legally effective.

These two advances will promote confidence in using Scots law to form contracts and will make Scotland a better place to do business.

Lord Pentland, the Chairman of the Scottish Law Commission, said:

“I am delighted by the introduction of this Bill, which will be considered for the new process in the Scottish Parliament for Scottish Law Commission Bills. The new process is an important innovation. Introducing this Bill marks a new era for law reform, with the Commission, the Government and the Parliament working together to implement useful law reform measures for Scotland “

Professor MacQueen, the lead Commissioner on the contract law reform team, added his welcome to the Bill by saying:

“This Bill is the end product of a great deal of consultation with legal practitioners which has helped to produce innovations that are both principled and pragmatic in allowing the swift completion of documents in accordance with international best practice. I look forward to helping its speedy progress on to the statute book.”

NOTES TO EDITORS

1. The Scottish Law Commission was set up in 1965 to promote the reform of the law of Scotland. The Chairman is the Hon Lord Pentland, a Court of Session judge. The other Commissioners are Laura J Dunlop QC, Patrick Layden QC TD, Professor Hector L MacQueen, and Dr Andrew J M Steven. The Chief Executive is Malcolm McMillan.

2. We issued a news release when the Delegated Powers and Law Reform Committee was established and the new SLC Bill procedure was agreed; it can be found here: <http://www.scotlawcom.gov.uk/news/new-procedure-to-consider-certain-commission-bills/>. Details can be found in the Scottish Parliament’s Official Record for 28 May 2013: <http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=8934>.

3. Further information can be obtained by contacting Charles Garland, Scottish Law Commission, 140 Causewayside, Edinburgh EH9 1PR (Tel: 0131 668 2131, Fax: 0131 662 4900, email: info@scotlawcom.gsi.gov.uk).

4. The paper may also be viewed on our website at <http://www.scotlawcom.gov.uk/> or purchased from TSO (<http://www.tsoshop.co.uk/>).