

# Execution in Counterpart etc. (Scotland) Bill

## 2013

[DRAFTCC]

An Act of the Scottish Parliament to make provision as regards execution in counterpart and the delivery by electronic means of traditional documents; and for connected purposes[LongTitle.doc]

### **1 Execution in two or more counterparts[j000.doc]**

- (1) A document may be executed in two or more counterparts, that is to say—
  - (a) in two duplicate, interchangeable, parts where neither part is signed by both parties, or
  - (b) in more than two such parts where no part is signed by all parties.
- (2) On such execution as is mentioned in subsection (1), the counterparts are deemed a single document.
- (3) But a document so executed is not effective—
  - (a) until each counterpart is delivered either—
    - (i) to the party (or parties) who did not sign the counterpart in question, or
    - (ii) if a person is nominated under subsection (1) of section 2 to take delivery of the counterparts, to that person, or
  - (b) until such later time as the parties may agree.
- (4) A document executed in two or more counterparts is not to be regarded as delivered to a person nominated under that subsection until every counterpart which the person is to take delivery of by virtue of that subsection is delivered.

### **2 Nomination of person to take delivery of a document executed in two or more counterparts[j004.doc]**

- (1) The parties to a document executed in two or more counterparts may nominate a person to take delivery of the counterparts (or of one or more of the counterparts).
- (2) Without prejudice to the generality of subsection (1), one of the parties, or an agent of one or more of the parties, may be nominated under that subsection.

DRAFT

THIS IS FOR DISCUSSION ONLY AND DOES NOT REPRESENT THE FINAL VIEWS OF  
THE SCOTTISH LAW COMMISSION

- (3) A person nominated under subsection (1) is, after taking delivery of a counterpart by virtue of that subsection, to hold and preserve it for the benefit of the parties except in so far as the parties may, whether before or after the document has effect, come to, or be taken to have come to, an alternative arrangement.
- (4) A document's having effect is not dependent on compliance with subsection (3).

### **3 Delivery by electronic means of a traditional document [j001.doc]**

- (1) A traditional document (whether or not a document executed in two or more counterparts) may be delivered by electronic means.
- (2) Subsection (1)—
  - (a) is subject to subsections (4) to (6), and
  - (b) is without prejudice to the use of any means other than electronic to effect the delivery of a traditional document.
- (3) Without prejudice to the generality of subsection (1), in that subsection "by electronic means" includes—
  - (a) by means of an electronic communications network (for example as an attachment to an e-mail),
  - (b) as a facsimile transmission (that is to say, as a fax),
  - (c) stored electronically on a device such as a compact disc or a memory stick, or
  - (d) by other means but in a form which requires the use of electronic apparatus by the recipient to render it intelligible.
- (4) The delivery must be by a means, and what is delivered by that means must be in a form—
  - (a) which the intended recipient ("IR") expresses a willingness to accept, or
  - (b) (if there is no such expression, if there is uncertainty as to what IR has expressed a willingness to accept or if what IR has expressed a willingness to accept is impracticable) which it is reasonable in all the circumstances for IR to accept.
- (5) But what is delivered by that means must, if it is part of a document—
  - (a) be sufficient in its own terms to show that it is part of that document, and
  - (b) comprise the page on which the sender has subscribed the document.
- (6) Subject to subsection (5) and without prejudice to the generality of subsection (4)—
  - (a) IR may under paragraph (a) of subsection (4) express a willingness to accept, as what is delivered, part only of the document in question, or
  - (b) it may under paragraph (b) of subsection (4) be found reasonable in all the circumstances that IR accept, as what is delivered, part only of that document.
- (7) Although delivery by electronic means constitutes effective delivery of a traditional document, what is received by that means is not otherwise to be treated as being the traditional document itself.
- (8) A traditional document which has been delivered by electronic means is to be held by the sender in accordance with whatever arrangements have been made by the sender and the recipient (or, if there is a number of recipients, have been made by the sender and the recipients as a group).

DRAFT

THIS IS FOR DISCUSSION ONLY AND DOES NOT REPRESENT THE FINAL VIEWS OF  
THE SCOTTISH LAW COMMISSION



- (9) Subsection (8) is subject to section 2.
- (10) In this section and in section 4, “traditional document” is to be construed in accordance with section 1A of the Requirements of Writing (Scotland) Act 1995 (c.7).

**4      Probativity of traditional document executed in two or more counterparts[j006.doc]**

A traditional document executed in two or more counterparts is probative if at least one of its grantors has signed in accordance with subsection (1) of section 7 of the Requirements of Writing (Scotland) Act 1995 (c.7) and the other grantor has (or grantors have) either signed in accordance with that subsection or has (or have) complied with subsection (3) of that section.

**5      Authentication of electronic document[j007.doc]**

- (1) In this Act, any reference to the execution of a document includes a reference to the authentication of an electronic document.
- (2) In subsection (1), “electronic document” is to be construed in accordance with section 9A of the Requirements of Writing (Scotland) Act 1995 (c.7).

**6      Saving[j005.doc]**

Nothing in this Act affects a document executed before this section comes into force.

**7      Commencement[j003.doc]**

- (1) This section and section 8 come into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force at the end of the period of 2 months beginning with that day.

**8      Short title[j002.doc]**

The short title of this Act is the Execution in Counterpart etc. (Scotland) Act 2013.

