

SCHEDULES

SCHEDULE 4

Section 14(1)

MINOR AND CONSEQUENTIAL AMENDMENTS

General adaptation

- 1 (1) Any reference in any other enactment to a probative document shall, in relation to a document executed after the commencement of this Act, be construed as a reference to a document in relation to which section 6(2) of this Act applies.
- (2) For the purposes of any enactment—
- (a) providing for a document to be executed by a body corporate by affixing its common seal; or
 - (b) referring (in whatever terms) to a document so executed,
- a document signed or subscribed by or on behalf of the body corporate in accordance with the provisions of the Requirements of Writing (Scotland) Act 1995 shall have effect as if so executed.

Specific enactments

Lands Clauses Consolidation (Scotland) Act 1845

- 2 In Schedules (A) and (B) to the Lands Clauses Consolidation (Scotland) Act 1845 at the end of each of the forms there shall be added—
- “Note—Subscription of the document by the granter of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

Infestment Act 1845

- 3 In Schedules (A) and (B) to the Infestment Act 1845 for the words from “In witness” to the end there shall be substituted the words
- “Testing clause+
- +Note—Subscription of the document by the granter of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

Commissioners Clauses Act 1847

- 4 At the end of section 59 of the Commissioners Clauses Act 1847 there shall be added the following subsection—
- “(2) This section shall apply to Scotland as if—

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- (a) for the words from “by deed under” to “recorded” there were substituted the words—

“by a document—

- (a) if they are a corporation, subscribed in accordance with section 7 of, and paragraph 5 of Schedule 2 to, the Requirements of Writing (Scotland) Act 1995;
- (b) if they are not a corporation, subscribed in accordance with the said section 7 by the commissioners or any two of them acting by the authority of and on behalf of the commissioners;

and a document so subscribed, followed by infestment duly recorded.”;

- (b) for the words from “under such” to “acting” there were substituted the word “subscribed”.”.

5 At the end of section 75 of that Act there shall be added the following subsection—

“(2) This section shall apply to Scotland as if for the words “by deed” to “five of them” there were substituted the words—

“in a document—

- (a) which is duly stamped;
- (b) in which the consideration is truly stated; and
- (c) which is subscribed, if the commissioners—
 - (i) are a corporation, in accordance with section 7 of, and paragraph 5 of Schedule 2 to, the Requirements of Writing (Scotland) Act 1995;
 - (ii) are not a corporation, in accordance with the said section 7 by the commissioners or any five of them,”.”.

6 At the end of section 77 of that Act there shall be added the following subsection—

“(2) This section shall apply to Scotland as if for the words “by deed duly stamped” there were substituted the words “in a document which is duly stamped and which is subscribed in accordance with the Requirements of Writing (Scotland) Act 1995.”.”.

7 In Schedule (B) to that Act—

- (a) the words from “or, if the deed” to “case may be,” are hereby repealed;
- (b) at the end there shall be added the words

“[or, if the document is granted under Scots law, insert testing clause+]

+Note—As regards a document granted under Scots law, subscription of it by the granter will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

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- 8 In Schedule (C) to that Act—
- (a) the words from “[or, if the deed” to “Scotland,]” are hereby repealed;
 - (b) at the end there shall be added the words
- “[or, if the document is granted under Scots law, insert testing clause+]”
- +Note—As regards a document granted under Scots law, subscription of it by the granter will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

Entail Amendment Act 1848

- 9 In section 50 of the Entail Amendment Act 1848 for the word “tested” there shall be substituted the word “subscribed”.
- 10 In the Schedule to that Act—
- (a) the words “and of the witnesses subscribing,” are hereby repealed;
 - (b) for the words from “In witness whereof” to the end there shall be substituted the words
- “Testing clause+”
- +Note—Subscription of the document by the heir of entail in possession and the notary public will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

Ordnance Board Transfer Act 1855

- 11 At the end of section 5 of the Ordnance Board Transfer Act 1855 there shall be added the following subsection—
- “(2) This section shall apply to Scotland as if for the words from “signing” to “his deed” there were substituted the words “subscribing it in accordance with the Requirements of Writing (Scotland) Act 1995”. ”.

Registration of Leases (Scotland) Act 1857

- 12 In Schedule (A) to the Registration of Leases (Scotland) Act 1857 for the words “in common form” there shall be substituted—
- “+”
- +Note—Subscription of the document by the granter of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.
- 13 In each of Schedules (B), (C), (D), (F), (G) and (H) to that Act after the words “Testing clause” there shall be inserted
- “+”
- +Note—Subscription of the document by the granter of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

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Transmission of Moveable Property (Scotland) Act 1862

- 14 In each of Schedules A and B to the Transmission of Moveable Property (Scotland) Act 1862 for the words from “In witness whereof” to the end there shall be substituted the words

“Testing clause+

+Note—Subscription of the document by the granter of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

- 15 In Schedule C to that Act for the words from “and D” to the end there shall be substituted the words “Testing clause”.

Titles to Land Consolidation (Scotland) Act 1868

- 16 In Schedule (B) nos. 1 and 2 and (AA) no. 3 to the Titles to Land Consolidation (Scotland) Act 1868 for the words from “In witness whereof” to “usual form]” there shall be substituted the words

“Testing clause+

+Note—Subscription of the document by the granter of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

- 17 In Schedules (J), (BB) no. 1, (CC) nos. 1 and 2 and (OO) to that Act for the words from “In witness whereof” to the end there shall be substituted the words

“Testing clause+

+Note—Subscription of the document by the granter of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

- 18 In Schedule (FF) no. 1 to that Act—

- (a) for the words from “In witness whereof” to “usual form]” there shall be substituted the words “Testing clause+”;
- (b) at the end there shall be added “+ Subscription of the document by the granter of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

- 19 In Schedule (GG) to that Act—

- (a) for the words from “In witness whereof” to “I K Witness” there shall be substituted the words “Testing clause+”;
- (b) after Note (b) there shall be inserted—

“+(c) Subscription of the document by the granter of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

- 20 In Schedule (NN) to that Act—

- (a) for the words from “In witness whereof” to “G H Witness” there shall be substituted the words “Testing clause+”;

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(b) at the end there shall be added—

“+Subscription of the document by the granter if it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

Conveyancing (Scotland) Act 1874

21 In Schedules C, F, L nos. 1 and 2 and N to the Conveyancing (Scotland) Act 1874 for the words “In witness whereof [testing clause]” there shall be substituted the words

“Testing clause+

+Note—Subscription of the document by the granter of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

22 In Schedule G to that Act—

(a) for the words “In witness whereof [testing clause]” there shall be substituted the words “Testing clause+”;

(b) at the end of the Note there shall be added—

“+Subscription of the document by the granter of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

23 In Schedule M to that Act for the words “and add testing clause]” there shall be substituted the words

“Testing clause+]”

+Note—Subscription of the document by the granter of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

Colonial Stock Act 1877

24 At the end of subsection (1) of section 4 of the Colonial Stock Act 1877 there shall be added the words “or, in relation to Scotland, subscribed in accordance with section 7 of the Requirements of Writing (Scotland) Act 1995.”.

25 At the end of section 6 of that Act there shall be added the following subsection—

“(2) This section shall have effect in relation to Scotland as if for the words from “given” to “attested” there were substituted the words “subscribed by the person not under disability in accordance with section 7 of the Requirements of Writing (Scotland) Act 1995.”.

Colonial Stock Act 1892

26 After subsection (2) of section 2 of the Colonial Stock Act 1892 there shall be added the following subsection—

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“(2A) This section shall have effect in relation to Scotland as if—

- (a) in subsection (1) for the words from “deed according” to “parties” there were substituted the words “a document in the form set out in the Schedule to this Act or to the like effect and the document as executed”;
- (b) in subsection (2) for the words “by deed” there were substituted the words “under this section”.

27 At the end of the Schedule to that Act there shall be added the words “[If the document is granted under the law of Scotland, for the words from “Witness our hands” to the end substitute

“[Testing clause+

+Note—Subscription of the document by the granter of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).]”].

Feudal Casualties (Scotland) Act 1914

28 In each of Schedules B and C to the Feudal Casualties (Scotland) Act 1914—

- (a) for the words “In witness whereof” there shall be substituted the words “Testing clause”; and
- (b) at the end of the Note there shall be added the words “Subscription of the document by the granter of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

Trusts (Scotland) Act 1921

29 In Schedule A to the Trusts (Scotland) Act 1921—

- (a) for the words “(To be attested)” there shall be substituted the words “Testing clause+”;
- (b) at the end there shall be added—

“+Note—Subscription of the document by the granter of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

30 In Schedule B to that Act for the words “(To be attested)” there shall be substituted the words

“Testing clause+

+Note—Subscription of the document by the granter or granters of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

Conveyancing (Scotland) Act 1924

31 In Schedule B to the Conveyancing (Scotland) Act 1924—

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- (a) in forms nos. 1 to 6 for the words “[To be attested]” there shall be substituted the words “Testing clause+”;

- (b) at the end of the Notes there shall be added—

“+Note 8—Subscription of the document by the notary public (or law agent) on behalf of the granter of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

- 32 In Schedule E to that Act for the words “[To be attested]” there shall be substituted the words

“Testing clause+

+Note—Subscription of the document by the granter of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

- 33 In Schedules G and H to that Act for the words “[to be attested]” there shall be substituted the words

“Texting clause+

+Note—Subscription of the document by the granter of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

- 34 In Schedule K to that Act—

- (a) in forms nos 1 to 7 for the words “[To be attested]” there shall be substituted the words “Testing clause+”;

- (b) at the end of the notes there shall be added—

“+Note 5—Subscription of the document by the granter of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

- 35 In Schedule L to that Act, in form 4, for the words “[To be attested]” there shall be substituted the words

“Texting clause+

+Note—Subscription of the document by the notary public or law agent on behalf of the granter of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

- 36 In Schedule N to that Act for the words “[To be attested]” there shall be substituted the words

“Texting clause+

+Note—Subscription of the document by the granter of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

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Long Leases (Scotland) Act 1954

- 37 In the Fourth Schedule to the Long Leases (Scotland) Act 1954—
- (a) for the words “[To be attested]” there shall be substituted the words —“Testing clause+”;
 - (b) at the end of the Notes there shall be added—

“+4 Subscription of the feu contract by the parties to it will be sufficient for the contract to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

Succession (Scotland) Act 1964

- 38 At the end of section 21 of the Succession (Scotland) Act 1964 there shall be added the following subsection—
- “(2) This section shall not apply to a testamentary document executed after the commencement of the Requirements of Writing (Scotland) Act 1995.”.
- 39 After section 21 of that Act there shall be inserted the following section—

“21A Evidence as to testamentary documents in commissary proceedings

Confirmation of an executor to property disposed of in a testamentary document executed after the commencement of the Requirements of Writing (Scotland) Act 1995 shall not be granted unless the formal validity of the document is governed—

- (a) by Scots law and the document is presumed under section 3 or 4 of that Act to have been subscribed by the granter so disposing of that property; or
- (b) by a law other than Scots law and the court is satisfied that the document is formally valid according to the law governing such validity.”.

- 40 For section 32 of that Act there shall be substituted the following section—

“32 Certain testamentary dispositions to be formally valid

- (1) For the purpose of any question arising as to entitlement, by virtue of a testamentary disposition, to any relevant property or to any interest therein, the disposition shall be treated as valid in respect of the formalities of execution.
- (2) Subsection (1) above is without prejudice to any right to challenge the validity of the testamentary disposition on the ground of forgery or on any other ground of essential invalidity.
- (3) In this section “relevant property” means property disposed of in the testamentary disposition in respect of which—
 - (a) confirmation has been granted; or
 - (b) probate, letters of administration or other grant of representation—
 - (i) has been issued, and has noted the domicile of the deceased to be, in England and Wales or Northern Ireland; or

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(ii) has been issued outwith the United Kingdom and had been sealed in Scotland under section 2 of the Colonial Probates Act 1892.”.

41 In Schedule 1 to that Act for the words “[To be attested by two witnesses] [Signature of A B]” there shall be substituted the words

“Texting clause+

+Note—Subscription of the document by the granter of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

Industrial and Provident Societies Act 1965

42 In Schedule 3 to the Industrial and Provident Societies Act 1965 in each of Forms C, D and E for the words from “Signed” to the end there shall be substituted the words

“Texting clause+

+Note—Subscription of the document by the granter of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

43 In Schedule 4 to that Act, in Form C for the words from “Signed” to the end there shall be substituted the words

“Texting clause+

+ Note—Subscription of the document by the cautioner will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

Conveyancing and Feudal Reform (Scotland) Act 1970

44 In Schedule 2 to the Conveyancing and Feudal Reform (Scotland) Act 1970—

(a) in forms A and B for the words “[To be attested]” there shall be substituted the words “Testing clause+”;

(b) at the end of the Notes there shall be added—

“+Note 8—Subscription of the document by the granter of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

45 In Schedule 4 to that Act—

(a) in form A and forms C to F for the words “[To be attested]” there shall be substituted the words “Testing clause+”;

(b) at the end of the Notes there shall be added—

“+Note 7—Subscription of the document by the granter of it, or in the case of form E the granter and the consenter to the variation, will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

46 In Schedule 5 to that Act, in form D—

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(a) in nos 1 and 2 for the words “[To be attested]” there shall be substituted the words “Testing clause+”;

(b) at the end there shall be added—

“+Note—Subscription of the document by the granter of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

47 In Schedule 9 to that Act—

(a) for the words “[To be attested]” there shall be substituted the words “Testing clause+”;

(b) at the end of the Notes there shall be added—

“+Note 4—Subscription of the document by the granter of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

Petroleum and Submarine Pipe-lines Act 1975

48 At the end of section 18(5)(b) of the Petroleum and Submarine Pipelines Act 1975 there shall be added the words “or, as respects Scotland, by an instrument subscribed by the Secretary of State and the licensee in accordance with the Requirements of Writing (Scotland) Act 1995.”.

Patents Act 1977

49 In section 31(6) of the Patents Act 1977 for the words from “probative” to the end there shall be substituted the words “subscribed in accordance with the Requirements of Writing (Scotland) Act 1995.”.

Oil and Gas (Enterprise) Act 1982

50 At the end of section 19(2) of the Oil and Gas (Enterprise) Act 1982 there shall be added the words “or, as respects Scotland, by an instrument subscribed by the Secretary of State and the licensee in accordance with the Requirements of Writing (Scotland) Act 1995.”.

Companies Act 1985

51 For section 36B of the Companies Act 1985 there shall be substituted the following section—

“36B Execution of documents by companies

(1) Notwithstanding the provisions of any enactment, a company need not have a company seal.

(2) For the purposes of any enactment—

(a) providing for a document to be executed by a company by affixing its common seal; or

(b) referring (in whatever terms) to a document so executed,

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a document signed or subscribed by or on behalf of the company in accordance with the provisions of the Requirements of Writing (Scotland) Act 1995 shall have effect as if so executed.

(3) In this section “enactment” includes an enactment contained in a statutory instrument.”.

52 At the end of section 38 of that Act there shall be added the following subsection—

“(3) This section does not extend to Scotland.”.

53 In section 39 of that Act—

(a) after subsection (2) there shall be inserted the following subsection—

“(2A) Subsection (2) does not extend to Scotland.”;

(b) in subsection (3) after the words “common seal” there shall be inserted the words “or as respects Scotland by writing subscribed in accordance with the Requirements of Writing (Scotland) Act 1995”.

54 Section 40 of that Act shall become subsection (1) of that section and at the end there shall be added the following subsection—

“(2) Nothing in this section shall affect the right of a company registered in Scotland to subscribe such securities and documents in accordance with the Requirements of Writing (Scotland) Act 1995.”.

55 Section 186 of that Act shall become subsection (1) of that section and at the end there shall be added the following subsection—

“(2) Without prejudice to subsection (1), as respects Scotland a certificate specifying any shares held by a member and subscribed by the company in accordance with the Requirements of Writing (Scotland) Act 1995 is, unless the contrary is shown, sufficient evidence of his title to the shares.”.

56 In section 188 of that Act in subsection (2) after the words “common seal” there shall be inserted the words “(or, in the case of a company registered in Scotland, subscribed in accordance with the Requirements of Writing (Scotland) Act 1995)”.

Companies Consolidation (Consequential Provisions) Act 1985

57 At the end of section 11 of the Companies Consolidation (Consequential Provisions) Act 1985 there shall be added the following subsection—

“(3) The foregoing provisions of this section are without prejudice to the right of a company to subscribe such securities and documents in accordance with the Requirements of Writing (Scotland) Act 1995.”.

Insolvency Act 1986

58 In section 53 of the Insolvency Act 1986—

(a) in subsection (1) for the words “a validly executed instrument in writing” there shall be substituted the words “an instrument subscribed in accordance with the Requirements of Writing (Scotland) Act 1995”;

(b) for subsection (4) there shall be substituted the following subsection—

“(4) If the receiver is to be appointed by the holders of a series of secured debentures, the instrument of appointment may be

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executed on behalf of the holders of the floating charge by any person authorised by resolution of the debenture-holders to execute the instrument.”.

Housing (Scotland) Act 1987

- 59 In section 53(1) of the Housing (Scotland) Act 1987 for the words from “probative” to the end there shall be substituted the words “subscribed by the parties in accordance with the Requirements of Writing (Scotland) Act 1995.”.
- 60 In section 54(6) of that Act for the words “probative or holograph of the parties” there shall be substituted the words “subscribed by the parties in accordance with the Requirements of Writing (Scotland) Act 1995.”.