

POLICY NOTE

THE LEGAL WRITINGS (COUNTERPARTS AND DELIVERY) (SCOTLAND) ACT 2015 (COMMENCEMENT) ORDER 2015

SSI 2015/242 (C. 33)

1. The above instrument is made in exercise of the powers conferred by section 6(2) of the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015. It is laid under section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010.

Policy Objectives

2. This Order brings provisions of the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 (“the 2015 Act”) into force.

3. The 2015 Act implements the recommendations contained in the Scottish Law Commission Report on Formation of Contract: Execution in Counterpart (SLC No 231; April 2013)¹. The two principal policy aims of the 2015 Act are:

(i) to provide a clear framework by which a document executed in counterpart will be effective in Scots law, ‘execution in counterpart’ being a process whereby each of the parties to a document signs (‘executes’) a separate physical copy of it and then exchange the resultant copies (sections 1 to 3 of the 2015 Act); and

(ii) to provide a mechanism to enable documents created and signed on paper (referred to in the 2015 Act as “traditional documents”), including executed counterparts, to be delivered for legal purposes by electronic means (section 4 of the Act).

4. The policy objectives are more fully described in the Policy Memorandum which accompanied the Bill for the 2015 Act. The link below shows the passage of the Bill through Parliament and includes the Policy Memorandum.

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/76414.aspx>

5. Further information can also be found in the Explanatory Notes for the 2015 Act:

<http://www.legislation.gov.uk/asp/2015/4/notes/contents>

6. Sections 5 (Ancillary provision), 6 (Commencement) and 7 (Short title) of the 2015 Act came into force on 2 April 2015, the day after the 2014 Act received Royal Assent. This Order brings into force the remaining sections (sections 1 to 4 of the 2015 Act) on 1 July 2015. Sections 1 to 4 of the 2015 Act may be summarised as follows:

Section 1 – places execution in counterpart on a clear statutory footing and sets out the requirements for executing in counterpart under the 2015 Act;

Section 2 – makes provision for where parties wish to nominate a person to administer the process of execution in counterpart;

¹http://www.scotlawcom.gov.uk/files/8214/1710/1226/Report_No_231_-_Review_of_Contract_Law.pdf

Section 3 – provides that the provisions relating to execution of documents in counterpart – as set out in sections 1 and 2 – apply to both traditional documents and electronic documents; and

Section 4 – provides a mechanism by which traditional documents, including executed counterparts, may be delivered for legal purposes by electronic means.

7. The effect of this Order is that:

(i) sections 1 to 3 of the 2015 Act (on execution in counterpart) will be available to those executing on or after 1 July 2015 (but not in transactions where any one of the counterparts was executed before that date); and

(ii) section 4 of the 2015 Act (on electronic delivery of traditional documents) will be available where delivery is being effected on or after 1 July 2015 regardless of whether the document being delivered had been executed before, on or after that date. (In the case of documents executed in counterpart, delivery on or after 1 July in accordance with section 4 will not remove the need for the parties to execute their counterparts on or after 1 July.)

Consultation

8. The Scottish Government did not formally consult on the Bill for the 2015 Act. Consultation was carried out by the Scottish Law Commission in accordance with their established practice in conducting law reform projects. In addition the Commission hosted a seminar and consulted on a number of Bill drafts. Further details of public consultation by the Scottish Law Commission can be found at paragraphs 36 to 39 of the Policy Memorandum which accompanied the Bill for the 2015 Act. The Minister for Energy, Enterprise and Tourism also wrote to a range of business representative bodies highlighting the Bill provisions and inviting comment.

Impact Assessments

9. No impact assessments were prepared for this commencement order. However, the Scottish Government prepared a Business and Regulatory Impact Assessment:

<http://sh45inta/Topics/Justice/law/damages/contract/Legal-Writings-BRIA>

and an Equality Impact Assessment:

<http://sh45inta/Topics/Justice/law/damages/contract/Legal-Writings-EQIA-Results>

in connection with introduction of the Bill for the 2015 Act to the Scottish Parliament on 14 May 2014.

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