



# Requirements of Writing (Scotland) Act 1995

## 1995 CHAPTER 7

### [<sup>F1</sup>PART 2

#### TRADITIONAL DOCUMENTS]

### 3 Presumption as to granter's subscription or date or place of subscription.

- (1) Subject to subsections (2) to (7) below, where—
- (a) a [<sup>F1</sup>traditional document] bears to have been subscribed by a granter of it;
  - (b) the document bears to have been signed by a person as a witness of that granter's subscription and the document, or the testing clause or its equivalent, bears to state the name and address of the witness; and
  - (c) nothing in the document, or in the testing clause or its equivalent, indicates—
    - (i) that it was not subscribed by that granter as it bears to have been so subscribed; or
    - (ii) that it was not validly witnessed for any reason specified in paragraphs (a) to (e) of subsection (4) below,the document shall be presumed to have been subscribed by that granter.
- (2) Where a [<sup>F2</sup>traditional document is a testamentary document consisting] of more than one sheet, it shall not be presumed to have been subscribed by a granter as mentioned in subsection (1) above unless, in addition to it bearing to have been subscribed by him and otherwise complying with that subsection, it bears to have been signed by him on every sheet.
- (3) For the purposes of subsection (1)(b) above—
- (a) the name and address of a witness may be added at any time before the document is—
    - (i) founded on in legal proceedings; or
    - (ii) registered for preservation in the Books of Council and Session or in sheriff court books; and

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*Changes to legislation: Requirements of Writing (Scotland) Act 1995, Section 3 is up to date with all changes known to be in force on or before 21 February 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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- (b) the name and address of a witness need not be written by the witness himself.
- (4) Where, in any proceedings relating to a [F3traditional document] in which a question arises as to a granter's subscription, it is established—
- (a) that a signature bearing to be the signature of the witness of that granter's subscription is not such a signature, whether by reason of forgery or otherwise;
  - (b) that the person who signed the document as the witness of that granter's subscription is a person who is named in the document as a granter of it;
  - (c) that the person who signed the document as the witness of that granter's subscription, at the time of signing—
    - (i) did not know the granter;
    - (ii) was under the age of 16 years; or
    - (iii) was mentally incapable of acting as a witness;
  - (d) that the person who signed the document, purporting to be the witness of that granter's subscription, did not witness such subscription;
  - (e) that the person who signed the document as the witness of that granter's subscription did not sign the document after him or that the granter's subscription or, as the case may be, acknowledgement of his subscription and the person's signature as witness of that subscription were not one continuous process;
  - (f) that the name or address of the witness of that granter's subscription was added after the document was founded on or registered as mentioned in subsection (3)(a) above or is erroneous in any material respect; or
  - (g) in the case of a testamentary document consisting of more than one sheet, that a signature on any sheet bearing to be the signature of the granter is not such a signature, whether by reason of forgery or otherwise,
- then, for the purposes of those proceedings, there shall be no presumption that the document has been subscribed by that granter.
- (5) For the purposes of subsection (4)(c)(i) above, the witness shall be regarded as having known the person whose subscription he has witnessed at the time of witnessing if he had credible information at that time of his identity.
- (6) For the purposes of subsection (4)(e) above, where—
- (a) a document is granted by more than one granter; and
  - (b) a person is the witness to the subscription of more than one granter,
- the subscription or acknowledgement of any such granter and the signature of the person witnessing that granter's subscription shall not be regarded as not being one continuous process by reason only that, between the time of that subscription or acknowledgement and that signature, another granter has subscribed the document or acknowledged his subscription.
- (7) For the purposes of the foregoing provisions of this section a person witnesses a granter's subscription of a document—
- (a) if he sees the granter subscribe it; or
  - (b) if the granter acknowledges his subscription to that person.
- (8) Where—
- (a) by virtue of subsection (1) above a document to which this subsection applies is presumed to have been subscribed by a granter of it;

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- (b) the document, or the testing clause or its equivalent, bears to state the date or place of subscription of the document by that granter; and
- (c) nothing in the document, or in the testing clause or its equivalent, indicates that that statement as to date or place is incorrect,

there shall be a presumption that the document was subscribed by that granter on the date or at the place as stated.

(9) Subsection (8) above applies to any [<sup>F4</sup>traditional document] other than a testamentary document.

(10) Where—

- (a) a [<sup>F5</sup>traditional document is a testamentary document bearing] to have been subscribed and the document, or the testing clause or its equivalent, bears to state the date or place of subscription (whether or not it is presumed under subsections (1) to (7) above to have been subscribed by a granter of it); and
- (b) nothing in the document, or in the testing clause or its equivalent, indicates that that statement as to date or place is incorrect,

there shall be a presumption that the statement as to date or place is correct.

#### Textual Amendments

- F1** Words in s. 3(1)(a) substituted (11.5.2014 for specified purposes) by [Land Registration etc. \(Scotland\) Act 2012 \(asp 5\)](#), ss. 122, 123, **Sch. 3 para. 6(a)** (with s. 121, Sch. 4 paras. 13, 16); S.S.I. 2014/41, art. 2(1)(b)(2), Sch. Pt. 2 (with arts. 3, 4)
- F2** Words in s. 3(2) substituted (11.5.2014 for specified purposes) by [Land Registration etc. \(Scotland\) Act 2012 \(asp 5\)](#), ss. 122, 123, **Sch. 3 para. 6(b)** (with s. 121, Sch. 4 paras. 13, 16); S.S.I. 2014/41, art. 2(1)(b)(2), Sch. Pt. 2 (with arts. 3, 4)
- F3** Words in s. 3(4) substituted (11.5.2014 for specified purposes) by [Land Registration etc. \(Scotland\) Act 2012 \(asp 5\)](#), ss. 122, 123, **Sch. 3 para. 6(c)** (with s. 121, Sch. 4 paras. 13, 16); S.S.I. 2014/41, art. 2(1)(b)(2), Sch. Pt. 2 (with arts. 3, 4)
- F4** Words in s. 3(9) substituted (11.5.2014 for specified purposes) by [Land Registration etc. \(Scotland\) Act 2012 \(asp 5\)](#), ss. 122, 123, **Sch. 3 para. 6(d)** (with s. 121, Sch. 4 paras. 13, 16); S.S.I. 2014/41, art. 2(1)(b)(2), Sch. Pt. 2 (with arts. 3, 4)
- F5** Words in s. 3(10)(a) substituted (11.5.2014 for specified purposes) by [Land Registration etc. \(Scotland\) Act 2012 \(asp 5\)](#), ss. 122, 123, **Sch. 3 para. 6(e)** (with s. 121, Sch. 4 paras. 13, 16); S.S.I. 2014/41, art. 2(1)(b)(2), Sch. Pt. 2 (with arts. 3, 4)

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 6(1)(aa) inserted by [2007 asp 3 s. 48\(1\)](#)
- Sch. 2 para. 2A and cross-heading inserted by [2024 asp 2 s. 79\(2\)](#)