

LEGAL WRITINGS (COUNTERPARTS AND DELIVERY) (SCOTLAND) ACT 2015

EXPLANATORY NOTES

THE ACT – COMMENTARY ON SECTIONS

Execution of documents in counterpart

Section 2: Nomination of person to take delivery of counterparts

12. This section makes provision for the scenario where parties wish to nominate a person to administer the execution of their document. Such a scenario is most probable where a document is to be signed by multiple parties (who would otherwise have to deliver a signed counterpart to every other party) and has been negotiated with the input of legal advisers. In this scenario, it is common for the legal adviser to one of the parties to act as administrator for the signing process. That person will send out the agreed documentation and collect back the subscribed counterparts. In order to remove any doubt as to the efficacy of such an arrangement, subsection (1) provides that parties may nominate a person to take delivery of the counterparts (or certain of the counterparts). Subsection (2) provides that that person may be a party to the document or an agent (e.g. solicitor) acting on behalf of a party to the document but this is not a requirement.
13. Subsection (3) sets out the duties of a person who is nominated to take delivery of counterparts. The nominee must hold and preserve what has been delivered, and must do so for the benefit of the parties involved. Subsection (4) provides that this is subject to any alternative arrangement made by parties. For example, parties might agree that the nominee is to advise parties of the successful delivery of all required counterparts or to forward what has been delivered to one of the parties. These provisions allow parties to make whatever arrangements they consider most suitable and ensure that, in the absence of any agreement, the delivered counterpart or counterparts will be held safely. If what is delivered contains a wet ink signature, then there is utility in the recipient (who may not be a party to the document) being obliged to hold the counterpart pending further instruction, for example to collate the counterparts in order to produce a single document for registration purposes. If what is delivered is an electronic copy of a signed traditional document, for example in the form of a PDF file or a fax, then there may also be utility in holding that pending further instruction; for example, because the time of its delivery may determine the point at which the document becomes effective.
14. Subsection (5) clarifies that a nominee's failure to meet the obligations under subsection (3) or (4) does not alter the effectiveness of a document's execution. In other words the document has its intended legal effect, even if the nominee's non-compliance with the duty to hold and preserve the counterparts makes it more difficult to prove such things as delivery.