



# Legal Writings (Counterparts and Delivery) (Scotland) Act 2015

## 2015 asp 4

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 24th February 2015 and received Royal Assent on 1st April 2015**

An Act of the Scottish Parliament to make provision about execution of documents in counterpart and the delivery by electronic means of traditional documents; and for connected purposes.

### *Execution of documents in counterpart*

#### **1 Execution of documents in counterpart**

- (1) A document may be executed in counterpart.
- (2) A document is executed in counterpart if—
  - (a) it is executed in two or more duplicate, interchangeable, parts, and
  - (b) no part is subscribed by both or all parties.
- (3) On such execution, the counterparts are to be treated as a single document.
- (4) That single document may be made up of—
  - (a) both or all the counterparts in their entirety, or
  - (b) one of the counterparts in its entirety, collated with the page or pages on which the other counterpart has, or other counterparts have, been subscribed.
- (5) A document executed in counterpart becomes effective when—
  - (a) both or all the counterparts have been delivered in accordance with subsection (6) or (7), and
  - (b) any other step required by an enactment or rule of law for the document to become effective has been taken.
- (6) Each counterpart is to be delivered to the party or parties who did not subscribe the counterpart in question unless it is a counterpart which falls to be delivered under subsection (7).

- (7) If a party has, under section 2(1), nominated a person to take delivery of one or more counterparts, the counterpart in question is (or counterparts in question are) to be delivered to that person.
- (8) Subsection (5) is subject to subsection (9).
- (9) Where a counterpart is to be held by the recipient as undelivered, the counterpart is not to be treated as delivered for the purposes of subsection (5)(a) until—
  - (a) the person from whom the counterpart is received indicates to the recipient that it is to be so treated, or
  - (b) if a specified condition is to be satisfied before the counterpart may be so treated, the condition has been satisfied.

## **2 Nomination of person to take delivery of counterparts**

- (1) Parties to a document executed in counterpart may nominate a person to take delivery of one or more of the counterparts.
- (2) Subsection (1) does not prevent one of the parties, or an agent of one or more of the parties, being so nominated.
- (3) A person so nominated must, after taking delivery of a counterpart by virtue of subsection (1), hold and preserve it for the benefit of the parties.
- (4) Subsection (3) does not apply in so far as the parties may agree, or be taken to have agreed, otherwise (whether before or after the document has effect).
- (5) A document's having effect is not dependent on compliance with subsection (3) or (4).

## **3 Use of counterparts: electronic documents**

- (1) Sections 1 and 2 apply to traditional documents and electronic documents.
- (2) In section 1 any reference to subscription is to be read, in the case of an electronic document to which section 1(2) of the Requirements of Writing (Scotland) Act 1995 ("the 1995 Act") applies, as a reference to authentication of the electronic document within the meaning of section 9B of the 1995 Act.
- (3) In this section—
  - “electronic document” has the meaning given by section 9A of the 1995 Act,
  - “traditional document” has the meaning given by section 1A of the 1995 Act.

### *Delivery of traditional documents by electronic means*

## **4 Delivery of traditional documents by electronic means**

- (1) This section applies where there is a requirement for delivery of a traditional document (whether or not a document executed in counterpart).
- (2) The requirement may be satisfied by delivery by electronic means of—
  - (a) a copy of the document, or
  - (b) a part of such a copy.

- (3) But the requirement may be satisfied by delivery of a part of such a copy only if the part—
- (a) is sufficient in all the circumstances to show that it is part of the document, and
  - (b) is, or includes, the page on which the sender (or the person on whose behalf the sender has effected the delivery) has subscribed the document.
- (4) Delivery under subsection (2) must be by a means (and what is delivered must be in a form) which the intended recipient has agreed to accept (the “accepted method”), unless subsection (5) applies.
- (5) If—
- (a) no accepted method has been agreed,
  - (b) there is uncertainty about the accepted method, or
  - (c) the accepted method is impracticable,
- delivery may be by such means (and in such form) as is reasonable in all the circumstances.
- (6) Although delivery by electronic means constitutes effective delivery in relation to a traditional document, what is received by that means is not to be treated as being the traditional document itself.
- (7) A traditional document, in relation to which delivery by electronic means has been effected, 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).
- (8) Any reference in subsection (7) to a recipient is to be construed, in a case where a person takes delivery by virtue of section 2(1), as a reference to the parties who nominated that person.
- (9) In this section, references to delivery by electronic means are to delivery—
- (a) by means of an electronic communications network (for example as an attachment to an e-mail),
  - (b) by fax,
  - (c) by means of a device on which the thing delivered is stored electronically (such as a disc, a memory stick or other removable or portable media), or
  - (d) by other means but in a form which requires the use of electronic apparatus by the recipient to render the thing delivered intelligible.
- (10) In this section—
- “electronic communications network” has the meaning given by section 32 of the Communications Act 2003,
  - “traditional document” has the meaning given by section 1A of the 1995 Act.

### *Final provisions*

## **5 Ancillary provision**

- (1) The Scottish Ministers may by order make such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider appropriate for the purposes of, in connection with or for giving full effect to this Act.

- (2) An order under subsection (1) may modify any enactment (including this Act).
- (3) An order under subsection (1) is subject to the negative procedure, unless subsection (4) applies.
- (4) An order under subsection (1) which adds to, replaces or omits the text of an Act is subject to the affirmative procedure.

## **6 Commencement**

- (1) Section 5, this section and section 7 come into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.
- (3) An order under subsection (2) may include transitional, transitory or saving provision.

## **7 Short title**

The short title of this Act is the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015.