



Requirements of Writing (Scotland) Act 1995

1995 CHAPTER 7

An Act to reform the law of Scotland with regard to the requirement of writing for certain matters and the formal validity of contractual and other documents and presumptions relating thereto; to abolish any rule of law restricting the proof of any matter to writ or oath and to abolish the procedure of reference to oath; and for connected purposes. [1st May 1995]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Modifications etc. (not altering text)

- C1 Act applied (30.9.2002) by [2001 asp 10, s. 24\(3\)](#); [S.S.I.2002/321, art. 2, Sch.](#) (subject to transitional provisions and savings in arts. 3-5)
- C2 Act applied (14.11.2011) by [The Investment Bank Special Administration \(Scotland\) Rules 2011 \(S.I. 2011/2262\)](#), arts. 2, [107\(2\)](#)

Commencement Information

- II Act not in force at Royal Assent. Act wholly in force at 1.8.1995 see s. 15(2).

1 Writing required for certain contracts, obligations, trusts, conveyances and wills.

- (1) Subject to subsection (2) below and any other enactment, writing shall not be required for the constitution of a contract, unilateral obligation or trust.
- (2) Subject to ^[F1]subsections (2A) and (3)] below, a written document complying with section 2 of this Act shall be required for—
- (a) the constitution of—

Status: Point in time view as at 22/03/2014.

Changes to legislation: Requirements of Writing (Scotland) Act 1995 is up to date with all changes known to be in force on or before 03 April 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)

- (i) a contract or unilateral obligation for the creation, transfer, variation or extinction of [^{F2}a real right] in land;
 - (ii) a gratuitous unilateral obligation except an obligation undertaken in the course of business; and
 - (iii) a trust whereby a person declares himself to be sole trustee of his own property or any property which he may acquire;
- (b) the creation, transfer, variation or extinction of [^{F2}a real right] in land otherwise than by the operation of a court decree, enactment or rule of law; and
 - (c) the making of any will, testamentary trust disposition and settlement or codicil.
- [^{F3}(2A) An electronic document complying with section 2A shall be valid for—
- (a) the constitution of a contract or unilateral obligation for the creation, transfer, variation or extinction of a real right in land;
 - (b) the constitution of a gratuitous unilateral obligation; and
 - (c) the creation, transfer, variation or extinction of a real right in land.
- (2B) In this section, “ electronic document ” means a document created as an electronic communication within the ARTL system.]
- (3) Where a contract, obligation or trust mentioned in [^{F4}subsections (2)(a) or (2A)] above is not constituted in a written document complying with section 2 [^{F5}or, as the case may be, an electronic document complying with section 2A,] of this Act, but one of the parties to the contract, a creditor in the obligation or a beneficiary under the trust (“the first person”) has acted or refrained from acting in reliance on the contract, obligation or trust with the knowledge and acquiescence of the other party to the contract, the debtor in the obligation or the truster (“the second person”)—
- (a) the second person shall not be entitled to withdraw from the contract, obligation or trust; and
 - (b) the contract, obligation or trust shall not be regarded as invalid,
- on the ground that it is not so constituted, if the condition set out in subsection (4) below is satisfied.
- (4) The condition referred to in subsection (3) above is that the position of the first person—
- (a) as a result of acting or refraining from acting as mentioned in that subsection has been affected to a material extent; and
 - (b) as a result of such a withdrawal as is mentioned in that subsection would be adversely affected to a material extent.
- (5) In relation to the constitution of any contract, obligation or trust mentioned in [^{F4}subsections (2)(a) or (2A)] above, subsections (3) and (4) above replace the rules of law known as *rei interventus* and homologation.
- (6) This section shall apply to the variation of a contract, obligation or trust as it applies to the constitution thereof but as if in subsections (3) and (4) for the references to acting or refraining from acting in reliance on the contract, obligation or trust and withdrawing therefrom there were substituted respectively references to acting or refraining from acting in reliance on the variation of the contract, obligation or trust and withdrawing from the variation.

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- (7) In this section [^{F6}“real right in land” means any real] right in or over land, including any right to occupy or to use land or to restrict the occupation or use of land, but does not include—
- (a) a tenancy;
 - (b) a right to occupy or use land; or
 - (c) a right to restrict the occupation or use of land,
- if the tenancy or right is not granted for more than one year, unless the tenancy or right is for a recurring period or recurring periods and there is a gap of more than one year between the beginning of the first, and the end of the last, such period.
- (8) For the purposes of subsection (7) above “land” does not include—
- (a) growing crops; or
 - (b) a moveable building or other moveable structure.

Textual Amendments

- F1** Words in s. 1(2) substituted (5.10.2006) by The Automated Registration of Title to Land (Electronic Communications) (Scotland) Order 2006 (S.S.I. 2006/491), **art. 3(1)**
- F2** Words in s. 1(2)(a)(i)(b) substituted (28.11.2004) by The Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), ss. 71, 76(1), 77, Sch. 12 Pt. 1 para. 58(a) (with ss. 58, 62, 75); S.S.I. 2003/456, **art. 2**
- F3** S. 1(2A)(2B) inserted (5.10.2006) by The Automated Registration of Title to Land (Electronic Communications) (Scotland) Order 2006 (S.S.I. 2006/491), **art. 3(2)**
- F4** Words in s. 1(3)(5) substituted (5.10.2006) by The Automated Registration of Title to Land (Electronic Communications) (Scotland) Order 2006 (S.S.I. 2006/491), **art. 3(3)(b)**
- F5** Words in s. 1(3) substituted (5.10.2006) by The Automated Registration of Title to Land (Electronic Communications) (Scotland) Order 2006 (S.S.I. 2006/491), **art. 3(3)(a)**
- F6** Words in s. 1(7) substituted (28.11.2004) by The Abolition of Feudal Tenure etc. (Scotland) Act 2000 asp 5, ss. 71, 76(1), 77, Sch. 12 Pt. 1 para. 58(b) (with ss. 58, 62, 75); S.S.I. 2003/456, **art. 2**

Modifications etc. (not altering text)

- C3** S. 1(2)(a)(ii) excluded (and s. 1(2) modified) (6.3.2009) by The Unit Trusts (Electronic Communications) Order 2009 (S.I. 2009/555), **art. 4**,
- C4** S. 1(2)(a)(ii) excluded (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), regs. 1, **22(2)** (with regs. 22(5), 24)

2 Type of writing required for formal validity of certain documents.

- (1) No document required by section 1(2) of this Act shall be valid in respect of the formalities of execution unless it is subscribed by the grantor of it or, if there is more than one grantor, by each grantor, but nothing apart from such subscription shall be required for the document to be valid as aforesaid.
- (2) A contract mentioned in section 1(2)(a)(i) of this Act may be regarded as constituted or varied (as the case may be) if the offer is contained in one or more documents and the acceptance is contained in another document or other documents, and each document is subscribed by the grantor or grantors thereof.
- (3) Nothing in this section shall prevent a document which has not been subscribed by the grantor or grantors of it from being used as evidence in relation to any right or obligation to which the document relates.

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- (4) This section is without prejudice to any other enactment which makes different provision in respect of the formalities of execution of a document to which this section applies.

[^{F7}2A Formalities of execution of electronic documents

- (1) An electronic document shall be valid in respect of the formalities of execution if that document has been authenticated by the granter, or if there is more than one granter by each granter, in accordance with subsection (2).
- (2) An electronic document is authenticated by a person if the digital signature of that person—
- (a) is incorporated into or logically associated with the electronic document;
 - (b) was created by the person by whom it purports to have been created;
 - (c) was created in accordance with such requirements as may be set out in directions made by the Keeper of the Registers of Scotland; and
 - (d) is certified in accordance with—
 - (i) subsection (3); and
 - (ii) such requirements as may be set out in directions made by the Keeper of the Registers of Scotland.
- (3) For the purpose of this section a digital signature incorporated into or logically associated with an electronic document is certified by any person if that person (whether before or after the creation of the electronic document) has made a statement confirming that—
- (a) the signature;
 - (b) a means of producing, communicating or verifying the signature; or
 - (c) a procedure applied to the signature,
- is (either alone or in combination with other factors) a valid means of establishing the authenticity of the document, the integrity of the document or both.

Textual Amendments

F7 Ss. 2A-2C inserted (5.10.2006) by The Automated Registration of Title to [Land \(Electronic Communications\) \(Scotland\) Order 2006 \(S.S.I. 2006/491\)](#), **art. 3(4)**

2B Directions by the Keeper of the Registers of Scotland

- A direction made by the Keeper of the Registers of Scotland under section 2A—
- (a) shall be published in such manner as the Keeper considers appropriate for the purpose of bringing it to the attention of the persons affected by it;
 - (b) may make different provision for different purposes;
 - (c) may include incidental, supplementary, saving and transitional provisions; and
 - (d) may be varied or revoked by a subsequent direction.

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Textual Amendments

- F7** Ss. 2A-2C inserted (5.10.2006) by The Automated Registration of Title to [Land \(Electronic Communications\) \(Scotland\) Order 2006 \(S.S.I. 2006/491\)](#), **art. 3(4)**

2C Authentication of an electronic document by a person granting in more than one capacity

Where a person grants an electronic document in more than one capacity authentication of that document by that person in accordance with this Act shall be sufficient to bind that person in all such capacities.]

Textual Amendments

- F7** Ss. 2A-2C inserted (5.10.2006) by The Automated Registration of Title to [Land \(Electronic Communications\) \(Scotland\) Order 2006 \(S.S.I. 2006/491\)](#), **art. 3(4)**

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

- (1) Subject to subsections (2) to (7) below, where—
- (a) a 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 testamentary document consists 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
 - (b) the name and address of a witness need not be written by the witness himself.
- (4) Where, in any proceedings relating to a 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;

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- (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;
 - (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.

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- (9) Subsection (8) above applies to any document other than a testamentary document.
- (10) Where—
- (a) a testamentary document bears 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.

[^{F8}3A **Presumption as to the authentication of electronic documents**

Where an electronic document bears to have been authenticated by the granter and nothing in the document or in the authentication indicates that it was not so authenticated the document shall be presumed to have been authenticated by the granter.]

Textual Amendments

- F8** S. 3A inserted (5.10.2006) by The Automated Registration of Title to [Land \(Electronic Communications\) \(Scotland\) Order 2006 \(S.S.I. 2006/491\)](#), [art. 3\(5\)](#)

4 Presumption as to granter's subscription or date or place of subscription when established in court proceedings.

- (1) Where a document bears to have been subscribed by a granter of it, but there is no presumption under section 3 of this Act that the document has been subscribed by that granter, then, if the court, on an application being made to it by any person who has an interest in the document, is satisfied that the document was subscribed by that granter, it shall—
 - (a) cause the document to be endorsed with a certificate to that effect; or
 - (b) where the document has already been registered in the Books of Council and Session or in sheriff court books, grant decree to that effect.
- (2) Where a document bears to have been subscribed by a granter of it, but there is no presumption under section 3 of this Act as to the date or place of subscription, then, if the court, on an application being made to it by any person who has an interest in the document, is satisfied as to the date or place of subscription, it shall—
 - (a) cause the document to be endorsed with a certificate to that effect; or
 - (b) where the document has already been registered in the Books of Council and Session or in sheriff court books, grant decree to that effect.
- (3) On an application under subsection (1) or (2) above evidence shall, unless the court otherwise directs, be given by affidavit.
- (4) An application under subsection (1) or (2) above may be made either as a summary application or as incidental to and in the course of other proceedings.
- (5) The effect of a certificate or decree—

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- (a) under subsection (1) above shall be to establish a presumption that the document has been subscribed by the granter concerned;
 - (b) under subsection (2) above shall be to establish a presumption that the statement in the certificate or decree as to date or place is correct.
- (6) In this section “the court” means—
- (a) in the case of a summary application—
 - (i) the sheriff in whose sheriffdom the applicant resides; or
 - (ii) if the applicant does not reside in Scotland, the sheriff at Edinburgh; and
 - (b) in the case of an application made in the course of other proceedings, the court before which those proceedings are pending.

5 Alterations to documents: formal validity and presumptions.

- (1) An alteration made to a document required by section 1(2) of this Act—
- (a) before the document is subscribed by the granter or, if there is more than one granter, by the granter first subscribing it, shall form part of the document as so subscribed;
 - (b) after the document is so subscribed shall, if the alteration has been signed by the granter or (as the case may be) by all the granters, have effect as a formally valid alteration of the document as so subscribed,
- but an alteration made to such a document otherwise than as mentioned in paragraphs (a) and (b) above shall not be formally valid.
- (2) Subsection (1) above is without prejudice to—
- (a) any rule of law enabling any provision in a testamentary document to be revoked by deletion or erasure without authentication of the deletion or erasure by the testator;
 - (b) the ^{M1}Erasures in Deeds (Scotland) Act 1836 and section 54 of the ^{M2}Conveyancing (Scotland) Act 1874.
- (3) The fact that an alteration to a document was made before the document was subscribed by the granter of it, or by the granter first subscribing it, may be established by all relevant evidence, whether written or oral.
- (4) Where a document bears to have been subscribed by the granter or, if there is more than one granter, by all the granters of it, then, if subsection (5) or (6) below applies, an alteration made to the document shall be presumed to have been made before the document was subscribed by the granter or, if there is more than one granter, by the granter first subscribing it, and to form part of the document as so subscribed.
- (5) This subsection applies where—
- (a) the document is presumed under section 3 of this Act to have been subscribed by the granter or granters (as the case may be);
 - (b) it is stated in the document, or in the testing clause or its equivalent, that the alteration was made before the document was subscribed; and
 - (c) nothing in the document, or in the testing clause or its equivalent, indicates that the alteration was made after the document was subscribed.
- (6) This subsection applies where subsection (5) above does not apply, but the court is satisfied, on an application being made to it, that the alteration was made before the

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document was subscribed by the granter or, if there is more than one granter, by the granter first subscribing it, and causes the document to be endorsed with a certificate to that effect or, where the document has already been registered in the Books of Council and Session or in sheriff court books, grants decree to that effect.

(7) Subsections (3), (4) and (6) of section 4 of this Act shall apply in relation to an application under subsection (6) above as they apply in relation to an application under subsection (1) of that section.

(8) Where an alteration is made to a document after the document has been subscribed by a granter, Schedule 1 to this Act (presumptions as to granter's signature and date and place of signing in relation to such alterations) shall have effect.

[^{F9}(9) This section shall have no application as regards an electronic document.]

Textual Amendments

F9 S. 5(9) inserted (5.10.2006) by The Automated Registration of Title to [Land \(Electronic Communications\) \(Scotland\) Order 2006 \(S.S.I. 2006/491\)](#), [art. 3\(6\)](#)

Marginal Citations

M1 1836 c. 33.

M2 1874 c. 94.

6 Registration of documents.

(1) Subject to subsection (3) below [^{F10}and section 6A of this Act], it shall not be competent—

- (a) to record a document in the Register of Sasines; or
- (b) to register a document for execution or preservation in the Books of Council and Session or in sheriff court books,

unless subsection (2) below applies in relation to the document.

(2) This subsection applies where—

- (a) the document is presumed under section 3 or 4 of this Act to have been subscribed by the granter; or
- (b) if there is more than one granter, the document is presumed under section 3 or 4 or partly under the one section and partly under the other to have been subscribed by at least one of the granters.

(3) Subsection (1) above shall not apply in relation to—

- (a) the recording of a document in the Register of Sasines or the registration of a document in the Books of Council and Session or in sheriff court books, if such recording or registration is required or expressly permitted under any enactment;
- (b) the recording of a court decree in the Register of Sasines;
- (c) the registration in the Books of Council and Session or in sheriff court books of—
 - (i) a testamentary document;
 - (ii) a document which is directed by the Court of Session or (as the case may be) the sheriff to be so registered;

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- (iii) a document whose formal validity is governed by a law other than Scots law, if the Keeper of the Registers of Scotland or (as the case may be) the sheriff clerk is satisfied that the document is formally valid according to the law governing such validity;
 - (iv) a court decree granted under section 4 or 5 of this Act in relation to a document already registered in the Books of Council and Session or in sheriff court books (as the case may be); or
 - (d) the registration of a court decree in a separate register maintained for that purpose.
- (4) A document may be registered for preservation in the Books of Council and Session or in sheriff court books without a clause of consent to registration.

Textual Amendments

F10 Words in s. 6(1) inserted (16.1.2007) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. [222\(2\)](#), [227\(2\)](#) (with s. [223](#))

[^{F11}6A Registration for preservation and execution of electronic standard securities

- (1) This section applies where an electronic document, which creates a standard security over a real right in land, is presumed under section 3A of this Act to have been authenticated by the granter.
- (2) An office copy of the electronic document may be registered for preservation and execution in the Books of Council and Session or in the sheriff court books.
- (3) An office copy so registered is to be treated for the purposes of executing any diligence (including, for the avoidance of doubt, for the purposes of sections 1 and 2 of the Writs Execution (Scotland) Act 1877 (c. 40)) as if—
 - (a) the standard security were created by a document to which section 6(2) of this Act applies; and
 - (b) the office copy were that document.]

Textual Amendments

F11 S. 6A inserted (16.1.2007) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. [222\(3\)](#), [227\(2\)](#) (with s. [223](#))

7 Subscription and signing.

- (1) Except where an enactment expressly provides otherwise, a document is subscribed by a granter of it if it is signed by him at the end of the last page (excluding any annexation, whether or not incorporated in the document as provided for in section 8 of this Act).
- (2) Subject to paragraph 2(2) of Schedule 2 to this Act, a document, or an alteration to a document, is signed by an individual natural person as a granter or on behalf of a granter of it if it is signed by him—
 - (a) with the full name by which he is identified in the document or in any testing clause or its equivalent; or

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- (b) with his surname, preceded by at least one forename (or an initial or abbreviation or familiar form of a forename); or
 - (c) except for the purposes of section 3(1) to (7) of this Act, with a name (not in accordance with paragraph (a) or (b) above) or description or an initial or mark if it is established that the name, description, initial or mark—
 - (i) was his usual method of signing, or his usual method of signing documents or alterations of the type in question; or
 - (ii) was intended by him as his signature of the document or alteration.
- (3) Where there is more than one granter, the requirement under subsection (1) above of signing at the end of the last page of a document shall be regarded as complied with if at least one granter signs at the end of the last page and any other granter signs on an additional page.
- (4) Where a person grants a document in more than one capacity, one subscription of the document by him shall be sufficient to bind him in all such capacities.
- (5) A document, or an alteration to a document, is signed by a witness if it is signed by him—
- (a) with the full name by which he is identified in the document or in any testing clause or its equivalent; or
 - (b) with his surname, preceded by at least one forename (or an initial or abbreviation or familiar form of a forename),
- and if the witness is witnessing the signature of more than one granter, it shall be unnecessary for him to sign the document or alteration more than once.
- (6) This section is without prejudice to any rule of law relating to the subscription or signing of documents by members of the Royal Family, by peers or by the wives or the eldest sons of peers.
- (7) Schedule 2 to this Act (special rules relating to subscription and signing of documents etc by partnerships, companies, [^{F12}limited liability partnership,] local authorities, other bodies corporate and Ministers) shall have effect.

Textual Amendments

F12 Words in s. 7(7) inserted (6.4.2001) by S.S.I. 2001/128, reg. 5, Sch. 4 para. 4

8 Annexations to documents.

- (1) Subject to subsection (2) below and except where an enactment expressly otherwise provides, any annexation to a document shall be regarded as incorporated in the document if it is—
- (a) referred to in the document; and
 - (b) identified on its face as being the annexation referred to in the document, without the annexation having to be signed or subscribed.
- (2) Where a document relates to land and an annexation to it describes or shows all or any part of the land to which the document relates, the annexation shall be regarded as incorporated in the document if and only if—
- (a) it is referred to in the document; and

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- (b) it is identified on its face as being the annexation referred to in the document; and
- (c) it is signed on—
 - (i) each page, where it is a plan, drawing, photograph or other representation; or
 - (ii) the last page, where it is an inventory, appendix, schedule or other writing.
- (3) Any annexation referred to in subsection (2) above which bears to have been signed by a granter of the document shall be presumed to have been signed by the person who subscribed the document as that granter.
- (4) Section 7(2) of this Act shall apply in relation to any annexation referred to in subsection (2) above as it applies in relation to a document as if for any reference to a document (except the reference in paragraph (a)) there were substituted a reference to an annexation.
- (5) It shall be competent to sign any annexation to a document at any time before the document is—
 - (a) founded on in legal proceedings;
 - (b) registered for preservation in the Books of Council and Session or in sheriff court books;
 - (c) recorded in the Register of Sasines;
 - (d) registered in the Land Register of Scotland.
- (6) Where there is more than one granter, the requirement under subsection (2)(c)(ii) above of signing on the last page shall be regarded as complied with (provided that at least one granter signs at the end of the last page) if any other granter signs on an additional page.

9 Subscription on behalf of blind granter or granter unable to write.

- (1) Where a granter of a document makes a declaration to a relevant person that he is blind or unable to write, the relevant person—
 - (a) having read the document to that granter; or
 - (b) if the granter makes a declaration that he does not wish him to do so, without having read it to the granter,
 shall, if authorised by the granter, be entitled to subscribe it and, if it is a testamentary document, sign it as mentioned in section 3(2) of this Act, on the granter's behalf.
- (2) Subscription or signing by a relevant person under subsection (1) above shall take place in the presence of the granter.
- (3) This Act shall have effect in relation to subscription or signing by a relevant person under subsection (1) above subject to the modifications set out in Schedule 3 to this Act.
- (4) A document subscribed by a relevant person under subsection (1) above which confers on the relevant person or his spouse, son or daughter a benefit in money or money's worth (whether directly or indirectly) shall be invalid to the extent, but only to the extent, that it confers such benefit.
- (5) This section and Schedule 3 to this Act apply in relation to the signing of—

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- (a) an annexation to a document as mentioned in section 8(2) of this Act;
 - (b) an alteration made to a document or to any such annexation to a document,
- as they apply in relation to the subscription of a document; and for that purpose, any reference to reading a document includes a reference to describing a plan, drawing, photograph or other representation in such an annexation or in an alteration to such an annexation.
- (6) In this Act “relevant person” means a solicitor who has in force a practising certificate as defined in section 4(c) of the ^{M3}Solicitors (Scotland) Act 1980, an advocate, a justice of the peace or a sheriff clerk and, in relation to the execution of documents outwith Scotland, includes a notary public or any other person with official authority under the law of the place of execution to execute documents on behalf of persons who are blind or unable to write.
- (7) Nothing in this section shall prevent the granter of a document who is blind from subscribing or signing the document as mentioned in section 7 of this Act.

Modifications etc. (not altering text)

C5 S. 9 modified (15.8.2003) by [Public Appointments and Public Bodies etc. \(Scotland\) Act 2003 \(asp 4\)](#), s. 14(3); S.S.I. 2003/384, art. 2(a)

Marginal Citations

M3 1980 c. 46.

[^{F13}PART 3

ELECTRONIC DOCUMENTS

Textual Amendments

F13 Pt. 3 inserted (22.3.2014 for specified purposes, 11.5.2014 for specified purposes, 1.4.2022 for specified purposes) by [Land Registration etc. \(Scotland\) Act 2012 \(asp 5\)](#), ss. 97(2), 122, 123 (with s. 121, sch. 4 paras. 13, 16); S.S.I. 2014/41, art. 2(1)(a)(b)(2), sch. Pts. 1, 2 (with arts. 3, 4); S.S.I. 2021/472, art. 2

9A Application of Part 3

This Part applies to documents which, rather than being written on paper, parchment or some similar tangible surface are created in electronic form (“electronic documents”).

9B Validity of electronic documents

- (1) No electronic document required by section 1(2) is valid in respect of the formalities of execution unless—
- (a) it is authenticated by the granter, or if there is more than one granter by each granter, in accordance with subsection (2), and
 - (b) it meets such other requirements (if any) as may be prescribed by the Scottish Ministers in regulations.

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- (2) An electronic document is authenticated by a person if the electronic signature of that person—
 - (a) is incorporated into, or logically associated with, the electronic document,
 - (b) was created by the person by whom it purports to have been created, and
 - (c) is of such type, and satisfies such requirements (if any), as may be prescribed by the Scottish Ministers in regulations.
- (3) A contract mentioned in section 1(2)(a) may be regarded as constituted or varied (as the case may be) if—
 - (a) the offer is contained in one or more electronic documents,
 - (b) the acceptance is contained in another electronic document or in other such documents, and
 - (c) each of the documents is authenticated by its granter or granters.
- (4) Where a person grants an electronic document in more than one capacity, authentication by the person of the document, in accordance with subsection (3), is sufficient to bind the person in all such capacities.
- (5) Nothing in this section prevents an electronic document which has not been authenticated by the granter or granters of it from being used as evidence in relation to any right or obligation to which the document relates.
- (6) Regulations under subsection (1)(b) or (2)(c) are subject to the negative procedure.

9C Presumption as to authentication of electronic documents

- (1) Where—
 - (a) an electronic document bears to have been authenticated by the granter,
 - (b) nothing in the document or in the authentication indicates that it was not so authenticated, and
 - (c) the conditions set out in subsection (2) are satisfied,
 the document is to be presumed to have been authenticated by the granter.
- (2) The conditions are that the electronic signature incorporated into, or logically associated with, the document—
 - (a) is of such type and satisfies such requirements as may be prescribed by the Scottish Ministers in regulations, and
 - (b) (either or both)—
 - (i) is used in such circumstances as may be so prescribed,
 - (ii) bears to be certified,
 and that if the electronic signature bears to be certified (and does not conform with paragraph (b)(i)) the certification is of such type and satisfies such requirements as may be so prescribed.
- (3) Regulations under subsection (2) are subject to the negative procedure.

9D Presumptions as to granter's authentication etc. when established in court proceedings

- (1) Where—
 - (a) an electronic document bears to have been authenticated by a granter of it, and

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- (b) there is no presumption under section 9C that the document has been authenticated by that granter,
- the court must, on an application being made to it by any person who has an interest in the document, if satisfied that the document was authenticated by that granter, grant decree to that effect.
- (2) Where—
- (a) an electronic document bears to have been authenticated by a granter of it, and
- (b) there is no presumption by virtue of section 9E(1) as to the time, date or place of authentication,
- the court must, on an application being made to it by any person who has an interest in the document, if satisfied as to that time, date or place, grant decree to that effect.
- (3) On an application under subsection (1) or (2), evidence is, unless the court otherwise directs, to be given by affidavit.
- (4) An application under subsection (1) or (2) may be made either as a summary application or as incidental to, and in the course of, other proceedings.
- (5) The effect of a decree—
- (a) under subsection (1), is to establish a presumption that the document has been authenticated by the granter concerned, or
- (b) under subsection (2), is to establish a presumption that the statement in the decree as to time, date or place is correct.
- (6) In this section, “ the court ” means—
- (a) in the case of a summary application—
- (i) the sheriff in whose sheriffdom the applicant resides, or
- (ii) if the applicant does not reside in Scotland, the sheriff at Edinburgh, or
- (b) in the case of an application made in the course of other proceedings, the court before which those proceedings are pending.

9E Further provision by Scottish Ministers about electronic documents

- (1) The Scottish Ministers may, in regulations, make provision as to the effectiveness or formal validity of, or presumptions to be made with regard to—
- (a) any alteration made, whether before or after authentication, to an electronic document,
- (b) the authentication, by or on behalf of the granter, of such a document,
- (c) the authentication, by or on behalf of a person with a disability, of such a document, or
- (d) any annexation to such a document,
- (including, without prejudice to the generality of this subsection, presumptions to be made with regard to the time, date and place of authentication of such a document).
- (2) Regulations under subsection (1) may make such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient for the purposes of, or in consequence of the regulations.
- (3) Subject to subsection (4), regulations under subsection (1) are subject to the negative procedure.

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(4) Regulations which—

- (a) make provision of the kind mentioned in subsection (1)(b), or
 - (b) add to, replace or omit any part of an Act (including this Act),
- are subject to the affirmative procedure.

9F Delivery of electronic documents

- (1) An electronic document may be delivered electronically or by such other means as are reasonably practicable.
- (2) But such a document must be in a form, and such delivery must be by a means—
 - (a) the intended recipient has agreed to accept, or
 - (b) which it is reasonable in all the circumstances for the intended recipient to accept.

9G Registration and recording of electronic documents

- (1) Subject to subsection (6), it is not competent—
 - (a) to record an electronic document in the Register of Sasines,
 - (b) to register such a document in the Land Register of Scotland,
 - (c) to register such a document for execution or preservation in the Books of Council and Session, or
 - (d) to record or register such a document in any other register under the management and control of the Keeper of the Registers of Scotland,unless both subsection (2) and subsection (3) apply in relation to the document.
- (2) This subsection applies where—
 - (a) the document is presumed under section 9C or 9D or by virtue of section 9E(1) to have been authenticated by the granter, or
 - (b) if there is more than one granter, the document is presumed by virtue of any of those provisions to have been authenticated by at least one of the granters.
- (3) This subsection applies where—
 - (a) the document,
 - (b) the electronic signature authenticating it, and
 - (c) if the document bears to be certified, the certification,are in such form and of such type as are prescribed by the Scottish Ministers in regulations.
- (4) Before making regulations under subsection (3), the Scottish Ministers must consult with—
 - (a) the Keeper of the Registers of Scotland,
 - (b) the Keeper of the Records of Scotland, and
 - (c) the Lord President of the Court of Session.
- (5) Regulations under subsection (3)—
 - (a) may make different provision for different cases or classes of case, and
 - (b) are subject to the negative procedure.
- (6) Subsection (1) above does not apply in relation to—

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- (a) a document's—
 - (i) being recorded in the Register of Sasines,
 - (ii) being registered in the Land Register of Scotland or in the Books of Council and Session, or
 - (iii) being recorded or registered in any other register under the management and control of the Keeper of the Registers of Scotland, if an enactment requires or expressly permits such recording or registration notwithstanding that the document is not presumed to have been authenticated by the granter or by at least one of the granters,
 - (b) the recording of a court decree in the Register of Sasines or the registering of such a decree in the Land Register of Scotland,
 - (c) the registering in the Books of Council and Session of—
 - (i) a document registration of which is directed by the Court of Session,
 - (ii) a document the formal validity of which is governed by a law other than Scots law, provided that the Keeper of the Registers of Scotland is satisfied that the document is formally valid according to that other law,
 - (iii) a court decree granted under section 9D, or by virtue of section 9E(1), of this Act in relation to a document already registered in the Books of Council and Session, or
 - (d) the registration of a court decree in a separate register maintained for that purpose.
- (7) An electronic document may be registered for preservation in the Books of Council and Session without a clause of consent to registration.]

10 Forms of testing clause.

- (1) Without prejudice to the effectiveness of any other means of providing information relating to the execution of a document, this information may be provided in such form of testing clause as may be prescribed in regulations made by the Secretary of State.
- (2) Regulations under subsection (1) above shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament and may prescribe different forms for different cases or classes of case.

11 Abolition of proof by writ or oath, reference to oath and other common law rules.

- (1) Any rule of law and any enactment whereby the proof of any matter is restricted to proof by writ or by reference to oath shall cease to have effect.
- (2) The procedure of proving any matter in any civil proceedings by reference to oath is hereby abolished.
- (3) The following rules of law shall cease to have effect—
 - (a) any rule whereby certain contracts and obligations and any variations of those contracts and obligations, and assignments of incorporeal moveables, are required to be in writing; and
 - (b) any rule which confers any privilege—
 - (i) on a document which is holograph or adopted as holograph; or

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(ii) on a writin *re mercatoria*.

(4) Subsections (1) and (2) above shall not apply in relation to proceedings commenced before the commencement of this Act.

12 Interpretation.

(1) In this Act, except where the context otherwise requires—

“alteration” includes interlineation, marginal addition, deletion, substitution, erasure or anything written on erasure;

“annexation” includes any inventory, appendix, schedule, other writing, plan, drawing, photograph or other representation annexed to a document;

[^{F14} “ARTL System ” means the computer system managed and controlled by the Keeper of the Registers of Scotland to enable creation of electronic documents and the electronic generation and communication of an application for registration of a dealing affecting an interest in land registered in the Land Register of Scotland and automated registration in respect of that interest;]

[^{F15} “ company ” has the meaning given by section 1(1) of the Companies Act 2006;]

[^{F16} “ dealing ” means a transaction or event capable of affecting the title to an interest in land registered in the Land Register of Scotland;]

“decree” includes a judgment or order, or an official certified copy, abbreviate or extract of a decree;

[^{F17} “ digital signature ” means data in electronic form which serves as a method of authentication and which is—

- (i) uniquely linked to the signatory;
- (ii) capable of identifying the signatory;
- (iii) created using a signature-creation device that the signatory can maintain under the signatory's sole control; and
- (iv) linked to the data to which it relates in such a manner that any subsequent change of data is detectable;]

“director” includes any person occupying the position of director, by whatever name he is called;

“document” includes any annexation which is incorporated in it under section 8 of this Act and any reference, however expressed, to the signing of a document includes a reference to the signing of an annexation;

[^{F18} “ electronic communication ” has the same meaning as in the Electronic Communications Act 2000;

“ electronic document ” has the meaning given by section 1(2B);]

“enactment” includes an enactment contained in a statutory instrument [^{F19}and an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament];

“governing board”, in relation to a body corporate to which paragraph 5 of Schedule 2 to this Act applies, means any governing body, however described;

“local authority” means a local authority within the meaning of section 235(1) of the ^{M4}Local Government (Scotland) Act 1973 and a council constituted under section 2 of the ^{M5}Local Government etc. (Scotland) Act 1994;

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“Minister” has the same meaning as “Minister of the Crown” has in section 8 of the ^{M6}Ministers of the Crown Act 1975 [^{F20}and also includes a member of the Scottish Executive];

“office-holder” does not include a Minister but, subject to that, means—

- (a) the holder of an office created or continued in existence by a public general Act of Parliament;
- (b) the holder of an office the remuneration in respect of which is paid out of money provided by Parliament [^{F21}or out of the Scottish Consolidated Fund]; and
- (c) the registrar of companies ^{F22}. . . ;

“officer”—

- (a) in relation to a Minister, means any person in the civil service of the Crown who is serving in his Department [^{F23}or, as the case may be, as a member of the staff of the Scottish Ministers or the Lord Advocate];
- (b) in relation an office-holder, means any member of his staff, or any person in the civil service of the Crown who has been assigned or appointed to assist him in the exercise of his functions;

“proper officer”, in relation to a local authority, has the same meaning as in section 235(3) of the Local Government (Scotland) Act 1973; and

“secretary” means, if there are two or more joint secretaries, any one of them;

[^{F24}“signature-creation data” means unique data (including, but not limited to, codes or private cryptographic keys) which are used by the signatory to create an electronic signature; and

“signature-creation device” means configured software or hardware used to implement the signature-creation data.]

- (2) Any reference in this Act to subscription or signing by a granter of a document or an alteration made to a document, in a case where a person is subscribing or signing under a power of attorney on behalf of the granter, shall be construed as a reference to subscription or signing by that person of the document or alteration.

[^{F25}(3) In a case where a person is authenticating an electronic document on behalf of a granter, any reference in this Act to authentication by a granter of an electronic document shall be construed as a reference to authentication by that person.]

Textual Amendments

- F14** S. 12(1): definition of "ARTL" inserted (5.10.2006) by The Automated Registration of Title to Land (Electronic Communications) (Scotland) Order 2006 (S.S.I. 2006/491) , **art. 3(7)(a)(i)**
- F15** S. 12(1): definition of "company" substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941) , art. 2(1), **Sch. 1 para. 151** (with art. 10)
- F16** S. 12(1): definition of "dealing" inserted (5.10.2006) by The Automated Registration of Title to Land (Electronic Communications) (Scotland) Order 2006 (S.S.I. 2006/491) , **art. 3(7)(a)(ii)**
- F17** S. 12(1): definition of "digital signature" inserted (5.10.2006) by The Automated Registration of Title to Land (Electronic Communications) (Scotland) Order 2006 (S.S.I. 2006/491) , **art. 3(7)(a)(iii)**
- F18** S. 12(1): definitions of "electronic communication" and "electronic document" inserted (5.10.2006) by The Automated Registration of Title to Land (Electronic Communications) (Scotland) Order 2006 (S.S.I. 2006/491) , **art. 3(7)(a)(iv)**

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- F19** S. 12(1): words in definition of “enactment” added (27.7.2000) by S.I. 20000/2040, art. 2, Sch. Pt. 1 para. 17 (with art. 3)
- F20** S. 12(1): words in definition of “Minister” inserted (6.5.1999) by 1998 c. 46 , s. 125(1) , **Sch. 8 para. 31(a)** (with s. 126(3)-(11)); S.I. 1998/3178, art. 2(2), **Sch. 3**
- F21** S. 12(1): words in definition of "office-holder" inserted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. 1 para. 118.**
- F22** S. 12(1): words in definition of "office-holder" omitted (1.10.2009) by virtue of **The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941)**, art. 2(1), **Sch. 1 para. 151** (with art. 10)
- F23** S. 12(1): words in definition of “Officer” inserted (6.5.1999) by 1998 c. 46, s. 125(1) , **Sch. 8 para. 31(b)** (with s. 126(3)-(11)); S.I. 1998/3178, art. 2(2), **Sch. 3**
- F24** S. 12(1): definitions of "signature-creation data" and "signature-creation device" inserted (5.10.2006) by **The Automated Registration of Title to Land (Electronic Communications) (Scotland) Order 2006 (S.S.I. 2006/491)** , **art. 3(7)(a)(v)**
- F25** S. 12(3) inserted (5.10.2006) by **The Automated Registration of Title to Land (Electronic Communications) (Scotland) Order 2006 (S.S.I. 2006/491)** , **art. 3(7)(b)**

Marginal Citations

- M4** 1973 c. 65 .
- M5** 1994 c. 39 .
- M6** 1975 c. 26 .

13 Application of Act to Crown.

- (1) Nothing in this Act shall—
- (a) prevent Her Majesty from authenticating—
 - (i) a document by superscription; or
 - (ii) a document relating to her private estates situated or arising in Scotland in accordance with section 6 of the ^{M7}Crown Private Estates Act 1862;
 - (b) prevent authentication under the ^{M8}Writs Act 1672 of a document passing the seal appointed by the Treaty of Union to be kept and used in Scotland in place of the Great Seal of Scotland formerly in use; or
 - (c) prevent any document mentioned in paragraph (a) or (b) above authenticated as aforesaid from being recorded in the Register of Sasines or registered for execution or preservation in the Books of Council and Session or in sheriff court books.
- (2) ^{F26}
- (3) Subject to subsections (1) and (2) above, this Act binds the Crown.

Textual Amendments

- F26** S. 13(2) repealed (28.11.2004) by **Title Conditions (Scotland) Act 2003 (asp 9)** , ss. 122(1) , 128(2) , 129(2) , **Sch. 15** (with ss. 119 , 121); S.S.I. 2003/456 , art. 2

Marginal Citations

- M7** 1862 c. 37 .
- M8** 1672 c. 16 .

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14 Minor and consequential amendments, repeals, transitional provisions and savings.

- (1) The enactments mentioned in Schedule 4 to this Act shall have effect subject to the minor and consequential amendments specified in that Schedule.
- (2) The enactments mentioned in Schedule 5 to this Act are hereby repealed to the extent specified in the third column of that Schedule.
- (3) Subject to subsection (4) below and without prejudice to subsection (5) below and section 11(4) of this Act, nothing in this Act shall—
 - (a) apply to any document executed or anything done before the commencement of this Act; or
 - (b) affect the operation, in relation to any document executed before such commencement, of any procedure for establishing the authenticity of such a document.
- (4) In the repeal of the ^{M9}Blank Bonds and Trusts Act 1696 (provided for in Schedule 5 to this Act), the repeal of the words from “And farther” to the end—
 - (a) shall have effect in relation to a deed of trust, whether executed before or after the commencement of this Act; but
 - (b) notwithstanding paragraph (a) above, shall not have effect in relation to proceedings commenced before the commencement of this Act in which a question arises as to the deed of trust.
- (5) The repeal of certain provisions of the ^{M10}Lyon King of Arms Act 1672 (provided for in Schedule 5 to this Act) shall not affect any right of a person to add a territorial designation to his signature or the jurisdiction of the Lord Lyon King of Arms in relation to any such designation.
- (6) For the purposes of this Act, if it cannot be ascertained whether a document was executed before or after the commencement of this Act, there shall be a presumption that it was executed after such commencement.

Marginal Citations

M9 1696 c. 25 (S.) .

M10 1672 c. 47 (S.) .

15 Short title, commencement and extent.

- (1) This Act may be cited as the Requirements of Writing (Scotland) Act 1995.
- (2) This Act shall come into force at the end of the period of three months beginning with the date on which it is passed.
- (3) This Act extends to Scotland only.

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SCHEDULES

SCHEDULE 1

Section 5(8)

ALTERATIONS MADE TO A DOCUMENT AFTER IT HAS BEEN SUBSCRIBED

Presumption as to granter's signature or date or place of signing

- 1 (1) Subject to sub-paragraphs (2) to (7) below, where—
- (a) an alteration to a document bears to have been signed by a granter of the document;
 - (b) the alteration bears to have been signed by a person as a witness of that granter's signature and the alteration, or the testing clause or its equivalent, bears to state the name and address of the witness; and
 - (c) nothing in the document or alteration, or in the testing clause or its equivalent, indicates—
 - (i) that the alteration was not signed by that granter as it bears to have been so signed; or
 - (ii) that it was not validly witnessed for any reason specified in paragraphs (a) to (e) of sub-paragraph (4) below,
 the alteration shall be presumed to have been signed by that granter.
- (2) Where an alteration to a testamentary document consists of more than one sheet, the alteration shall not be presumed to have been signed by a granter as mentioned in sub-paragraph (1) above unless, in addition to it bearing to have been signed by him on the last sheet and otherwise complying with that sub-paragraph, it bears to have been signed by him on every other sheet.
- (3) For the purposes of sub-paragraph (1)(b) above—
- (a) the name and address of a witness may be added at any time before the alteration 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
 - (b) the name and address of a witness need not be written by the witness himself.
- (4) Where, in any proceedings relating to an alteration to a document in which a question arises as to a granter's signature, it is established—
- (a) that a signature bearing to be the signature of the witness of that granter's signature is not such a signature, whether by reason of forgery or otherwise;
 - (b) that the person who signed the alteration as the witness of that granter's signature is a person who is named in the document as a granter of the document;
 - (c) that the person who signed the alteration as the witness of that granter's signature, at the time of signing—
 - (i) did not know the granter;

Status: Point in time view as at 22/03/2014.

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- (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 alteration, purporting to be the witness of that granter's signature, did not witness such signature;
 - (e) that the person who signed the alteration as the witness of that granter's signature did not sign the alteration after him or that the signing of the alteration by the granter or, as the case may be, the granter's acknowledgement of his signature and the signing by the person as witness were not one continuous process;
 - (f) that the name or address of the witness of that granter's signature was added after the alteration was founded on or registered as mentioned in sub-paragraph (3)(a) above or is erroneous in any material respect; or
 - (g) in the case of an alteration to a testamentary document consisting of more than one sheet, that a signature on any sheet of the alteration 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 alteration has been signed by that granter.
- (5) For the purposes of sub-paragraph (4)(c)(i) above, the witness shall be regarded as having known the person whose signature he has witnessed at the time of witnessing if he had credible information at that time of his identity.
 - (6) For the purposes of sub-paragraph (4)(e) above, where—
 - (a) an alteration to a document is made by more than one granter; and
 - (b) a person is the witness to the signature of more than one granter,the signing of the alteration by any such granter or the acknowledgement of his signature and the signing by the person witnessing that granter's signature shall not be regarded as not being one continuous process by reason only that, between the time of signing or acknowledgement by that granter and of signing by that witness, another granter has signed the alteration or acknowledged his signature.
 - (7) For the purposes of the foregoing provisions of this paragraph a person witnesses a granter's signature of an alteration—
 - (a) if he sees the granter sign it; or
 - (b) if the granter acknowledges his signature to that person.
 - (8) Where—
 - (a) by virtue of sub-paragraph (1) above an alteration to a document to which this sub-paragraph applies is presumed to have been signed by a granter of the document;
 - (b) the alteration, or the testing clause or its equivalent, bears to state the date or place of signing of the alteration by that granter; and
 - (c) nothing in the document or alteration, 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 alteration was signed by that granter on the date or at the place as stated.
 - (9) Sub-paragraph (8) above applies to any document other than a testamentary document.
 - (10) Where—

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- (a) an alteration to a testamentary document bears to have been signed and the alteration, or the testing clause or its equivalent, bears to state the date or place of signing (whether or not it is presumed under sub-paragraphs (1) to (7) above to have been signed by a granter of the document); and
 - (b) nothing in the document or alteration, 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.

*Presumption as to granter’s signature or date or place
of signing when established in court proceedings*

- 2 (1) Where an alteration to a document bears to have been signed by a granter of the document, but there is no presumption under paragraph 1 above that the alteration has been signed by that granter, then, if the court, on an application being made to it by any person having an interest in the document, is satisfied that the alteration was signed by that granter, it shall—
- (a) cause the document to be endorsed with a certificate to that effect; or
 - (b) where the document has already been registered in the Books of Council and Session or in sheriff court books, grant decree to that effect.
- (2) Where an alteration to a document bears to have been signed by a granter of the document, but there is no presumption under paragraph 1 above as to the date or place of signing, then, if the court, on an application being made to it by any person having an interest in the document, is satisfied as to the date or place of signing, it shall—
- (a) cause the document to be endorsed with a certificate to that effect; or
 - (b) where the document has already been registered in the Books of Council and Session or in sheriff court books, grant decree to that effect.
- (3) In relation to an application under sub-paragraph (1) or (2) above evidence shall, unless the court otherwise directs, be given by affidavit.
- (4) An application under sub-paragraph (1) or (2) above may be made either as a summary application or as incidental to and in the course of other proceedings.
- (5) The effect of a certificate or decree—
- (a) under sub-paragraph (1) above shall be to establish a presumption that the alteration has been signed by the granter concerned;
 - (b) under sub-paragraph (2) above shall be to establish a presumption that the statement in the certificate or decree as to date or place is correct.
- (6) In this paragraph “the court” means—
- (a) in the case of a summary application—
 - (i) the sheriff in whose sheriffdom the applicant resides; or
 - (ii) if the applicant does not reside in Scotland, the sheriff at Edinburgh;
 and
 - (b) in the case of an application made in the course of other proceedings, the court before which those proceedings are pending.

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SCHEDULE 2

Section 7(7)

SUBSCRIPTION AND SIGNING: SPECIAL CASES

General

- 1 Any reference in this Act to subscription or signing by a granter of a document or an alteration to a document, in a case where the granter is a person to whom any of paragraphs 2 to 6 of this Schedule applies shall, unless the context otherwise requires, be construed as a reference to subscription or, as the case may be, signing of the document or alteration by a person in accordance with that paragraph.

Partnerships

- 2 (1) Except where an enactment expressly provides otherwise, where a granter of a document is a partnership, the document is signed by the partnership if it is signed on its behalf by a partner or by a person authorised to sign the document on its behalf.
- (2) A person signing on behalf of a partnership under this paragraph may use his own name or the firm name.
- (3) Sub-paragraphs (1) and (2) of this paragraph apply in relation to the signing of an alteration made to a document as they apply in relation to the signing of a document.
- (4) In this paragraph “partnership” has the same meaning as in section 1 of the ^{M11}Partnership Act 1890.

Marginal Citations

M11 1890 c. 39.

Companies

- 3 (1) Except where an enactment expressly provides otherwise, where a granter of a document is a company, the document is signed by the company if it is signed on its behalf by a director, or by the secretary, of the company or by a person authorised to sign the document on its behalf.
- (2) This Act is without prejudice to—
- [^{F27}(a) sections 270(3) and 274 of the Companies Act 2006; and]
- (b) paragraph 9 of Schedule 1, paragraph 9 of Schedule 2, and paragraph 7 of Schedule 4, to the ^{M12}Insolvency Act 1986.
- (3) Sub-paragraphs (1) and (2) of this paragraph apply in relation to the signing of an alteration made to a document as they apply in relation to the signing of a document.
- (4) Where a granter of a document is a company, section 3 of and Schedule 1 to this Act shall have effect subject to the modifications set out in sub-paragraphs (5) and (6) below.
- (5) In section 3—
- (a) for subsection (1) there shall be substituted the following subsections—
- “(1) Subject to subsections (1A) to (7) below, where—

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- (a) a document bears to have been subscribed on behalf of a company by a director, or by the secretary, of the company or by a person bearing to have been authorised to subscribe the document on its behalf;
 - (b) the document bears to have been signed by a person as a witness of the subscription of the director, secretary or other person subscribing on behalf of the company and 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 on behalf of the company 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 the company.
- (1A) Where a document does not bear to have been signed by a person as a witness of the subscription of the director, secretary or other person subscribing on behalf of the company it shall be presumed to have been subscribed by the company if it bears to have been subscribed on behalf of the company by—
- (a) two directors of the company; or
 - (b) a director and secretary of the company; or
 - (c) two persons bearing to have been authorised to subscribe the document on its behalf.
- (1B) For the purposes of subsection (1)(b) above, the name and address of the witness may bear to be stated in the document itself or in the testing clause or its equivalent.
- (1C) A presumption under subsection (1) or (1A) above as to subscription of a document does not include a presumption—
- (a) that a person bearing to subscribe the document as a director or the secretary of the company was such director or secretary; or
 - (b) that a person subscribing the document on behalf of the company bearing to have been authorised to do so was authorised to do so.”;
- (b) in subsection (4) after paragraph (g) there shall be inserted the following paragraph—
- “(h) if the document does not bear to have been witnessed, but bears to have been subscribed on behalf of the company by two of the directors of the company, or by a director and secretary of the company, or by two authorised persons, that a signature bearing to be the signature of a director, secretary or authorised person is not such a signature, whether by reason of forgery or otherwise;”.

(6) In paragraph 1 of Schedule 1—

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- (a) for sub-paragraph (1) there shall be substituted the following sub-paragraphs—

“(1) Subject to sub-paragraphs (1A) to (7) below, where—

- (a) an alteration to a document bears to have been signed on behalf of a company by a director, or by the secretary, of the company or by a person bearing to have been authorised to sign the alteration on its behalf;
- (b) the alteration bears to have been signed by a person as a witness of the signature of the director, secretary or other person signing on behalf of the company and to state the name and address of the witness; and
- (c) nothing in the document or alteration, or in the testing clause or its equivalent, indicates—
 - (i) that the alteration was not signed on behalf of the company as it bears to have been so signed; or
 - (ii) that the alteration was not validly witnessed for any reason specified in paragraphs (a) to (e) of sub-paragraph (4) below,

the alteration shall be presumed to have been signed by the company.

- (1A) Where an alteration does not bear to have been signed by a person as a witness of the signature of the director, secretary or other person signing on behalf of the company it shall be presumed to have been signed by the company if it bears to have been signed on behalf of the company by—

- (a) two directors of the company; or
- (b) a director and secretary of the company; or
- (c) two persons bearing to have been authorised to sign the alteration on its behalf.

- (1B) For the purposes of sub-paragraph (1)(b) above, the name and address of the witness may bear to be stated in the alteration itself or in the testing clause or its equivalent.

- (1C) A presumption under sub-paragraph (1) or (1A) above as to signing of an alteration to a document does not include a presumption—

- (a) that a person bearing to sign the alteration as a director or the secretary of the company was such director or secretary; or
- (b) that a person signing the alteration on behalf of the company bearing to have been authorised to do so was authorised to do so.”;

- (b) in sub-paragraph (4) after paragraph (g) there shall be inserted the following paragraph—

“(h) if the alteration does not bear to have been witnessed, but bears to have been signed on behalf of the company by two of the directors of the company, or by a director and secretary of the company, or by two authorised persons, that a signature bearing to be the signature of a director, secretary or authorised person is not such a signature, whether by reason of forgery or otherwise.”.

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Textual Amendments

F27 Sch. 2 para. 3(2)(a) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2, 3(1)(b), **Sch. 1 para. 199** (with arts. 6, 11, 12)

Marginal Citations

M12 1986 c. 45.

^{F28}Limited Liability Partnerships

Textual Amendments

F28 Sch. 2 para. 3A and heading inserted (6.4.2001) by [S.S.I. 2001/128](#), **reg. 5 Sch. 4 para. 5**

- ^{F29}3A (1) Except where an enactment expressly provides otherwise, where a granter of a document is a limited liability partnership, the document is signed by the limited liability partnership if it is signed on its behalf by a member of the limited liability partnership.
- (2) This Act is without prejudice to paragraph 9 of Schedule 1, paragraph 9 of Schedule 2, and paragraph 7 of Schedule 4, to the Insolvency Act 1986.
- (3) Sub-paragraphs (1) and (2) of this paragraph apply in relation to the signing of an alteration made to a document as they apply in relation to the signing of a document.
- (4) Where a granter of a document is a limited liability partnership, section 3 of and Schedule 1 to this Act shall have effect subject to the modifications set out in sub-paragraphs (5) and (6) below.
- (5) In section 3—
- (a) for subsection (1) there shall be substituted the following subsections— “
- (1) Subject to subsections (1A) to (7) below, where—
- (a) a document bears to have been subscribed on behalf of a limited liability partnership by a member of the limited liability partnership;
- (b) the document bears to have been signed by a person as a witness of the subscription of the member of the limited liability partnership and 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 on behalf of the limited liability partnership 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 the limited liability partnership.
- (1A) Where a document does not bear to have been signed by a person as a witness of the subscription of the member of the limited liability partnership it shall be presumed to have been subscribed by the limited liability partnership if it bears to have been subscribed on behalf of the limited liability partnership by two members of the limited liability partnership.

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- (1B) A presumption under subsection (1) or (1A) above as to subscription of a document does not include a presumption that a person bearing to subscribe the document as a member of the limited liability partnership was such member.”;
- (b) in subsection (4) after paragraph (g) there shall be inserted the following paragraph— “
- (h) if the document does not bear to have been witnessed, but bears to have been subscribed on behalf of the limited liability partnership by two of the members of the limited liability partnership, that a signature bearing to be the signature of a member is not such a signature, whether by reason of forgery or otherwise;”.
- (6) In paragraph 1 of Schedule 1—
- (a) for sub-paragraph (1) there shall be substituted the following sub-paragraphs—“
- (1) Subject to sub-paragraphs (1A) to (7) below, where—
- (a) an alteration to a document bears to have been signed on behalf of a limited liability partnership by a member of the limited liability partnership;
- (b) the alteration bears to have been signed by a person as a witness of the signature of the member of the limited liability partnership and to state the name and address of the witness; and
- (c) nothing in the document or alteration, or in the testing clause or its equivalent, indicates—
- (i) that the alteration was not signed on behalf of the limited liability partnership as it bears to have been so signed; or
- (ii) that the alteration was not validly witnessed for any reason specified in paragraphs (a) to (e) of sub-paragraph (4) below,
- the alteration shall be presumed to have been signed by the limited liability partnership.
- (1A) Where an alteration does not bear to have been signed by a person as a witness of the signature of the member of the limited liability partnership it shall be presumed to have been signed by the limited liability partnership if it bears to have been signed on behalf of the limited liability partnership by two members of the limited liability partnership.
- (1B) For the purposes of sub-paragraph (1)(b) above, the name and address of the witness may bear to be stated in the alteration itself or in the testing clause or its equivalent.
- (1C) A presumption under sub-paragraph (1) or (1A) above as to signing of an alteration to a document does not include a presumption that a person bearing to sign the alteration as a member of the limited liability partnership was such member ”;
- (b) in sub-paragraph (4) after paragraph (g) there shall be inserted the following—
- “
- ; or
- (h) if the alteration does not bear to have been witnessed, but bears to have been signed on behalf of the limited liability partnership by two of the members of the limited liability partnership, that a signature bearing to be the signature of a member is not such a signature, whether by reason of forgery or otherwise;”.]

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Textual Amendments

F29 Sch. 2 para. 3A and heading inserted (6.4.2001) by **S.S.I. 2001/128, reg. 5 Sch. 4 para. 5**

Local authorities

- 4 (1) Except where an enactment expressly provides otherwise, where a granter of a document is a local authority, the document is signed by the authority if it is signed on their behalf by the proper officer of the authority.
- (2) For the purposes of the signing of a document under this paragraph, a person purporting to sign on behalf of a local authority as an officer of the authority shall be presumed to be the proper officer of the authority.
- (3) Sub-paragraphs (1) and (2) of this paragraph apply in relation to the signing of an alteration made to a document as they apply in relation to the signing of a document.
- (4) Where a granter of a document is a local authority, section 3 of and Schedule 1 to this Act shall have effect subject to the modifications set out in sub-paragraphs (5) to (8) below.
- (5) For section 3(1) there shall be substituted the following subsections—
- “(1) Subject to subsections (1A) to (7) below, where—
- (a) a document bears to have been subscribed on behalf of a local authority by the proper officer of the authority;
 - (b) the document bears—
 - (i) to have been signed by a person as a witness of the proper officer’s subscription and to state the name and address of the witness; or
 - (ii) (if the subscription is not so witnessed), to have been sealed with the common seal of the authority; and
 - (c) nothing in the document, or in the testing clause or its equivalent, indicates—
 - (i) that it was not subscribed on behalf of the authority 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 or that it was not sealed as it bears to have been sealed or that it was not validly sealed for the reason specified in subsection (4)(h) below,

the document shall be presumed to have been subscribed by the proper officer and by the authority.
- (1A) For the purposes of subsection (1)(b)(i) above, the name and address of the witness may bear to be stated in the document itself or in the testing clause or its equivalent.”
- (6) In section 3(4) after paragraph (g) there shall be inserted the following paragraph—
- “(h) if the document does not bear to have been witnessed, but bears to have been sealed with the common seal of the authority, that it was

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sealed by a person without authority to do so or was not sealed on the date on which it was subscribed on behalf of the authority;”.

(7) For paragraph 1(1) of Schedule 1 there shall be substituted the following sub-paragraphs—

“(1) Subject to sub-paragraphs (1A) to (7) below, where—

- (a) an alteration to a document bears to have been signed on behalf of a local authority by the proper officer of the authority;
- (b) the alteration bears—
 - (i) to have been signed by a person as a witness of the proper officer’s signature and to state the name and address of the witness; or
 - (ii) (if the signature is not so witnessed), to have been sealed with the common seal of the authority; and
- (c) nothing in the document or alteration, or in the testing clause or its equivalent, indicates—
 - (i) that the alteration was not signed on behalf of the authority as it bears to have been so signed; or
 - (ii) that the alteration was not validly witnessed for any reason specified in paragraphs (a) to (e) of sub-paragraph (4) below or that it was not sealed as it bears to have been sealed or that it was not validly sealed for the reason specified in sub-paragraph (4)(h) below,

the alteration shall be presumed to have been signed by the proper officer and by the authority.

(1A) For the purposes of sub-paragraph (1)(b)(i) above, the name and address of the witness may bear to be stated in the alteration itself or in the testing clause or its equivalent.”.

(8) In paragraph 1(4) of Schedule 1 after paragraph (g) there shall be inserted the following paragraph—

“(h) if the alteration does not bear to have been witnessed, but bears to have been sealed with the common seal of the authority, that it was sealed by a person without authority to do so or was not sealed on the date on which it was signed on behalf of the authority;”.

Other bodies corporate

- 5 (1) This paragraph applies to any body corporate other than a company or a local authority.
- (2) Except where an enactment expressly provides otherwise, where a granter of a document is a body corporate to which this paragraph applies, the document is signed by the body if it is signed on its behalf—
- (a) a member of the body’s governing board or, if there is no governing board, a member of the body;
 - (b) the secretary of the body by whatever name he is called; or
 - (c) a person authorised to sign the document on behalf of the body.
- (3) Sub-paragraphs (1) and (2) of this paragraph apply in relation to the signing of an alteration made to a document as they apply in relation to the signing of a document.

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(4) Where a granter of a document is a body corporate to which this paragraph applies, section 3 of and Schedule 1 to this Act shall have effect subject to the modifications set out in sub-paragraphs (5) to (8) below.

(5) For section 3(1) there shall be substituted the following subsections—

“(1) Subject to subsections (1A) to (7) below, where—

- (a) a document bears to have been subscribed on behalf of a body corporate to which paragraph 5 of Schedule 2 to this Act applies by—
 - (i) a member of the body’s governing board or, if there is no governing board, a member of the body;
 - (ii) the secretary of the body; or
 - (iii) a person bearing to have been authorised to subscribe the document on its behalf;
- (b) the document bears—
 - (i) to have been signed by a person as a witness of the subscription of the member, secretary or other person signing on behalf of the body and to state the name and address of the witness; or
 - (ii) (if the subscription is not so witnessed), to have been sealed with the common seal of the body; and
- (c) nothing in the document, or in the testing clause or its equivalent, indicates—
 - (i) that it was not subscribed on behalf of the body 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 or that it was not sealed as it bears to have been sealed or that it was not validly sealed for the reason specified in subsection (4)(h) below,

the document shall be presumed to have been subscribed by the member, secretary or authorised person (as the case may be) and by the body.

(1A) For the purposes of subsection (1)(b)(i) above, the name and address of the witness may bear to be stated in the document itself or in the testing clause or its equivalent.

(1B) A presumption under subsection (1) above as to subscription of a document does not include a presumption—

- (a) that a person bearing to subscribe the document as a member of the body’s governing board, a member of the body or the secretary of the body was such member or secretary; or
- (b) that a person subscribing the document on behalf of the body bearing to have been authorised to do so was authorised to do so.”.

(6) In section 3(4) after paragraph (g) there shall be inserted the following paragraph—

“(h) if the document does not bear to have been witnessed, but bears to have been sealed with the common seal of the body, that it was sealed by a person without authority to do so or was not sealed on the date on which it was subscribed on behalf of the body;”.

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(7) For paragraph 1(1) of Schedule 1 there shall be substituted the following sub-paragraphs—

“(1) Subject to sub-paragraphs (1A) to (7) below, where—

- (a) an alteration to a document bears to have been signed on behalf of a body corporate to which paragraph 5 of Schedule 2 to this Act applies by—
 - (i) a member of the body’s governing board or, if there is no governing board, a member of the body;
 - (ii) the secretary of the body; or
 - (iii) a person bearing to have been authorised to sign the alteration on its behalf;
- (b) the alteration bears—
 - (i) to have been signed by a person as a witness of the signature of the member, secretary or other person signing on behalf of the body and to state the name and address of the witness; or
 - (ii) (if the signature is not so witnessed), to have been sealed with the common seal of the body; and
- (c) nothing in the document or alteration, or in the testing clause or its equivalent, indicates—
 - (i) that the alteration was not signed on behalf of the body as it bears to have been so signed; or
 - (ii) that the alteration was not validly witnessed for any reason specified in paragraphs (a) to (e) of sub-paragraph (4) below or that it was not sealed as it bears to have been sealed or that it was not validly sealed for the reason specified in sub-paragraph (4)(h) below,

the alteration shall be presumed to have been signed by the member, secretary or authorised person (as the case may be) and by the body.

(1A) For the purposes of sub-paragraph (1)(b)(i) above, the name and address of the witness may bear to be stated in the alteration itself or in the testing clause or its equivalent.

(1B) A presumption under sub-paragraph (1) above as to signing of an alteration to a document does not include a presumption—

- (a) that a person bearing to sign the alteration as a member of the body’s governing board, a member of the body or the secretary of the body was such member or secretary; or
- (b) that a person signing the alteration on behalf of the body bearing to have been authorised to do so was authorised to do so.”.

(8) In paragraph 1(4) of Schedule 1 after paragraph (g) there shall be inserted the following paragraph—

“(h) if the alteration does not bear to have been witnessed, but bears to have been sealed with the common seal of the body, that it was sealed by a person without authority to do so or was not sealed on the date on which it was signed on behalf of the body;”.

Status: Point in time view as at 22/03/2014.

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Modifications etc. (not altering text)

- C6 Sch. 2 para. 5(2) applied (2.3.2005) by [The Scrabster Harbour Revision \(Constitution\) Order 2005 \(S.S.I. 2005/133\)](#), **art. 18**

Ministers of the Crown and office-holders

- 6 (1) Except where an enactment expressly provides otherwise, where a granter of a document is a Minister or an office-holder, the document is signed by the Minister or office-holder if it is signed—
- (a) by him personally; or
 - (b) in a case where by virtue of any enactment or rule of law a document by a Minister may be signed by an officer of his or by any other Minister, by that officer or by that other Minister as the case may be; or
 - (c) in a case where by virtue of any enactment or rule of law a document by an office-holder may be signed by an officer of his, by that officer; or
 - (d) by any other person authorised to sign the document on his behalf.
- (2) For the purposes of the signing of a document under this paragraph, a person purporting to sign—
- (a) as an officer as mentioned in sub-paragraph (1)(b) or (1)(c) above;
 - (b) as another Minister as mentioned in sub-paragraph (1)(b) above;
 - (c) as a person authorised as mentioned in sub-paragraph (1)(d) above,
- shall be presumed to be the officer, other Minister or authorised person, as the case may be.
- (3) Sub-paragraphs (1) and (2) of this paragraph are without prejudice to section 3 of and Schedule 1 to the ^{M13}Ministers of the Crown Act 1975.
- (4) Sub-paragraphs (1) to (3) of this paragraph apply in relation to the signing of an alteration made to a document as they apply in relation to the signing of a document.
- (5) Where a granter of a document is a Minister or office-holder, section 3 of and Schedule 1 to this Act shall have effect subject to the modifications set out in sub-paragraphs (6) and (7) below.
- (6) For section 3(1) there shall be substituted the following subsections—
- “(1) Subject to subsections (1A) to (7) below, where—
- (a) a document bears to have been subscribed—
 - (i) by a Minister or, in a case where by virtue of any enactment or rule of law a document by a Minister may be signed by an officer of his or by any other Minister, by that officer or by that other Minister; or
 - (ii) by an office-holder or, in a case where by virtue of any enactment or rule of law a document by an office-holder may be signed by an officer of his, by that officer; or
 - (iii) by any other person bearing to have been authorised to subscribe the document on behalf of the Minister or office-holder;

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- (b) the document bears to have been signed by a person as a witness of the subscription mentioned in paragraph (a) above and 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 as it bears to have been 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 the officer, other Minister or authorised person and by the Minister or office-holder, as the case may be.

(1A) For the purposes of subsection (1)(b) above, the name and address of the witness may bear to be stated in the document itself or in the testing clause or its equivalent.”.

(7) For paragraph 1(1) of Schedule 1 there shall be substituted the following sub-paragraphs—

“(1) Subject to sub-paragraphs (1A) to (7) below, where—

- (a) an alteration to a document bears to have been signed by—
 - (i) a Minister or, in a case where by virtue of any enactment or rule of law a document by a Minister may be signed by an officer of his or by any other Minister, by that officer or by that other Minister; or
 - (ii) an office-holder or, in a case where by virtue of any enactment or rule of law a document by an office-holder may be signed by an officer of his, by that officer; or
 - (iii) any other person bearing to have been authorised to sign the alteration on behalf of the Minister or office-holder;
- (b) the alteration bears to have been signed by a person as a witness of the signature mentioned in paragraph (a) above and to state the name and address of the witness; and
- (c) nothing in the document or alteration, or in the testing clause or its equivalent, indicates—
 - (i) that the alteration was not signed as it bears to have been signed; or
 - (ii) that the alteration was not validly witnessed for any reason specified in paragraphs (a) to (e) of sub-paragraph (4) below,

the alteration shall be presumed to have been signed by the officer, other Minister or authorised person and by the Minister or office-holder, as the case may be.

(1A) For the purposes of sub-paragraph (1)(b) above, the name and address of the witness may bear to be stated in the alteration itself or in the testing clause or its equivalent.”.

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Modifications etc. (not altering text)

- C7** Sch. 2 para. 6 applied (1.4.2000) by [S.S.I. 2000/47](#) art. 5, Sch. Pt. II
 Sch. 2 para. 6 applied (6.4.2001) by [S.S.I. 2001/137](#), art. 5(1), **Sch. Pt. II**
 Sch. 2 para. 6 applied (31.3.2002) by [S.S.I. 2002/103](#), art. 6, **Sch. Pt. II** (with art. 4(4))
 Sch. 2 para. 6 applied (27.6.2002) by [S.S.I. 2002/305](#), art. 5(1), **Sch. Pt. II** (with art. 4(4))
- C8** Sch. 2 para. 6 applied by [S.I. 1990/2639](#) art. 4(3)(b) (as substituted (1.4.2003) by [The Health Education Board for Scotland Amendment Order 2003 \(S.S.I. 2003/154\)](#), art. 5(3))

Marginal Citations

- M13** 1975 c. 26.

SCHEDULE 3

Section 9(3)

MODIFICATIONS OF THIS ACT IN RELATION TO SUBSCRIPTION
 OR SIGNING BY RELEVANT PERSON UNDER SECTION 9

- 1 For any reference to the subscription or signing of a document by a granter there shall be substituted a reference to such subscription or signing by a relevant person under section 9(1).
- 2 For section 3(1) there shall be substituted the following subsection—
- “(1) Subject to subsections (2) to (6) below, where—
- (a) a document bears to have been subscribed by a relevant person with the authority of a granter of it;
- (b) the document, or the testing clause or its equivalent, states that the document was read to that granter by the relevant person before such subscription or states that it was not so read because the granter made a declaration that he did not wish him to do so;
- (c) the document bears to have been signed by a person as a witness of the relevant person’s subscription and the document, or the testing clause or its equivalent, bears to state the name and address of the witness; and
- (d) nothing in the document, or in the testing clause or its equivalent, indicates—
- (i) that it was not subscribed by the relevant person as it bears to have been so subscribed;
- (ii) that the statement mentioned in paragraph (b) above is incorrect; or
- (iii) that it was not validly witnessed for any reason specified in paragraphs (a) to (e) of subsection (4) below (as modified by paragraph 4 of Schedule 3 to this Act),
- the document shall be presumed to have been subscribed by the relevant person and the statement so mentioned shall be presumed to be correct.”
- 3 In section 3(3) for the words “subsection (1)(b)” there shall be substituted the words “subsection (1)(c) ”.
- 4 For section 3(4) there shall be substituted the following subsection—

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“(4) Where, in any proceedings relating to a document in which a question arises as to a relevant person’s subscription on behalf of a granter under section 9(1) of this Act, it is established—

- (a) that a signature bearing to be the signature of the witness of the relevant person’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 the relevant person’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 the relevant person’s subscription, at the time of signing—
 - (i) did not know the granter on whose behalf the relevant person had so subscribed;
 - (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 the relevant person’s subscription, did not see him subscribe it;
- (dd) that the person who signed the document as the witness of the relevant person’s subscription did not witness the granting of authority by the granter concerned to the relevant person to subscribe the document on his behalf or did not witness the reading of the document to the granter by the relevant person or the declaration that the granter did not wish him to do so;
- (e) that the person who signed the document as the witness of the relevant person’s subscription did not sign the document after him or that such subscription and signature were not one continuous process;
- (f) that the name or address of such a witness 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 relevant person 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 the relevant person on behalf of the granter concerned.”.

5 In section 3(6) the words “or acknowledgement” in both places where they occur shall be omitted.

6 Section 3(7) shall be omitted.

7 For section 4(1) there shall be substituted the following subsection—

“(1) Where—

- (a) a document bears to have been subscribed by a relevant person under section 9(1) of this Act on behalf of a granter of it; but
- (b) there is no presumption under section 3 of this Act (as modified by paragraph 2 of Schedule 3 to this Act) that the document has

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been subscribed by that person or that the procedure referred to section 3(1)(b) of this Act as so modified was followed,

then, if the court, on an application being made to it by any person who has an interest in the document, is satisfied that the document was so subscribed by the relevant person with the authority of the granter and that the relevant person read the document to the granter before subscription or did not so read it because the granter declared that he did not wish him to do so, it shall—

- (i) cause the document to be endorsed with a certificate to that effect; or
- (ii) where the document has already been registered in the Books of Council and Session or in sheriff court books, grant decree to that effect.”.

8 At the end of section 4(5)(a) there shall be added the following words— “ and that the procedure referred to in section 3(1)(b) of this Act as modified by paragraph 2 of Schedule 3 to this Act was followed. ”.

9 For paragraph 1(1) of Schedule 1 there shall be substituted the following sub-paragraph—

“(1) Subject to sub-paragraphs (2) to (6) below, where—

- (a) an alteration to a document bears to have been signed by a relevant person with the authority of a granter of the document;
- (b) the document or alteration, or the testing clause or its equivalent, states that the alteration was read to that granter by the relevant person before such signature or states that the alteration was not so read because the granter made a declaration that he did not wish him to do so;
- (c) the alteration bears to have been signed by a person as a witness of the relevant person’s signature and the alteration, or the testing clause or its equivalent, bears to state the name and address of the witness; and
- (d) nothing in the document or alteration, or in the testing clause or its equivalent, indicates—
 - (i) that the alteration was not signed by the relevant person as it bears to have been so signed;
 - (ii) that the statement mentioned in paragraph (b) above is incorrect; or
 - (iii) that the alteration was not validly witnessed for any reason specified in paragraphs (a) to (e) of sub-paragraph (4) below (as modified by paragraph 11 of Schedule 3 to this Act),

the alteration shall be presumed to have been signed by the relevant person and the statement so mentioned shall be presumed to be correct.”.

10 In paragraph 1(3) of Schedule 1 for the words “sub-paragraph (1)(b)” there shall be substituted the words “ sub-paragraph (1)(c) ”.

11 For paragraph 1(4) of Schedule 1 there shall be substituted the following sub-paragraph—

“(4) Where, in any proceedings relating to an alteration to a document in which a question arises as to a relevant person’s signature on behalf of a granter under section 9(1) of this Act, it is established—

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- (a) that a signature bearing to be the signature of the witness of the relevant person's signature is not such a signature, whether by reason of forgery or otherwise;
- (b) that the person who signed the alteration as the witness of the relevant person's signature is a person who is named in the document as a granter of it;
- (c) that the person who signed the alteration as the witness of the relevant person's signature, at the time of signing—
 - (i) did not know the granter on whose behalf the relevant person had so signed;
 - (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 alteration, purporting to be the witness of the relevant person's signature, did not see him sign it;
- (dd) that the person who signed the alteration as the witness of the relevant person's signature did not witness the granting of authority by the granter concerned to the relevant person to sign the alteration on his behalf or did not witness the reading of the alteration to the granter by the relevant person or the declaration that the granter did not wish him to do so;
- (e) that the person who signed the alteration as the witness of the relevant person's signature did not sign the alteration after him or that the signing of the alteration by the granter and the witness was not one continuous process;
- (f) that the name or address of such a witness was added after the alteration was founded on or registered as mentioned in sub-paragraph (3)(a) above or is erroneous in any material respect; or
- (g) in the case of an alteration to a testamentary document consisting of more than one sheet, that a signature on any sheet of the alteration bearing to be the signature of the relevant person 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 alteration has been signed by the relevant person on behalf of the granter concerned.”.

12 In paragraph 1(6) of Schedule 1 the words “or the acknowledgement of his signature” and the words “or acknowledgement” shall be omitted.

13 Paragraph 1(7) of Schedule 1 shall be omitted.

14 For paragraph 2(1) of Schedule 1 there shall be substituted the following sub-paragraph—

“(1) Where—

- (a) an alteration to a document bears to have been signed by a relevant person under section 9(1) of this Act on behalf of a granter of the document; but
- (b) there is no presumption under paragraph 1 of Schedule 1 to this Act (as modified by paragraph 9 of Schedule 3 to this Act) that the alteration has been signed by that person or that the procedure referred to in paragraph 1(1)(b) of Schedule 1 to this Act as so modified was followed,

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then, if the court, on an application being made to it by any person who has an interest in the document, is satisfied that the alteration was so signed by the relevant person with the authority of the granter and that the relevant person read the alteration to the granter before signing or did not so read it because the granter declared that he did not wish him to do so, it shall—

(i) cause the document to be endorsed with a certificate to that effect;
or

(ii) where the document has already been registered in the Books of Council and Session or in sheriff court books, grant decree to that effect.”

15 At the end of paragraph 2(5)(a) of Schedule 1 there shall be added the following words— “ and that the procedure referred to in paragraph 1(1)(b) of Schedule 1 to this Act as modified by paragraph 9 of Schedule 3 to this Act was followed. ”

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 ^{M14}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).”

Marginal Citations

M14 1845 c. 19.

Status: Point in time view as at 22/03/2014.

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Infertment Act 1845

- 3 In Schedules (A) and (B) to the ^{M15}Infertment 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).”.

Marginal Citations

M15 1845 c. 35.

Commissioners Clauses Act 1847

- 4 At the end of section 59 of the ^{M16}Commissioners Clauses Act 1847 there shall be added the following subsection—

“(2) This section shall apply to Scotland as if—

- (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 infertment duly recorded,”;

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

Marginal Citations

M16 1847 c. 16.

- 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—

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“(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).”.

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 ^{M17}Entail Amendment Act 1848 for the word “tested” there shall be substituted the word “subscribed”.

Marginal Citations

M17 1848 c. 36.

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 ^{M18}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.”.”.

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Marginal Citations

M18 1855 c. 117.

Registration of Leases (Scotland) Act 1857

- 12 In Schedule (A) to the ^{M19}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).”.

Marginal Citations

M19 1857 c. 26.

- 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).”.

Transmission of Moveable Property (Scotland) Act 1862

- 14 In each of Schedules A and B to the ^{M20}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).”.

Marginal Citations

M20 1862 c. 85.

- 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 ^{M21}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).”.

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Marginal Citations

M21 1868 c. 101.

- 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+ ”;
 - (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 ^{M22}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).”.

Marginal Citations

M22 1874 c. 94.

Status: Point in time view as at 22/03/2014.

Changes to legislation: Requirements of Writing (Scotland) Act 1995 is up to date with all changes known to be in force on or before 03 April 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)

- 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 ^{M23}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.”.

Marginal Citations

M23 1877 c. 59.

- 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 ^{M24}Colonial Stock Act 1892 there shall be added the following subsection—

“(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”.

Marginal Citations

M24 1892 c. 35.

Status: Point in time view as at 22/03/2014.

Changes to legislation: Requirements of Writing (Scotland) Act 1995 is up to date with all changes known to be in force on or before 03 April 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)

- 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 ^{M25}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).”.

Marginal Citations

M25 1914 c. 48.

Trusts (Scotland) Act 1921

- 29 In Schedule A to the ^{M26}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).”.

Marginal Citations

M26 1921 c. 58.

- 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 ^{M27}Conveyancing (Scotland) Act 1924—
- (a) in forms nos. 1 to 6 for the words “[To be attested]” there shall be substituted the words “Testing clause+ ”;

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(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).”.

Marginal Citations

M27 1924 c. 27.

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 “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).”.

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 “Testing 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 “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).”.

Long Leases (Scotland) Act 1954

37 In the Fourth Schedule to the ^{M28}Long Leases (Scotland) Act 1954—

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

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(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).”.

Marginal Citations

M28 1954 c. 49.

Succession (Scotland) Act 1964

38 At the end of section 21 of the ^{M29}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.”.

Marginal Citations

M29 1964 c. 41.

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—

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- (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
 - (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 “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).”.

Industrial and Provident Societies Act 1965

42 In Schedule 3 to the ^{M30}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 “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).”.

Marginal Citations

M30 1965 c. 12.

43 In Schedule 4 to that Act, in Form C for the words from “Signed” to the end there shall be substituted the words “Testing 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 ^{M31}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).”.

Marginal Citations

M31 1970 c. 35.

45 In Schedule 4 to that Act—

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(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—

(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

[^{F30}48]

Textual Amendments

F30 Sch. 4 para. 48 repealed (15.2.1999) by [Petroleum Act 1998 \(c. 17\)](#), ss. 51(1), 52(4), [Sch. 5, Pt. I](#); S.I. 1999/161, [art. 2\(1\)](#)

Patents Act 1977

49 In section 31(6) of the ^{M32}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. ”.

Marginal Citations

M32 1977 c. 37.

Oil and Gas (Enterprise) Act 1982

[^{F31}50]

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Textual Amendments

F31 Sch. 4 para. 50 repealed (15.2.1999) by Petroleum Act 1998 (c. 17), ss. 51(1), 52(4), Sch. 5, Pt. I; S.I. 1999/161, art. 2(1)

Companies Act 1985

51 **F32**

Textual Amendments

F32 Sch. 4 paras. 51- 54 repealed (1.10.2009) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2008/2860, art. 4, Sch. 1 Pt. 1 (with arts. 5, 7, 8, Sch. 2) (as amended by S.I. 2009/1802, art. 18; S.I. 2009/2476, reg. 2(4))

52 **F33**

Textual Amendments

F33 Sch. 4 paras. 51- 54 repealed (1.10.2009) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2008/2860, art. 4, Sch. 1 Pt. 1 (with arts. 5, 7, 8, Sch. 2) (as amended by S.I. 2009/1802, art. 18; S.I. 2009/2476, reg. 2(4))

53 **F34**

Textual Amendments

F34 Sch. 4 paras. 51- 54 repealed (1.10.2009) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2008/2860, art. 4, Sch. 1 Pt. 1 (with arts. 5, 7, 8, Sch. 2) (as amended by S.I. 2009/1802, art. 18; S.I. 2009/2476, reg. 2(4))

54 **F35**

Textual Amendments

F35 Sch. 4 paras. 51- 54 repealed (1.10.2009) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2008/2860, art. 4, Sch. 1 Pt. 1 (with arts. 5, 7, 8, Sch. 2) (as amended by S.I. 2009/1802, art. 18; S.I. 2009/2476, reg. 2(4))

55 **F36**

Textual Amendments

F36 Sch. 4 paras. 55, 56 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 1 (with art. 12)

56 **F37**

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Textual Amendments

- F37** Sch. 4 paras. 55, 56 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 1 (with art. 12)

Companies Consolidation (Consequential Provisions) Act 1985

- 57 At the end of section 11 of the ^{M33}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.”.

Marginal Citations

- M33** 1985 c. 9.

Insolvency Act 1986

- 58 In section 53 of the ^{M34}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 executed on behalf of the holders of the floating charge by any person authorised by resolution of the debenture-holders to execute the instrument.”.

Marginal Citations

- M34** 1986 c. 45.

Housing (Scotland) Act 1987

- F38** 59

Textual Amendments

- F38** Sch. 4 para. 59 repealed (30.9.2002) by 2001 asp 10 , ss. 112, Sch. 10 para. 22; S.S.I. 2002/321, art. 2, Sch. Table (subject to transitional provisions and savings in arts. 3-5)

- F39** 60

Status: Point in time view as at 22/03/2014.

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Textual Amendments

F39 Sch. 4 para. 60 repealed (30.9.2002) by 2001 asp 10, s. 112, sch. 10 para. 22; S.S.I. 2002/321, art. 2, Sch. Table (subject to transitional provisions and savings in arts. 3-5)

SCHEDULE 5

Section 14(2)

REPEALS

Chapter	Short title	Extent of repeal
1540 c. 37 (S.).	The Subscription of Deeds Act 1540.	The whole Act.
1579 c. 18 (S.).	The Subscription of Deeds Act 1579.	The whole Act.
1672 c. 47 (S.).	The Lyon King of Arms Act 1672.	The words from “And his Maiestie with consent” to “contraveiners heirof”.
1681 c. 5 (S.).	The Subscription of Deeds Act 1681.	The whole Act.
1696 c. 15 (S.).	The Deeds Act 1696.	The whole Act.
1696 c. 25 (S.).	The Blank Bonds and Trusts Act 1696.	The whole Act.
1698 c. 4 (S.).	The Registration Act 1698.	The whole Act.
10 & 11 Vict. c. 16.	The Commissioners Clauses Act 1847.	In section 56, the words from “(that is to say,)” to “discharge the same” where they first occur. In Schedule (B), the words from “or, if the deed” to “case may be,”. In Schedule (C), the words from “[or, if the deed” to “Scotland,]”.
11 & 12 Vict. c. 36.	The Entail Amendment Act 1848.	In the Schedule the words “and of the witnesses subscribing,”.
19 & 20 Vict. c. 60.	The Mercantile Law Amendment Act, Scotland 1856.	Section 6.
31 & 32 Vict. c. 101.	The Titles to Land Consolidation (Scotland) Act 1868.	Sections 139 and 149.

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37 & 38 Vict. c. 94.	The Conveyancing (Scotland) Act 1874.	Sections 38 to 41. Schedule I.
7 Edw. 7 c. 51.	The Sheriff Courts (Scotland) Act 1907.	In section 35 the words “either holograph or attested by one witness”. In Schedule 1, paragraph 67 and in the Appendix in Form M the words from “If not holograph” to the end of the form.
4 & 5 Geo. 5 c. 48.	The Feudal Casualties (Scotland) Act 1914.	In section 8 the words “which need not be tested or holograph”.
14 & 15 Geo. 5 c. 27.	The Conveyancing (Scotland) Act 1924.	Section 18. Schedule I.
23 & 24 Geo. 5 c. 44.	The Church of Scotland (Property and Endowments) (Amendment) Act 1933.	Section 13.
2 & 3 Geo. 6 c. 20.	The Reorganisation of Offices (Scotland) Act 1939.	In section 1(8) the words from “and any such” to the end.
1959 c. 40.	The Deer (Scotland) Act 1959.	In Schedule 1, paragraphs 12 and 13.
1963 c. 18.	The Stock Transfer Act 1963.	Section 2(4).
1965 c. 12.	The Industrial and Provident Societies Act 1965.	In section 34(5)(a), in the definition of “receipt” the words from “signed by two members” to “as such”. Section 36.
1967 c. 10.	The Forestry Act 1967.	Section 39(5).
1968 c. 16.	The New Towns (Scotland) Act 1968.	In Schedule 2, paragraphs 10 and 11.
1970 c. 35.	The Conveyancing and Feudal Reform (Scotland) Act 1970.	Section 44.
1973 c. 52.	The Prescription and Limitation (Scotland) Act 1973.	Section 5(2). In Schedule 1, paragraphs 2(c), 3 and 4(b).

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1973 c. 65.	The Local Government (Scotland) Act 1973.	Section 194, other than subsection (2). In Schedule 8, paragraph 5.
1978 c. 29.	The National Health Service (Scotland) Act 1978.	In section 79(1A) the words from “and where” to the end of the subsection. In Schedule 1, paragraphs 9 and 10. In Schedule 5, paragraphs 10 and 11.
1980 c. 46.	The Solicitors (Scotland) Act 1980.	In Schedule 1, paragraph 12.
1985 c. 6.	The Companies Act 1985.	In section 2(6) the words from “and that” to the end. In section 7(3)(c) the words from “(which attestation” to the end. Section 462(3).
1985 c. 16.	The National Heritage (Scotland) Act 1985.	In Schedule 1, paragraphs 8 and 19.
1986 c. 47.	The Legal Aid (Scotland) Act 1986.	In Schedule 1, paragraph 14.
1988 c. 43.	The Housing (Scotland) Act 1988.	In Schedule 1, paragraphs 18 and 19.
1990 c. 40.	The Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.	Section 72. Section 75(6). In Schedule 8, paragraph 33.
1990 c. 35.	The Enterprise and New Towns (Scotland) Act 1990.	In Schedule 1, paragraph 23.
1991 c. 28.	The Natural Heritage (Scotland) Act 1991.	In Schedule 1, paragraph 18.
1993 c. 44.	The Crofters (Scotland) Act 1993.	In Schedule 1, paragraphs 14 and 15.
1994 c. 39.	The Local Government etc. (Scotland) Act 1994.	In section 172(4), paragraph (h). In Schedule 3, paragraph 11. In Schedule 5, in Part II, paragraph 8. In Schedule 7, paragraph 17.

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In Schedule 12, paragraph 13.

In Schedule 13, paragraph
92(60).

Status:

Point in time view as at 22/03/2014.

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