Requirements of Writing (Scotland) Act 1995

1995 CHAPTER 7

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—

(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

Status: *Point in time view as at 06/06/2013.*
Changes to legislation: *Requirements of Writing (Scotland) Act 1995 is up to date with all changes known to be in force on or before 20 September 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)*

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.

(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)

C1 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**,

C2 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 granter of it or, if there is more than one granter, by each granter, 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 granter or granters thereof.

(3) Nothing in this section shall prevent a document which has not been subscribed by the granter or granters of it from being used as evidence in relation to any right or obligation to which the document relates.

(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

Status: *Point in time view as at 06/06/2013.*
Changes to legislation: *Requirements of Writing (Scotland) Act 1995 is up to date with all changes known to be in force on or before 20 September 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)*

(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.

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;

(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—

Status: *Point in time view as at 06/06/2013.*
Changes to legislation: *Requirements of Writing (Scotland) Act 1995 is up to date with all changes known to be in force on or before 20 September 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)*

(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.

(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

Status: *Point in time view as at 06/06/2013.*
Changes to legislation: *Requirements of Writing (Scotland) Act 1995 is up to date with all changes known to be in force on or before 20 September 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)*

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—

(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;

Status: *Point in time view as at 06/06/2013.*
Changes to legislation: *Requirements of Writing (Scotland) Act 1995 is up to date with all changes known to be in force on or before 20 September 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)*

(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 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

Status: *Point in time view as at 06/06/2013.*
Changes to legislation: *Requirements of Writing (Scotland) Act 1995 is up to date with all changes known to be in force on or before 20 September 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)*

(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;

(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.

Status: *Point in time view as at 06/06/2013.*
Changes to legislation: *Requirements of Writing (Scotland) Act 1995 is up to date with all changes known to be in force on or before 20 September 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)*

(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
  (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.

Status: *Point in time view as at 06/06/2013.*
Changes to legislation: *Requirements of Writing (Scotland) Act 1995 is up to date with all changes known to be in force on or before 20 September 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)*

(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 partnersship,**]**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

(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.

Status: *Point in time view as at 06/06/2013.*
Changes to legislation: *Requirements of Writing (Scotland) Act 1995 is up to date with all changes known to be in force on or before 20 September 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)*

(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—
  (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)

C3 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 .

Status: *Point in time view as at 06/06/2013.*
Changes to legislation: *Requirements of Writing (Scotland) Act 1995 is up to date with all changes known to be in force on or before 20 September 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)*

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 assignations 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

(ii) on a writ*in 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;

[[F13]"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;**]**

[[F14]"company" has the meaning given by section 1(1) of the Companies Act 2006;**]**

[[F15]"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;

[[F16]"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;

Status: *Point in time view as at 06/06/2013.*
Changes to legislation: *Requirements of Writing (Scotland) Act 1995 is up to date with all changes known to be in force on or before 20 September 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)*

(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;

[[F17]"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 **[**[F18]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;

"Minister" has the same meaning as "Minister of the Crown" has in section 8 of the [M6]Ministers of the Crown Act 1975 **[**[F19]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 **[**[F20]or out of the Scottish Consolidated Fund**]**; and

(c) the registrar of companies [F21]. . . ;

"officer"—

(a) in relation to a Minister, means any person in the civil service of the Crown who is serving in his Department **[**[F22]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;

[[F23]"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

Status: *Point in time view as at 06/06/2013.*
Changes to legislation: *Requirements of Writing (Scotland) Act 1995 is up to date with all changes known to be in force on or before 20 September 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)*

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.

[[F24](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

F13 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)**

F14 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)

F15 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)**

F16 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)**

F17 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)**

F18 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)

F19 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**

F20 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. I para. 118**.

F21 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)

F22 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**

F23 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)**

F24 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;

Status: *Point in time view as at 06/06/2013.*
Changes to legislation: *Requirements of Writing (Scotland) Act 1995 is up to date with all changes known to be in force on or before 20 September 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)*

(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) [F25]. . . . . .

(3) Subject to subsections (1) and (2) above, this Act binds the Crown.

Textual Amendments

F25 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 .

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 farder” 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.

Status: *Point in time view as at 06/06/2013.*
Changes to legislation: *Requirements of Writing (Scotland) Act 1995 is up to date with all changes known to be in force on or before 20 September 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)*

(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.

Status:
Point in time view as at 06/06/2013.

Changes to legislation:
Requirements of Writing (Scotland) Act 1995 is up to date with all changes known to be in force on or before 20 September 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.