



Requirements of Writing (Scotland) Act 1995

1995 CHAPTER 7

[^{F1}PART 4]

[^{F2}GENERAL PROVISIONS]

Textual Amendments

- F1** Ss. 10-15 renumbered as Pt. 4 (11.5.2014 for specified purposes) by [Land Registration etc. \(Scotland\) Act 2012 \(asp 5\)](#), ss. 122, 123, **Sch. 3 para. 21** (with s. 121, Sch. 4 paras. 13, 16); S.S.I. 2014/41, art. 2(1)(b)(2), Sch. Pt. 2 (with arts. 3, 4)
- F2** Pt. 4 title inserted (11.5.2014 for specified purposes) by [Land Registration etc. \(Scotland\) Act 2012 \(asp 5\)](#), ss. 122, 123, **Sch. 3 para. 22** (with s. 121, Sch. 4 paras. 13, 16); S.S.I. 2014/41, art. 2(1)(b)(2), Sch. Pt. 2 (with arts. 3, 4)

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.

^{F3}11 Abolition of proof by writ or oath, reference to oath and other common law rules.

.....

Status: Point in time view as at 11/05/2014.

Changes to legislation: Requirements of Writing (Scotland) Act 1995, Part 4 is up to date with all changes known to be in force on or before 06 May 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)

Textual Amendments

- F3** S. 11 repealed (11.5.2014 for specified purposes) by [Land Registration etc. \(Scotland\) Act 2012 \(asp 5\)](#), ss. 122, 123, [Sch. 3 para. 18](#) (with s. 121, Sch. 4 paras. 13, 16); S.S.I. 2014/41, art. 2(1)(b)(2), Sch. Pt. 2 (with arts. 3, 4)

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;

[^{F4} “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;]

“authorised” means expressly or impliedly authorised and any reference to a person authorised to sign includes a reference to a person authorised to sign generally or in relation to a particular document;

[^{F5} “certification”, in relation to an electronic signature incorporated into or logically associated with an electronic document, means confirming in a statement that—

- (a) the electronic signature,
- (b) a means of producing, communicating or verifying that signature, or
- (c) a procedure applied to that signature,

is, either alone or combined with other factors, a valid means of establishing the authenticity of the electronic document, its integrity or both its authenticity and its integrity (it being immaterial, in construing this definition, whether the statement is made before or after the authentication of an electronic document to which the statement relates).]

[^{F6} “company” has the meaning given by section 1(1) of the Companies Act 2006;]

[^{F7} “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;

[^{F8} “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;

Status: Point in time view as at 11/05/2014.

Changes to legislation: Requirements of Writing (Scotland) Act 1995, Part 4 is up to date with all changes known to be in force on or before 06 May 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)

“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;

[^{F9} “electronic communication” has the same meaning as in the Electronic Communications Act 2000;]

[^{F10} “electronic document” has the meaning given by section 9A,

“electronic signature” means so much of anything in electronic form as—

- (a) is incorporated into, or logically associated with, an electronic document, and
- (b) purports to be so incorporated or associated for the purpose of being used in establishing the authenticity of the electronic document, its integrity or both its authenticity and its integrity;]

“enactment” includes an enactment contained in a statutory instrument [^{F11} 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 ^{M1} Local Government (Scotland) Act 1973 and a council constituted under section 2 of the ^{M2} Local Government etc. (Scotland) Act 1994;

“Minister” has the same meaning as “Minister of the Crown” has in section 8 of the ^{M3} Ministers of the Crown Act 1975 [^{F12} 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 [^{F13} or out of the Scottish Consolidated Fund]; and
- (c) the registrar of companies ^{F14} . . . ;

“officer”—

- (a) in relation to a Minister, means any person in the civil service of the Crown who is serving in his Department [^{F15} 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;

[^{F16} “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 grantor 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 11/05/2014.

Changes to legislation: Requirements of Writing (Scotland) Act 1995, Part 4 is up to date with all changes known to be in force on or before 06 May 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.

[^{F17}(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.]

[^{F18}(4) In relation to an electronic document—

- (a) references to authenticity—
 - (i) are references to whether the document has been electronically signed by a particular person, and
 - (ii) may include references to whether the document is accurately timed or dated, and
- (b) references to integrity are references as to whether there has been any tampering with, or other modification of, the document.]

Textual Amendments

- F4** 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)**
- F5** Words in s. 12(1) inserted (11.5.2014 for specified purposes) by Land Registration etc. (Scotland) Act 2012 (asp 5) , ss. 122 , 123 , **Sch. 3 para. 19(a)(ii)** (with s. 121 , Sch. 4 paras. 13 , 16) ; S.S.I. 2014/41 , art. 2(1)(b)(2) , Sch. Pt. 2 (with arts. 3 , 4)
- F6** 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)
- F7** 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)**
- F8** 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)**
- F9** 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)**
- F10** Words in s. 12(1) substituted (11.5.2014 for specified purposes) by Land Registration etc. (Scotland) Act 2012 (asp 5) , ss. 122 , 123 , **Sch. 3 para. 19(a)(vii)** (with s. 121 , Sch. 4 paras. 13 , 16) ; S.S.I. 2014/41 , art. 2(1)(b)(2) , Sch. Pt. 2 (with arts. 3 , 4)
- F11** S. 12(1): words in definition of "enactment" added (27.7.2000) by S.I. 2000/2040 , art. 2 , Sch. Pt. 1 para. 17 (with art. 3)
- F12** 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**
- F13** 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**.
- F14** 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)
- F15** 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**
- F16** 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)**
- F17** 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)**

Status: Point in time view as at 11/05/2014.

Changes to legislation: Requirements of Writing (Scotland) Act 1995, Part 4 is up to date with all changes known to be in force on or before 06 May 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)

F18 S. 12(4) inserted (11.5.2014 for specified purposes) by [Land Registration etc. \(Scotland\) Act 2012 \(asp 5\)](#) , ss. 122 , 123 , **Sch. 3 para. 19(b)** (with s. 121 , Sch. 4 paras. 13 , 16); S.S.I. 2014/41, art. 2(1)(b)(2), Sch. Pt. 2 (with arts. 3, 4)

Modifications etc. (not altering text)

C1 S. 12 modified (temp.) (11.5.2014) by [The Land Registration etc. \(Scotland\) Act 2012 \(Commencement No. 2 and Transitional Provisions\) Order 2014 \(S.S.I. 2014/41\)](#) , **art. 3(4)** (see S.S.I. 2014/127, art. 2)

Marginal Citations

M1 1973 c. 65 .
M2 1994 c. 39 .
M3 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 ^{M4} Crown Private Estates Act 1862;
- (b) prevent authentication under the ^{M5} 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^{F19} , registered in the Land Register of Scotland] or registered for execution or preservation in the Books of Council and Session or in sheriff court books.

(2) ^{F20}

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

Textual Amendments

F19 Words in s. 13(1)(c) inserted (11.5.2014 for specified purposes) by [Land Registration etc. \(Scotland\) Act 2012 \(asp 5\)](#) , ss. 122 , 123 , **sch. 3 para. 20** (with s. 121 , sch. 4 paras. 13 , 16) ; S.S.I. 2014/41 , art. 2(1)(b)(2) , sch. Pt. 2 (with arts. 3 , 4)

F20 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

M4 1862 c. 37 .
M5 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.

Status: Point in time view as at 11/05/2014.

Changes to legislation: Requirements of Writing (Scotland) Act 1995, Part 4 is up to date with all changes known to be in force on or before 06 May 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)

- (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 ^{M6} 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 ^{M7} 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

M6 1696 c. 25 (S).

M7 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 11/05/2014.

Changes to legislation:

Requirements of Writing (Scotland) Act 1995, Part 4 is up to date with all changes known to be in force on or before 06 May 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.