

*Status: Point in time view as at 01/10/2009.*

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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;

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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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