

Status: Point in time view as at 01/08/1995.

Changes to legislation: Requirements of Writing (Scotland) Act 1995, SCHEDULE 3 is up to date with all changes known to be in force on or before 02 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)

SCHEDULES

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—
 - “(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;

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- (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 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—

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- (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—

- (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;

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- (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,

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—

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- (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. ”.

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