

Execution in Counterpart (Scotland) Bill 2012

[DRAFTAG]

An Act of the Scottish Parliament to make further provision as regards the formation of contract by execution in counterpart; and for connected purposes[LongTitle.doc]

1 Execution in two or more counterparts[j000.doc]

- (1) An agreement may be executed in two or more counterparts (that is to say, in two or more duplicate interchangeable parts) the counterparts then being deemed a single document.
- (2) But an agreement so executed is not binding until each counterpart is delivered to the party (or parties) who did not sign the counterpart in question.

2 Delivery of a counterpart which is a traditional document[j001.doc]

- (1) For the purposes of section 1, a counterpart which is a traditional document may be delivered by electronic means.
- (2) But subsection (1) is without prejudice to the use of any means other than electronic to effect the delivery of a traditional document.
- (3) Without prejudice to the generality of subsection (1), in that subsection “by electronic means” includes—
 - (a) by means of an electronic communications network (for example as an attachment to an e-mail),
 - (b) as a facsimile transmission (that is to say, as a fax),
 - (c) stored electronically on a device such as a compact disc or a memory stick, or
 - (d) by other means but in a form which requires the use of electronic apparatus by the recipient to render it intelligible.
- (4) The delivery must be by a means, and what is received by that means must be in a form, which—
 - (a) the intended recipient has agreed to accept, or
 - (b) in all the circumstances, it is reasonable for the intended recipient to accept.
- (5) An intended recipient may, by virtue of paragraph (a) of subsection (4), agree that the counterpart be sent in component parts; and the counterpart may also be sent in component parts if it is, in all the circumstances, reasonable for the intended recipient to accept its being so sent.

DRAFT

THIS IS FOR DISCUSSION ONLY AND DOES NOT REPRESENT THE FINAL VIEWS OF
THE SCOTTISH LAW COMMISSION

- (6) But the signature page, if sent as one of the component parts, must be the part which contains at least the final sentence of the agreement.
- (7) For the purposes of subsection (6), the final sentence of an agreement is not constituted by a testing clause (or by anything equivalent, or analogous, to a testing clause).
- (8) Although delivery by electronic means constitutes effective delivery of the executed counterpart, what is received by that means is not otherwise to be treated as being the traditional document itself.
- (9) Where a counterpart is delivered by electronic means, the sender must, after that, hold and preserve the executed counterpart for the benefit of the recipient except in so far as the sender and recipient may come to some alternative arrangement.
- (10) If there is a number of such recipients, subsection (9) is to be construed—
 - (a) as requiring the sender to hold and preserve that number of executed counterparts for the benefit, respectively, of each of those recipients, and
 - (b) as if the reference to the sender and recipient coming to an alternative arrangement were a reference to the sender and those recipients coming to such an arrangement.
- (11) “Traditional document” is to be construed in accordance with section 1A of the Requirements of Writing (Scotland) Act 1995 (c.7).

3 Commencement[j003.doc]

- (1) This section and section 4 come into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.

4 Short title[j002.doc]

The short title of this Act is the Execution in Counterpart (Scotland) Act 2012.

DRAFT

THIS IS FOR DISCUSSION ONLY AND DOES NOT REPRESENT THE FINAL VIEWS OF
THE SCOTTISH LAW COMMISSION