

Response from Jill Moore, on behalf of Burness Paull:

From: Jill Moore

Sent: 23 February 2017 11:49

To: Clark J (Jill) (Justice)

Cc: Lindsay Wallace

Subject: FW: The Legal Writings(Counterparts and Delivery)(Scotland) Act 2015

Jill

I work with Lindsay Wallace and she has asked that I come back to you with some feedback in response to your email.

I am pleased to report that counterpart execution and electronic delivery is being widely used by our fee earners across various departments of the firm and has helped to facilitate and improve the efficiency of completing transactions. We are regularly involved in cross-border transactions and the new legislation has undoubtedly assisted greatly with this.

The one aspect of the legislation that solicitors appear to be reluctant to use relates to the appointment of a nominated person: my understanding is that, even in transactions involving multiple parties, solicitors are circulating all signing pages to all parties. This appears to be the approach being taken by most firms. I suspect this is because solicitors are reluctant to inadvertently assume more responsibility in terms of completion than they otherwise need to and, in addition, they wish to be able to identify any issues with execution as and when they arise rather than waiting for the nominated person to circulate the compiled document.

I hope this assists however, if you would like to discuss at all, please don't hesitate to give me a call.

Kind regards,

Jill

From: Clark J (Jill) (Justice)

Sent: 13 February 2017 10:51

To: Lindsay Wallace

Subject: The Legal Writings(Counterparts and Delivery)(Scotland) Act 2015

Dear Ms Wallace,

I hope you don't mind this speculative approach.

The Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 came into force on 1st July 2015. It implemented the legislative recommendations contained in the Scottish Law Commission Report on Formation of Contract: Execution in Counterpart (SLC No 213) which was published in April 2013. It had 2 main policy aims: to provide a clear framework by which parties may execute a document in counterpart under Scots law; and to provide a mechanism to enable documents created and signed on paper to be delivered for legal purposes by electronic means. Much of the impetus for the legislation was derived from criticisms of the unavailability of the ability to execute in counterpart in Scots law. This was reported as leading to a preference for the use of English law for key transactions. The consequential effect of this was the concern that fewer contracts were subject to Scots law and therefore fewer contracts resulted in litigation in the Scottish courts or

arbitration under Scots law which was potentially leading to a loss of business in Scotland.

In light of the change to the law under the 2015 Act we would be interested in knowing whether or not the Act has had a positive impact on the use of Scots law in this area. In particular:

- Are you now completing transactions, involving execution of documents, under Scots law?
- Has the legislation enabled more efficient completion of transactions with international parties?
- Has the legislation resulted in other efficiencies or solved difficulties that would otherwise have arisen? If so, what are they?
- Has the legislation had a positive impact on your business?
- Are there any difficulties with the legislation that you would wish to highlight?

If you have any available evidence in support of your views, be that anecdotal or statistical we would be pleased to receive that too. It would be very helpful to have your response by **3 March**.

Thank you and kind regards.
Jill Clark