

Response from Stewart Brymer, on behalf of Brymer Legal Limited:

From: Stewart Brymer

Sent: 13 February 2017 20:20

To: Clark J (Jill) (Justice)

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

Dear Jill.

Thanks for your email.

I supported the legislation and remain a supporter. It has, however, had little impact on the commercial activities of our clients to date - I am afraid to say. Styles have been updated but when it comes to signing, old habits die hard.

Of more impact to our business and the profession as a whole was the enactment of Part 10 of the 2012 Act (enabling the use of secure digital signatures). I advised the Law Commission at the time that this was likely to be the case.

For your information, I am of the opinion that we will require a short Law of Property Act at some point over the course of the next 5 years in order to tidy up a few loose ends. That point was made in a meeting with Simon Stockwell in December last year. It has also been raised with Registers of Scotland.

Regards

Stewart

Professor Stewart Brymer OBE, WS

On 13 Feb 2017, at 23:57, Clark J (Jill) (Justice) wrote:

Dear Mr Brymer,

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