

LEGAL WRITINGS (COUNTERPARTS AND DELIVERY) (SCOTLAND) ACT 2015

EXPLANATORY NOTES

THE ACT – OVERVIEW

3. Execution in counterpart is the process whereby each of the parties to a document signs (“executes”) a separate physical copy of it and all then exchange the resultant copies so that each ends up with a set of each of the copies signed by the other parties. The aim is to create a legally enforceable document rather than having to arrange for all parties to meet together for each to sign the same document. The Act provides a clear framework by which a document executed in counterpart will be effective under Scots law. The Act also creates a mechanism to enable documents created on paper (referred to in the Act as “traditional documents”) to be regarded as delivered by electronic means for legal purposes such as concluding a contract. The Act implements the legislative recommendations in the Scottish Law Commission (SLC) report *Review of Contract Law – Report on Formation of Contract: Execution in Counterpart*¹, which was published in April 2013 (“the SLC Report”).
4. The Act has 7 sections with the following key provisions:
 - execution in counterpart is confirmed as an optional process for validly signing (“executing”) documents;
 - where execution in counterpart is used, the counterparts are treated as a single document;
 - parties may either deliver their counterpart to each other party to the transaction, or nominate a person to take delivery of all counterparts but the Act requires delivery in some form to complete the effective execution of a document in counterpart;
 - a copy of a document created on paper (whether or not executed in two or more counterparts) may be delivered for legal purposes by electronic means such as email or fax;
 - delivery by electronic means of a document created on paper need not be constituted by delivery of the whole document (including, where the document is a counterpart, delivery of the whole counterpart): part of the document may be delivered, providing this is sufficient on its own terms to show that it is part of the document and comprises at a minimum the page on which the sender has subscribed the document.

¹ http://scotlawcom.gov.uk/index.php/download_file/view/1149/138/