
EXPLANATORY NOTE

(This note is not part of the Order)

This Order reforms the legislation governing the execution of deeds and documents in order to standardise the formal requirements for companies, corporations and individuals.

Article 3 replaces the wording in section 74(1) of the Law of Property Act 1925 (c. 20) (“the 1925 Act”) in order to extend the presumption in favour of a purchaser of due execution by a corporation to all instruments under seal. Such instruments may be attested by two members of the corporation’s governing body.

Article 4 adds a new section 74A to the 1925 Act. New section 74A(1) clarifies what is needed for an instrument to be executed as a deed. New section 74A(2) provides a rebuttable presumption that an instrument is delivered on being executed, and thereby makes the provision for corporations analogous to that applicable to companies under the Companies Act 1985 (c. 6) (“the 1985 Act”). The relevant provision in the 1985 Act is re-enacted with modifications by Article 6.

Article 5 amends section 36A(6) of the 1985 Act and repeals the irrebuttable presumption in favour of a purchaser of delivery upon execution by a company of a document. Article 6 inserts a new section 36AA into the 1985 Act, mirroring new section 74A of the 1925 Act which applies in respect of corporations, and clarifying the requirements for a document to be executed as a deed by a company. Articles 5 and 6 and Schedule 2 also remove the “face-value” requirement from the 1985 Act, which is still required of all deeds by virtue of section 1(2)(a) of the Law of Property (Miscellaneous Provisions) Act 1989 (c. 40) (“the 1989 Act”), and which is clarified by the amendment made by article 8.

Article 7 clarifies the rules which apply where an instrument is executed on behalf of another person by a corporation, company or individual. Article 7(1) inserts a new section 74(1A) into the 1925 Act, which provides that the deemed execution in favour of a purchaser in section 74(1) (as amended by article 3) applies where the corporation executes an instrument on behalf of another person. Article 7(2) inserts a new section 36A(7) into the 1985 Act, clarifying that the provisions of section 36A (as amended by article 6 and Schedule 2) which state how a company may execute a document and provide for deemed execution in favour of a purchaser, apply where a company executes a document on behalf of another person. Article 7(3) amends section 1(2)(b) of the 1989 Act to clarify that a document may be executed by a person on behalf of another, and that it is the person who executes the document (whether or not on behalf of another) who must comply with the formalities. Article 7(4) inserts a new section 1(4A) into the 1989 Act to provide that where one person executes on behalf of another, the witnessing, attesting and delivery requirements of section 1(3) apply.

Article 8 inserts a new section 1(2A) into the 1989 Act to clarify that the “face-value” requirement set out in section 1(2)(a) is not satisfied merely because an instrument is executed under seal.

Article 9 amends section 1(5) of the 1989 Act to provide that the presumption in favour of a purchaser that solicitors, etc, are authorised to deliver a deed on behalf of a party to it, is no longer limited to the creation or disposal of an interest in land.

Schedule 1 makes minor and consequential amendments. Paragraph 2 inserts a new section 74(1B) into the 1925 Act to clarify how the presumption of due execution in section 74(1) applies, where the corporation has a director or secretary who is not an individual. Paragraph 3 amends section 74(3) to clarify that the witness to a conveyance by an individual in the name or on behalf of a corporation must attest the signature. Paragraph 4 amends section 74(4) to provide that where a corporation acts on behalf of another person, it may sign the instrument in the name of that other person. Where the

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instrument is a deed, this must be done in the presence of a witness who attests the signature. This mirrors the position for individuals, as provided by article 7(4).

Paragraphs 6 and 7 amend section 7(1) of the Powers of Attorney Act 1971 (c. 27) and insert a new section 7(1A) to make more appropriate provision for execution by an individual attorney on behalf of a corporate donor.

Paragraphs 10, 11 and 12 amend the 1985 Act. Paragraph 10 inserts a new section 36A(4A) to provide that for a document to be validly executed, a director or secretary signing in respect of more than one company must sign for each company which is a party to the document. Paragraph 11 inserts a new section 36A(8) to clarify the position in respect of execution where a company has a director or secretary which is itself a corporation. Paragraph 12 makes a consequential amendment to Schedule 22 to include the new section 36AA inserted by article 6 above in the provisions which apply to unregistered companies.

Paragraph 14 amends section 1(4) of the 1989 Act to confirm that where an instrument is executed on behalf on another person, signing includes signing the name of the person on whose behalf the instrument is executed as well as signing the individual's own name.

Paragraph 16 makes a consequential amendment to section 130(6) of the Companies Act 1989 (c. 40) to include the new section 36AA inserted by article 6 above in the provisions which apply to foreign companies.

Paragraph 17 makes a consequential amendment to the Land Registration Act 2002 (c. 8) to take account of the effect of the amendments to the Companies Act 1985 on electronic dispositions.