



# Requirements of Writing (Scotland) Act 1995

## 1995 CHAPTER 7

### [<sup>F1</sup>PART 1]

#### [<sup>F2</sup>WHEN WRITING IS REQUIRED]

##### Textual Amendments

- F1** S. 1 renumbered as Pt. 1 (11.5.2014 for specified purposes) by *Land Registration etc. (Scotland) Act 2012* (asp 5), **ss. 96(3)**, 122, 123 (with s. 121, Sch. 4 paras. 13, 16); S.S.I. 2014/41, art. 2(1)(b)(2), Sch. Pt. 2 (with arts. 3, 4)
- F2** Pt. 1 heading inserted (11.5.2014 for specified purposes) by *Land Registration etc. (Scotland) Act 2012* (asp 5), **ss. 96(4)**, 122, 123 (with s. 121, Sch. 4 paras. 13, 16); S.S.I. 2014/41, art. 2(1)(b)(2), Sch. Pt. 2

## **1 Writing required for certain contracts, obligations, trusts, conveyances and wills.**

- (1) Subject to subsection (2) below and any other enactment, writing shall not be required for the constitution of a contract, unilateral obligation or trust.
- (2) Subject to [<sup>F3</sup>[<sup>F4</sup>subsection] (3)] below, a written document[<sup>F5</sup>which is a traditional document] complying with section 2[<sup>F6</sup>or an electronic document complying with section 9B] of this Act shall be required for—
- (a) the constitution of—
- (i) a contract or unilateral obligation for the creation, transfer, variation or extinction of [<sup>F7</sup>a real right] in land;
  - (ii) a gratuitous unilateral obligation except an obligation undertaken in the course of business; and
  - (iii) a trust whereby a person declares himself to be sole trustee of his own property or any property which he may acquire;

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- (b) the creation, transfer, variation or extinction of <sup>F7</sup>a real right] in land otherwise than by the operation of a court decree, enactment or rule of law; and
- <sup>F8</sup>(ba) the constitution of an agreement under section 66(1) of the Land Registration etc. (Scotland) Act 2012 (asp 5), ]
- (c) the making of any will, testamentary trust disposition and settlement or codicil.

<sup>F9</sup>(2A) .....

<sup>F9</sup>(2B) .....

(3) Where a contract, obligation or trust mentioned in <sup>F10</sup>subsection (2)(a)] above is not constituted in a <sup>F11</sup>... document complying with section 2 <sup>F12</sup>or, as the case may be, <sup>F13</sup>section 9B]] of this Act, but one of the parties to the contract, a creditor in the obligation or a beneficiary under the trust (“the first person”) has acted or refrained from acting in reliance on the contract, obligation or trust with the knowledge and acquiescence of the other party to the contract, the debtor in the obligation or the truster (“the second person”)—

- (a) the second person shall not be entitled to withdraw from the contract, obligation or trust; and
- (b) the contract, obligation or trust shall not be regarded as invalid,

on the ground that it is not so constituted, if the condition set out in subsection (4) below is satisfied.

(4) The condition referred to in subsection (3) above is that the position of the first person—

- (a) as a result of acting or refraining from acting as mentioned in that subsection has been affected to a material extent; and
- (b) as a result of such a withdrawal as is mentioned in that subsection would be adversely affected to a material extent.

(5) In relation to the constitution of any contract, obligation or trust mentioned in <sup>F14</sup>subsection (2)(a)] above, subsections (3) and (4) above replace the rules of law known as *res interventus* and homologation.

(6) This section shall apply to the variation of a contract, obligation or trust as it applies to the constitution thereof but as if in subsections (3) and (4) for the references to acting or refraining from acting in reliance on the contract, obligation or trust and withdrawing therefrom there were substituted respectively references to acting or refraining from acting in reliance on the variation of the contract, obligation or trust and withdrawing from the variation.

(7) In this section <sup>F15</sup>“real right in land” means any real] right in or over land, including any right to occupy or to use land or to restrict the occupation or use of land, but does not include—

- (a) a tenancy;
- (b) a right to occupy or use land; or
- (c) a right to restrict the occupation or use of land,

if the tenancy or right is not granted for more than one year, unless the tenancy or right is for a recurring period or recurring periods and there is a gap of more than one year between the beginning of the first, and the end of the last, such period.

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[<sup>F16</sup>(7A) A private residential tenancy as defined in the Private Housing (Tenancies) (Scotland) Act 2016 is not a “real right in land” for the purposes of this section.]

- (8) For the purposes of subsection (7) above “land” does not include—
- (a) growing crops; or
  - (b) a moveable building or other moveable structure.

#### Textual Amendments

- F3** Words in s. 1(2) substituted (5.10.2006) by The Automated Registration of Title to Land (Electronic Communications) (Scotland) Order 2006 (S.S.I. 2006/491), **art. 3(1)**
- F4** Word in s. 1(2) substituted (8.12.2014 for specified purposes) by Land Registration etc. (Scotland) Act 2012 (asp 5), **ss. 96(2)(a)(i)**, 122, 123 (with s. 121, Sch. 4 paras. 13, 16); S.S.I. 2014/41, art. 2(1)(c)(2), Sch. Pt. 3 (see S.S.I. 2014/127, art. 2)
- F5** Words in s. 1(2) inserted (11.5.2014 for specified purposes) by Land Registration etc. (Scotland) Act 2012 (asp 5), **ss. 96(2)(a)(ii)**, 122, 123 (with s. 121, Sch. 4 paras. 13, 16); S.S.I. 2014/41, art. 2(1)(b)(2), Sch. Pt. 2
- F6** Words in s. 1(2) inserted (11.5.2014 for specified purposes) by Land Registration etc. (Scotland) Act 2012 (asp 5), **ss. 96(2)(a)(iii)**, 122, 123 (with s. 121, Sch. 4 paras. 13, 16); S.S.I. 2014/41, art. 2(1)(b)(2), Sch. Pt. 2
- F7** Words in s. 1(2)(a)(i)(b) substituted (28.11.2004) by The Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), **ss. 71, 76(1), 77, Sch. 12 Pt. 1 para. 58(a)** (with **ss. 58, 62, 75**); S.S.I. 2003/456, **art. 2**
- F8** S. 1(2)(ba) inserted (8.12.2014 for specified purposes) by Land Registration etc. (Scotland) Act 2012 (asp 5), **ss. 96(2)(a)(iv)**, 122, 123 (with s. 121, Sch. 4 paras. 13, 16); S.S.I. 2014/41, art. 2(1)(c)(2), Sch. Pt. 3 (see S.S.I. 2014/127, art. 2)
- F9** S. 1(2A)(2B) repealed (8.12.2014) by The Land Registration etc. (Scotland) Act 2012 (Incidental, Consequential and Transitional) Order 2014 (S.S.I. 2014/190), **arts. 1(2), 3**
- F10** Words in s. 1(3) substituted (8.12.2014 for specified purposes) by Land Registration etc. (Scotland) Act 2012 (asp 5), **ss. 96(2)(b)(i)**, 122, 123 (with s. 121, Sch. 4 paras. 13, 16); S.S.I. 2014/41, art. 2(1)(c)(2), Sch. Pt. 3 (see S.S.I. 2014/127, art. 2)
- F11** Word in s. 1(3) repealed (11.5.2014 for specified purposes) by Land Registration etc. (Scotland) Act 2012 (asp 5), **ss. 96(2)(b)(ii)**, 122, 123 (with s. 121, Sch. 4 paras. 13, 16); S.S.I. 2014/41, art. 2(1)(b)(2), Sch. Pt. 2
- F12** Words in s. 1(3) substituted (5.10.2006) by The Automated Registration of Title to Land (Electronic Communications) (Scotland) Order 2006 (S.S.I. 2006/491), **art. 3(3)(a)**
- F13** Words in s. 1(3) substituted (11.5.2014 for specified purposes) by Land Registration etc. (Scotland) Act 2012 (asp 5), **ss. 96(2)(b)(iii)**, 122, 123 (with s. 121, Sch. 4 paras. 13, 16); S.S.I. 2014/41, art. 2(1)(b)(2), Sch. Pt. 2
- F14** Words in s. 1(5) substituted (8.12.2014 for specified purposes) by Land Registration etc. (Scotland) Act 2012 (asp 5), **ss. 96(2)(c)**, 122, 123 (with s. 121, Sch. 4 paras. 13, 16); S.S.I. 2014/41, art. 2(1)(c)(2), Sch. Pt. 3 (see S.S.I. 2014/127, art. 2)
- F15** Words in s. 1(7) substituted (28.11.2004) by The Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), **ss. 71, 76(1), 77, Sch. 12 Pt. 1 para. 58(b)** (with **ss. 58, 62, 75**); S.S.I. 2003/456, **art. 2**
- F16** S. 1(7A) inserted (1.12.2017) by Private Housing (Tenancies) (Scotland) Act 2016 (asp 19), s. 79(2), **sch. 4 para. 6**; S.S.I. 2017/346, **reg. 2, sch.**

#### Modifications etc. (not altering text)

- C1** S. 1(2)(a)(ii) excluded (and s. 1(2) modified) (6.3.2009) by The Unit Trusts (Electronic Communications) Order 2009 (S.I. 2009/555), **art. 4**,

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**C2** S. 1(2)(a)(ii) excluded (6.6.2013) by [The Collective Investment in Transferable Securities \(Contractual Scheme\) Regulations 2013](#) (S.I. 2013/1388), regs. 1, **22(2)** (with regs. 22(5), 24)

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 6(1)(aa) inserted by [2007 asp 3 s. 48\(1\)](#)
- Sch. 2 para. 2A and cross-heading inserted by [2024 asp 2 s. 79\(2\)](#)