



Requirements of Writing (Scotland) Act 1995

CHAPTER 7

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Requirements of Writing (Scotland) Act 1995

CHAPTER 7

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Section

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Requirements of Writing (Scotland) Act 1995

1995 CHAPTER 7

An Act to reform the law of Scotland with regard to the requirement of writing for certain matters and the formal validity of contractual and other documents and presumptions relating thereto; to abolish any rule of law restricting the proof of any matter to writ or oath and to abolish the procedure of reference to oath; and for connected purposes. [1st May 1995]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1.—(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.

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

(2) Subject to subsection (3) below, a written document complying with section 2 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 an interest 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;

(b) the creation, transfer, variation or extinction of an interest in land otherwise than by the operation of a court decree, enactment or rule of law; and

(c) the making of any will, testamentary trust disposition and settlement or codicil.

(3) Where a contract, obligation or trust mentioned in subsection (2)(a) above is not constituted in a written document complying with section 2 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 subsection (2)(a) above, subsections (3) and (4) above replace the rules of law known as *rei 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 “interest in land” means any estate, interest or 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.

(8) For the purposes of subsection (7) above “land” does not include—

(a) growing crops; or

(b) a moveable building or other moveable structure.

Type of writing
required for
formal validity of
certain
documents.

2.—(1) No document required by section 1(2) of this Act shall be valid in respect of the formalities of execution unless it is subscribed by the granter of it or, if there is more than one granter, by each granter, but nothing apart from such subscription shall be required for the document to be valid as aforesaid.

(2) A contract mentioned in section 1(2)(a)(i) of this Act may be regarded as constituted or varied (as the case may be) if the offer is contained in one or more documents and the acceptance is contained in another document or other documents, and each document is subscribed by the granter or granters thereof.

(3) Nothing in this section shall prevent a document which has not been subscribed by the granter or granters of it from being used as evidence in relation to any right or obligation to which the document relates.

(4) This section is without prejudice to any other enactment which makes different provision in respect of the formalities of execution of a document to which this section applies.

3.—(1) Subject to subsections (2) to (7) below, where—

- (a) a document bears to have been subscribed by a granter of it;
- (b) the document bears to have been signed by a person as a witness of that granter's subscription and the document, or the testing clause or its equivalent, bears to state the name and address of the witness; and
- (c) nothing in the document, or in the testing clause or its equivalent, indicates—
 - (i) that it was not subscribed by that granter as it bears to have been so subscribed; or
 - (ii) that it was not validly witnessed for any reason specified in paragraphs (a) to (e) of subsection (4) below,

Presumption as to granter's subscription or date or place of subscription.

the document shall be presumed to have been subscribed by that granter.

(2) Where a testamentary document consists of more than one sheet, it shall not be presumed to have been subscribed by a granter as mentioned in subsection (1) above unless, in addition to it bearing to have been subscribed by him and otherwise complying with that subsection, it bears to have been signed by him on every sheet.

(3) For the purposes of subsection (1)(b) above—

- (a) the name and address of a witness may be added at any time before the document is—
 - (i) founded on in legal proceedings; or
 - (ii) registered for preservation in the Books of Council and Session or in sheriff court books; and
- (b) the name and address of a witness need not be written by the witness himself.

(4) Where, in any proceedings relating to a document in which a question arises as to a granter's subscription, it is established—

- (a) that a signature bearing to be the signature of the witness of that granter's subscription is not such a signature, whether by reason of forgery or otherwise;
- (b) that the person who signed the document as the witness of that granter's subscription is a person who is named in the document as a granter of it;
- (c) that the person who signed the document as the witness of that granter's subscription, at the time of signing—

- (i) did not know the granter;
 - (ii) was under the age of 16 years; or
 - (iii) was mentally incapable of acting as a witness;
- (d) that the person who signed the document, purporting to be the witness of that granter's subscription, did not witness such subscription;
 - (e) that the person who signed the document as the witness of that granter's subscription did not sign the document after him or that the granter's subscription or, as the case may be, acknowledgement of his subscription and the person's signature as witness of that subscription were not one continuous process;
 - (f) that the name or address of the witness of that granter's subscription was added after the document was founded on or registered as mentioned in subsection (3)(a) above or is erroneous in any material respect; or
 - (g) in the case of a testamentary document consisting of more than one sheet, that a signature on any sheet bearing to be the signature of the granter is not such a signature, whether by reason of forgery or otherwise,

then, for the purposes of those proceedings, there shall be no presumption that the document has been subscribed by that granter.

(5) For the purposes of subsection (4)(c)(i) above, the witness shall be regarded as having known the person whose subscription he has witnessed at the time of witnessing if he had credible information at that time of his identity.

- (6) For the purposes of subsection (4)(e) above, where—
 - (a) a document is granted by more than one granter; and
 - (b) a person is the witness to the subscription of more than one granter,

the subscription or acknowledgement of any such granter and the signature of the person witnessing that granter's subscription shall not be regarded as not being one continuous process by reason only that, between the time of that subscription or acknowledgement and that signature, another granter has subscribed the document or acknowledged his subscription.

(7) For the purposes of the foregoing provisions of this section a person witnesses a granter's subscription of a document—

- (a) if he sees the granter subscribe it; or
- (b) if the granter acknowledges his subscription to that person.

(8) Where—

- (a) by virtue of subsection (1) above a document to which this subsection applies is presumed to have been subscribed by a granter of it;
- (b) the document, or the testing clause or its equivalent, bears to state the date or place of subscription of the document by that granter; and

(c) nothing in the document, or in the testing clause or its equivalent, indicates that that statement as to date or place is incorrect, there shall be a presumption that the document was subscribed by that granter on the date or at the place as stated.

(9) Subsection (8) above applies to any document other than a testamentary document.

(10) Where—

(a) a testamentary document bears to have been subscribed and the document, or the testing clause or its equivalent, bears to state the date or place of subscription (whether or not it is presumed under subsections (1) to (7) above to have been subscribed by a granter of it); and

(b) nothing in the document, or in the testing clause or its equivalent, indicates that that statement as to date or place is incorrect,

there shall be a presumption that the statement as to date or place is correct.

4.—(1) Where a document bears to have been subscribed by a granter of it, but there is no presumption under section 3 of this Act that the document has been subscribed by that granter, then, if the court, on an application being made to it by any person who has an interest in the document, is satisfied that the document was subscribed by that granter, it shall—

Presumption as to granter's subscription or date or place of subscription when established in court proceedings.

(a) cause the document to be endorsed with a certificate to that effect; or

(b) where the document has already been registered in the Books of Council and Session or in sheriff court books, grant decree to that effect.

(2) Where a document bears to have been subscribed by a granter of it, but there is no presumption under section 3 of this Act as to the date or place of subscription, then, if the court, on an application being made to it by any person who has an interest in the document, is satisfied as to the date or place of subscription, it shall—

(a) cause the document to be endorsed with a certificate to that effect; or

(b) where the document has already been registered in the Books of Council and Session or in sheriff court books, grant decree to that effect.

(3) On an application under subsection (1) or (2) above evidence shall, unless the court otherwise directs, be given by affidavit.

(4) An application under subsection (1) or (2) above may be made either as a summary application or as incidental to and in the course of other proceedings.

(5) The effect of a certificate or decree—

(a) under subsection (1) above shall be to establish a presumption that the document has been subscribed by the granter concerned;

(b) under subsection (2) above shall be to establish a presumption that the statement in the certificate or decree as to date or place is correct.

(6) In this section “the court” means—

(a) in the case of a summary application—

(i) the sheriff in whose sheriffdom the applicant resides; or

(ii) if the applicant does not reside in Scotland, the sheriff at Edinburgh; and

(b) in the case of an application made in the course of other proceedings, the court before which those proceedings are pending.

Alterations to documents: formal validity and presumptions.

5.—(1) An alteration made to a document required by section 1(2) of this Act—

(a) before the document is subscribed by the granter or, if there is more than one granter, by the granter first subscribing it, shall form part of the document as so subscribed;

(b) after the document is so subscribed shall, if the alteration has been signed by the granter or (as the case may be) by all the granters, have effect as a formally valid alteration of the document as so subscribed,

but an alteration made to such a document otherwise than as mentioned in paragraphs (a) and (b) above shall not be formally valid.

(2) Subsection (1) above is without prejudice to—

(a) any rule of law enabling any provision in a testamentary document to be revoked by deletion or erasure without authentication of the deletion or erasure by the testator;

(b) the Erasures in Deeds (Scotland) Act 1836 and section 54 of the Conveyancing (Scotland) Act 1874.

1836 c. 33.
1874 c. 94.

(3) The fact that an alteration to a document was made before the document was subscribed by the granter of it, or by the granter first subscribing it, may be established by all relevant evidence, whether written or oral.

(4) Where a document bears to have been subscribed by the granter or, if there is more than one granter, by all the granters of it, then, if subsection (5) or (6) below applies, an alteration made to the document shall be presumed to have been made before the document was subscribed by the granter or, if there is more than one granter, by the granter first subscribing it, and to form part of the document as so subscribed.

(5) This subsection applies where—

(a) the document is presumed under section 3 of this Act to have been subscribed by the granter or granters (as the case may be);

(b) it is stated in the document, or in the testing clause or its equivalent, that the alteration was made before the document was subscribed; and

(c) nothing in the document, or in the testing clause or its equivalent, indicates that the alteration was made after the document was subscribed.

(6) This subsection applies where subsection (5) above does not apply, but the court is satisfied, on an application being made to it, that the alteration was made before the document was subscribed by the granter or, if there is more than one granter, by the granter first subscribing it, and causes the document to be endorsed with a certificate to that effect or, where the document has already been registered in the Books of Council and Session or in sheriff court books, grants decree to that effect.

(7) Subsections (3), (4) and (6) of section 4 of this Act shall apply in relation to an application under subsection (6) above as they apply in relation to an application under subsection (1) of that section.

(8) Where an alteration is made to a document after the document has been subscribed by a granter, Schedule 1 to this Act (presumptions as to granter's signature and date and place of signing in relation to such alterations) shall have effect.

6.—(1) Subject to subsection (3) below, it shall not be competent—

Registration of documents.

- (a) to record a document in the Register of Sasines; or
- (b) to register a document for execution or preservation in the Books of Council and Session or in sheriff court books,

unless subsection (2) below applies in relation to the document.

(2) This subsection applies where—

- (a) the document is presumed under section 3 or 4 of this Act to have been subscribed by the granter; or
- (b) if there is more than one granter, the document is presumed under section 3 or 4 or partly under the one section and partly under the other to have been subscribed by at least one of the granters.

(3) Subsection (1) above shall not apply in relation to—

- (a) the recording of a document in the Register of Sasines or the registration of a document in the Books of Council and Session or in sheriff court books, if such recording or registration is required or expressly permitted under any enactment;
- (b) the recording of a court decree in the Register of Sasines;
- (c) the registration in the Books of Council and Session or in sheriff court books of—
 - (i) a testamentary document;
 - (ii) a document which is directed by the Court of Session or (as the case may be) the sheriff to be so registered;
 - (iii) a document whose formal validity is governed by a law other than Scots law, if the Keeper of the Registers of Scotland or (as the case may be) the sheriff clerk is satisfied that the document is formally valid according to the law governing such validity;
 - (iv) a court decree granted under section 4 or 5 of this Act in relation to a document already registered in the Books of Council and Session or in sheriff court books (as the case may be); or
- (d) the registration of a court decree in a separate register maintained for that purpose.

(4) A document may be registered for preservation in the Books of Council and Session or in sheriff court books without a clause of consent to registration.

Subscription and signing.

7.—(1) Except where an enactment expressly provides otherwise, a document is subscribed by a granter of it if it is signed by him at the end of the last page (excluding any annexation, whether or not incorporated in the document as provided for in section 8 of this Act).

(2) Subject to paragraph 2(2) of Schedule 2 to this Act, a document, or an alteration to a document, is signed by an individual natural person as a granter or on behalf of a granter of it if it is signed by him—

- (a) with the full name by which he is identified in the document or in any testing clause or its equivalent; or
- (b) with his surname, preceded by at least one forename (or an initial or abbreviation or familiar form of a forename); or
- (c) except for the purposes of section 3(1) to (7) of this Act, with a name (not in accordance with paragraph (a) or (b) above) or description or an initial or mark if it is established that the name, description, initial or mark—
 - (i) was his usual method of signing, or his usual method of signing documents or alterations of the type in question; or
 - (ii) was intended by him as his signature of the document or alteration.

(3) Where there is more than one granter, the requirement under subsection (1) above of signing at the end of the last page of a document shall be regarded as complied with if at least one granter signs at the end of the last page and any other granter signs on an additional page.

(4) Where a person grants a document in more than one capacity, one subscription of the document by him shall be sufficient to bind him in all such capacities.

(5) A document, or an alteration to a document, is signed by a witness if it is signed by him—

- (a) with the full name by which he is identified in the document or in any testing clause or its equivalent; or
- (b) with his surname, preceded by at least one forename (or an initial or abbreviation or familiar form of a forename),

and if the witness is witnessing the signature of more than one granter, it shall be unnecessary for him to sign the document or alteration more than once.

(6) This section is without prejudice to any rule of law relating to the subscription or signing of documents by members of the Royal Family, by peers or by the wives or the eldest sons of peers.

(7) Schedule 2 to this Act (special rules relating to subscription and signing of documents etc by partnerships, companies, local authorities, other bodies corporate and Ministers) shall have effect.

Annexations to documents.

8.—(1) Subject to subsection (2) below and except where an enactment expressly otherwise provides, any annexation to a document shall be regarded as incorporated in the document if it is—

- (a) referred to in the document; and

- (b) identified on its face as being the annexation referred to in the document,

without the annexation having to be signed or subscribed.

(2) Where a document relates to land and an annexation to it describes or shows all or any part of the land to which the document relates, the annexation shall be regarded as incorporated in the document if and only if—

- (a) it is referred to in the document; and
- (b) it is identified on its face as being the annexation referred to in the document; and
- (c) it is signed on—
 - (i) each page, where it is a plan, drawing, photograph or other representation; or
 - (ii) the last page, where it is an inventory, appendix, schedule or other writing.

(3) Any annexation referred to in subsection (2) above which bears to have been signed by a granter of the document shall be presumed to have been signed by the person who subscribed the document as that granter.

(4) Section 7(2) of this Act shall apply in relation to any annexation referred to in subsection (2) above as it applies in relation to a document as if for any reference to a document (except the reference in paragraph (a)) there were substituted a reference to an annexation.

(5) It shall be competent to sign any annexation to a document at any time before the document is—

- (a) founded on in legal proceedings;
- (b) registered for preservation in the Books of Council and Session or in sheriff court books;
- (c) recorded in the Register of Sasines;
- (d) registered in the Land Register of Scotland.

(6) Where there is more than one granter, the requirement under subsection (2)(c)(ii) above of signing on the last page shall be regarded as complied with (provided that at least one granter signs at the end of the last page) if any other granter signs on an additional page.

9.—(1) Where a granter of a document makes a declaration to a relevant person that he is blind or unable to write, the relevant person—

- (a) having read the document to that granter; or
- (b) if the granter makes a declaration that he does not wish him to do so, without having read it to the granter,

shall, if authorised by the granter, be entitled to subscribe it and, if it is a testamentary document, sign it as mentioned in section 3(2) of this Act, on the granter's behalf.

(2) Subscription or signing by a relevant person under subsection (1) above shall take place in the presence of the granter.

(3) This Act shall have effect in relation to subscription or signing by a relevant person under subsection (1) above subject to the modifications set out in Schedule 3 to this Act.

Subscription on behalf of blind granter or granter unable to write.

(4) A document subscribed by a relevant person under subsection (1) above which confers on the relevant person or his spouse, son or daughter a benefit in money or money's worth (whether directly or indirectly) shall be invalid to the extent, but only to the extent, that it confers such benefit.

(5) This section and Schedule 3 to this Act apply in relation to the signing of—

- (a) an annexation to a document as mentioned in section 8(2) of this Act;
- (b) an alteration made to a document or to any such annexation to a document,

as they apply in relation to the subscription of a document; and for that purpose, any reference to reading a document includes a reference to describing a plan, drawing, photograph or other representation in such an annexation or in an alteration to such an annexation.

1980 c. 46.

(6) In this Act "relevant person" means a solicitor who has in force a practising certificate as defined in section 4(c) of the Solicitors (Scotland) Act 1980, an advocate, a justice of the peace or a sheriff clerk and, in relation to the execution of documents outwith Scotland, includes a notary public or any other person with official authority under the law of the place of execution to execute documents on behalf of persons who are blind or unable to write.

(7) Nothing in this section shall prevent the granter of a document who is blind from subscribing or signing the document as mentioned in section 7 of this Act.

Forms of testing clause.

10.—(1) Without prejudice to the effectiveness of any other means of providing information relating to the execution of a document, this information may be provided in such form of testing clause as may be prescribed in regulations made by the Secretary of State.

(2) Regulations under subsection (1) above shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament and may prescribe different forms for different cases or classes of case.

Abolition of proof by writ or oath, reference to oath and other common law rules.

11.—(1) Any rule of law and any enactment whereby the proof of any matter is restricted to proof by writ or by reference to oath shall cease to have effect.

(2) The procedure of proving any matter in any civil proceedings by reference to oath is hereby abolished.

(3) The following rules of law shall cease to have effect—

- (a) any rule whereby certain contracts and obligations and any variations of those contracts and obligations, and assignations of incorporeal moveables, are required to be in writing; and
- (b) any rule which confers any privilege—
 - (i) on a document which is holograph or adopted as holograph; or
 - (ii) on a writ *in re mercatoria*.

(4) Subsections (1) and (2) above shall not apply in relation to proceedings commenced before the commencement of this Act.

- 12.—(1) In this Act, except where the context otherwise requires—
- Interpretation.**
- “alteration” includes interlineation, marginal addition, deletion, substitution, erasure or anything written on erasure;
- “annexation” includes any inventory, appendix, schedule, other writing, plan, drawing, photograph or other representation annexed to a document;
- “authorised” means expressly or impliedly authorised and any reference to a person authorised to sign includes a reference to a person authorised to sign generally or in relation to a particular document;
- “company” has the same meaning as in section 735(1) of the Companies Act 1985; 1985 c. 6.
- “decree” includes a judgment or order, or an official certified copy, abbreviate or extract of a decree;
- “director” includes any person occupying the position of director, by whatever name he is called;
- “document” includes any annexation which is incorporated in it under section 8 of this Act and any reference, however expressed, to the signing of a document includes a reference to the signing of an annexation;
- “enactment” includes an enactment contained in a statutory instrument;
- “governing board”, in relation to a body corporate to which paragraph 5 of Schedule 2 to this Act applies, means any governing body, however described;
- “local authority” means a local authority within the meaning of section 235(1) of the Local Government (Scotland) Act 1973 and a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994; 1973 c.65.
1994 c. 39.
- “Minister” has the same meaning as “Minister of the Crown” has in section 8 of the Ministers of the Crown Act 1975; 1975 c. 26.
- “office-holder” does not include a Minister but, subject to that, means—
- (a) the holder of an office created or continued in existence by a public general Act of Parliament;
 - (b) the holder of an office the remuneration in respect of which is paid out of money provided by Parliament; and
 - (c) the registrar of companies within the meaning of the Companies Act 1985;
- “officer”—
- (a) in relation to a Minister, means any person in the civil service of the Crown who is serving in his Department;
 - (b) in relation an office-holder, means any member of his staff, or any person in the civil service of the Crown who has been assigned or appointed to assist him in the exercise of his functions;
- “proper officer”, in relation to a local authority, has the same meaning as in section 235(3) of the Local Government (Scotland) Act 1973; and

“secretary” means, if there are two or more joint secretaries, any one of them.

(2) Any reference in this Act to subscription or signing by a grantor of a document or an alteration made to a document, in a case where a person is subscribing or signing under a power of attorney on behalf of the grantor, shall be construed as a reference to subscription or signing by that person of the document or alteration.

Application of Act to Crown.

13.—(1) Nothing in this Act shall—

(a) prevent Her Majesty from authenticating—

(i) a document by superscription; or

(ii) a document relating to her private estates situated or arising in Scotland in accordance with section 6 of the Crown Private Estates Act 1862;

1862 c. 37.

1672 c. 16.

(b) prevent authentication under the Writs Act 1672 of a document passing the seal appointed by the Treaty of Union to be kept and used in Scotland in place of the Great Seal of Scotland formerly in use; or

(c) prevent any document mentioned in paragraph (a) or (b) above authenticated as aforesaid from being recorded in the Register of Sasines or registered for execution or preservation in the Books of Council and Session or in sheriff court books.

1868 c. 101.

(2) Nothing in this Act shall prevent a Crown writ from being authenticated or recorded in Chancery under section 78 of the Titles to Land Consolidation (Scotland) Act 1868.

(3) Subject to subsections (1) and (2) above, this Act binds the Crown.

Minor and consequential amendments, repeals, transitional provisions and savings.

14.—(1) The enactments mentioned in Schedule 4 to this Act shall have effect subject to the minor and consequential amendments specified in that Schedule.

(2) The enactments mentioned in Schedule 5 to this Act are hereby repealed to the extent specified in the third column of that Schedule.

(3) Subject to subsection (4) below and without prejudice to subsection (5) below and section 11(4) of this Act, nothing in this Act shall—

(a) apply to any document executed or anything done before the commencement of this Act; or

(b) affect the operation, in relation to any document executed before such commencement, of any procedure for establishing the authenticity of such a document.

1696 c. 25 (S.).

(4) In the repeal of the Blank Bonds and Trusts Act 1696 (provided for in Schedule 5 to this Act), the repeal of the words from “And farder” to the end—

(a) shall have effect in relation to a deed of trust, whether executed before or after the commencement of this Act; but

(b) notwithstanding paragraph (a) above, shall not have effect in relation to proceedings commenced before the commencement of this Act in which a question arises as to the deed of trust.

(5) The repeal of certain provisions of the Lyon King of Arms Act 1672 (provided for in Schedule 5 to this Act) shall not affect any right of a person to add a territorial designation to his signature or the jurisdiction of the Lord Lyon King of Arms in relation to any such designation. 1672 c. 47 (S.).

(6) For the purposes of this Act, if it cannot be ascertained whether a document was executed before or after the commencement of this Act, there shall be a presumption that it was executed after such commencement.

15.—(1) This Act may be cited as the Requirements of Writing (Scotland) Act 1995.

Short title,
commencement
and extent.

(2) This Act shall come into force at the end of the period of three months beginning with the date on which it is passed.

(3) This Act extends to Scotland only.

SCHEDULES

Section 5(8)

SCHEDULE 1

ALTERATIONS MADE TO A DOCUMENT AFTER IT HAS BEEN SUBSCRIBED

Presumption as to granter's signature or date or place of signing

- 1.—(1) Subject to sub-paragraphs (2) to (7) below, where—
- (a) an alteration to a document bears to have been signed by a granter of the document;
 - (b) the alteration bears to have been signed by a person as a witness of that granter's signature and the alteration, or the testing clause or its equivalent, bears to state the name and address of the witness; and
 - (c) nothing in the document or alteration, or in the testing clause or its equivalent, indicates—
 - (i) that the alteration was not signed by that granter as it bears to have been so signed; or
 - (ii) that it was not validly witnessed for any reason specified in paragraphs (a) to (e) of sub-paragraph (4) below,
 the alteration shall be presumed to have been signed by that granter.
- (2) Where an alteration to a testamentary document consists of more than one sheet, the alteration shall not be presumed to have been signed by a granter as mentioned in sub-paragraph (1) above unless, in addition to it bearing to have been signed by him on the last sheet and otherwise complying with that sub-paragraph, it bears to have been signed by him on every other sheet.
- (3) For the purposes of sub-paragraph (1)(b) above—
- (a) the name and address of a witness may be added at any time before the alteration is—
 - (i) founded on in legal proceedings; or
 - (ii) registered for preservation in the Books of Council and Session or in sheriff court books; and
 - (b) the name and address of a witness need not be written by the witness himself.
- (4) Where, in any proceedings relating to an alteration to a document in which a question arises as to a granter's signature, it is established—
- (a) that a signature bearing to be the signature of the witness of that granter's signature is not such a signature, whether by reason of forgery or otherwise;
 - (b) that the person who signed the alteration as the witness of that granter's signature is a person who is named in the document as a granter of the document;
 - (c) that the person who signed the alteration as the witness of that granter's signature, at the time of signing—
 - (i) did not know the granter;
 - (ii) was under the age of 16 years; or
 - (iii) was mentally incapable of acting as a witness;
 - (d) that the person who signed the alteration, purporting to be the witness of that granter's signature, did not witness such signature;
 - (e) that the person who signed the alteration as the witness of that granter's signature did not sign the alteration after him or that the signing of the alteration by the granter or, as the case may be, the granter's acknowledgement of his signature and the signing by the person as witness were not one continuous process;

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- (f) that the name or address of the witness of that granter's signature was added after the alteration was founded on or registered as mentioned in sub-paragraph (3)(a) above or is erroneous in any material respect; or
- (g) in the case of an alteration to a testamentary document consisting of more than one sheet, that a signature on any sheet of the alteration bearing to be the signature of the granter is not such a signature, whether by reason of forgery or otherwise,

then, for the purposes of those proceedings, there shall be no presumption that the alteration has been signed by that granter.

(5) For the purposes of sub-paragraph (4)(c)(i) above, the witness shall be regarded as having known the person whose signature he has witnessed at the time of witnessing if he had credible information at that time of his identity.

(6) For the purposes of sub-paragraph (4)(e) above, where—

- (a) an alteration to a document is made by more than one granter; and
- (b) a person is the witness to the signature of more than one granter,

the signing of the alteration by any such granter or the acknowledgement of his signature and the signing by the person witnessing that granter's signature shall not be regarded as not being one continuous process by reason only that, between the time of signing or acknowledgement by that granter and of signing by that witness, another granter has signed the alteration or acknowledged his signature.

(7) For the purposes of the foregoing provisions of this paragraph a person witnesses a granter's signature of an alteration—

- (a) if he sees the granter sign it; or
- (b) if the granter acknowledges his signature to that person.

(8) Where—

- (a) by virtue of sub-paragraph (1) above an alteration to a document to which this sub-paragraph applies is presumed to have been signed by a granter of the document;
- (b) the alteration, or the testing clause or its equivalent, bears to state the date or place of signing of the alteration by that granter; and
- (c) nothing in the document or alteration, or in the testing clause or its equivalent, indicates that that statement as to date or place is incorrect,

there shall be a presumption that the alteration was signed by that granter on the date or at the place as stated.

(9) Sub-paragraph (8) above applies to any document other than a testamentary document.

(10) Where—

- (a) an alteration to a testamentary document bears to have been signed and the alteration, or the testing clause or its equivalent, bears to state the date or place of signing (whether or not it is presumed under sub-paragraphs (1) to (7) above to have been signed by a granter of the document); and
- (b) nothing in the document or alteration, or in the testing clause or its equivalent, indicates that that statement as to date or place is incorrect,

there shall be a presumption that the statement as to date or place is correct.

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Presumption as to granter's signature or date or place of signing when established in court proceedings

2.—(1) Where an alteration to a document bears to have been signed by a granter of the document, but there is no presumption under paragraph 1 above that the alteration has been signed by that granter, then, if the court, on an application being made to it by any person having an interest in the document, is satisfied that the alteration was signed by that granter, it shall—

- (a) cause the document to be endorsed with a certificate to that effect; or
- (b) where the document has already been registered in the Books of Council and Session or in sheriff court books, grant decree to that effect.

(2) Where an alteration to a document bears to have been signed by a granter of the document, but there is no presumption under paragraph 1 above as to the date or place of signing, then, if the court, on an application being made to it by any person having an interest in the document, is satisfied as to the date or place of signing, it shall—

- (a) cause the document to be endorsed with a certificate to that effect; or
- (b) where the document has already been registered in the Books of Council and Session or in sheriff court books, grant decree to that effect.

(3) In relation to an application under sub-paragraph (1) or (2) above evidence shall, unless the court otherwise directs, be given by affidavit.

(4) An application under sub-paragraph (1) or (2) above may be made either as a summary application or as incidental to and in the course of other proceedings.

(5) The effect of a certificate or decree—

- (a) under sub-paragraph (1) above shall be to establish a presumption that the alteration has been signed by the granter concerned;
- (b) under sub-paragraph (2) above shall be to establish a presumption that the statement in the certificate or decree as to date or place is correct.

(6) In this paragraph “the court” means—

- (a) in the case of a summary application—
 - (i) the sheriff in whose sheriffdom the applicant resides; or
 - (ii) if the applicant does not reside in Scotland, the sheriff at Edinburgh; and
- (b) in the case of an application made in the course of other proceedings, the court before which those proceedings are pending.

Section 7(7)

SCHEDULE 2

SUBSCRIPTION AND SIGNING: SPECIAL CASES

General

1. Any reference in this Act to subscription or signing by a granter of a document or an alteration to a document, in a case where the granter is a person to whom any of paragraphs 2 to 6 of this Schedule applies shall, unless the context otherwise requires, be construed as a reference to subscription or, as the case may be, signing of the document or alteration by a person in accordance with that paragraph.

Partnerships

2.—(1) Except where an enactment expressly provides otherwise, where a granter of a document is a partnership, the document is signed by the partnership if it is signed on its behalf by a partner or by a person authorised to sign the document on its behalf.

(2) A person signing on behalf of a partnership under this paragraph may use his own name or the firm name.

(3) Sub-paragraphs (1) and (2) of this paragraph apply in relation to the signing of an alteration made to a document as they apply in relation to the signing of a document.

(4) In this paragraph “partnership” has the same meaning as in section 1 of the Partnership Act 1890.

1890 c. 39.

Companies

3.—(1) Except where an enactment expressly provides otherwise, where a granter of a document is a company, the document is signed by the company if it is signed on its behalf by a director, or by the secretary, of the company or by a person authorised to sign the document on its behalf.

(2) This Act is without prejudice to—

(a) section 283(3) of the Companies Act 1985; and

1985 c. 6.

(b) paragraph 9 of Schedule 1, paragraph 9 of Schedule 2, and paragraph 7 of Schedule 4, to the Insolvency Act 1986.

1986 c. 45.

(3) Sub-paragraphs (1) and (2) of this paragraph apply in relation to the signing of an alteration made to a document as they apply in relation to the signing of a document.

(4) Where a granter of a document is a company, section 3 of and Schedule 1 to this Act shall have effect subject to the modifications set out in sub-paragraphs (5) and (6) below.

(5) In section 3—

(a) for subsection (1) there shall be substituted the following subsections—

“(1) Subject to subsections (1A) to (7) below, where—

(a) a document bears to have been subscribed on behalf of a company by a director, or by the secretary, of the company or by a person bearing to have been authorised to subscribe the document on its behalf;

(b) the document bears to have been signed by a person as a witness of the subscription of the director, secretary or other person subscribing on behalf of the company and to state the name and address of the witness; and

(c) nothing in the document, or in the testing clause or its equivalent, indicates—

(i) that it was not subscribed on behalf of the company as it bears to have been so subscribed; or

(ii) that it was not validly witnessed for any reason specified in paragraphs (a) to (e) of subsection (4) below,

the document shall be presumed to have been subscribed by the company.

(1A) Where a document does not bear to have been signed by a person as a witness of the subscription of the director, secretary or other person subscribing on behalf of the company it shall be presumed to have been subscribed by the company if it bears to have been subscribed on behalf of the company by—

(a) two directors of the company; or

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- (b) a director and secretary of the company; or
- (c) two persons bearing to have been authorised to subscribe the document on its behalf.

(1B) For the purposes of subsection (1)(b) above, the name and address of the witness may bear to be stated in the document itself or in the testing clause or its equivalent.

(1C) A presumption under subsection (1) or (1A) above as to subscription of a document does not include a presumption—

- (a) that a person bearing to subscribe the document as a director or the secretary of the company was such director or secretary; or
- (b) that a person subscribing the document on behalf of the company bearing to have been authorised to do so was authorised to do so.”;

(b) in subsection (4) after paragraph (g) there shall be inserted the following paragraph—

“(h) if the document does not bear to have been witnessed, but bears to have been subscribed on behalf of the company by two of the directors of the company, or by a director and secretary of the company, or by two authorised persons, that a signature bearing to be the signature of a director, secretary or authorised person is not such a signature, whether by reason of forgery or otherwise;”.

(6) In paragraph 1 of Schedule 1—

(a) for sub-paragraph (1) there shall be substituted the following sub-paragraphs—

“(1) Subject to sub-paragraphs (1A) to (7) below, where—

- (a) an alteration to a document bears to have been signed on behalf of a company by a director, or by the secretary, of the company or by a person bearing to have been authorised to sign the alteration on its behalf;
- (b) the alteration bears to have been signed by a person as a witness of the signature of the director, secretary or other person signing on behalf of the company and to state the name and address of the witness; and
- (c) nothing in the document or alteration, or in the testing clause or its equivalent, indicates—
 - (i) that the alteration was not signed on behalf of the company as it bears to have been so signed; or
 - (ii) that the alteration was not validly witnessed for any reason specified in paragraphs (a) to (e) of sub-paragraph (4) below,

the alteration shall be presumed to have been signed by the company.

(1A) Where an alteration does not bear to have been signed by a person as a witness of the signature of the director, secretary or other person signing on behalf of the company it shall be presumed to have been signed by the company if it bears to have been signed on behalf of the company by—

- (a) two directors of the company; or
- (b) a director and secretary of the company; or
- (c) two persons bearing to have been authorised to sign the alteration on its behalf.

(1B) For the purposes of sub-paragraph (1)(b) above, the name and address of the witness may bear to be stated in the alteration itself or in the testing clause or its equivalent.

(1C) A presumption under sub-paragraph (1) or (1A) above as to signing of an alteration to a document does not include a presumption—

- (a) that a person bearing to sign the alteration as a director or the secretary of the company was such director or secretary; or
 - (b) that a person signing the alteration on behalf of the company bearing to have been authorised to do so was authorised to do so.”;
- (b) in sub-paragraph (4) after paragraph (g) there shall be inserted the following paragraph—

“(h) if the alteration does not bear to have been witnessed, but bears to have been signed on behalf of the company by two of the directors of the company, or by a director and secretary of the company, or by two authorised persons, that a signature bearing to be the signature of a director, secretary or authorised person is not such a signature, whether by reason of forgery or otherwise;”.

Local authorities

4.—(1) Except where an enactment expressly provides otherwise, where a granter of a document is a local authority, the document is signed by the authority if it is signed on their behalf by the proper officer of the authority.

(2) For the purposes of the signing of a document under this paragraph, a person purporting to sign on behalf of a local authority as an officer of the authority shall be presumed to be the proper officer of the authority.

(3) Sub-paragraphs (1) and (2) of this paragraph apply in relation to the signing of an alteration made to a document as they apply in relation to the signing of a document.

(4) Where a granter of a document is a local authority, section 3 of and Schedule 1 to this Act shall have effect subject to the modifications set out in sub-paragraphs (5) to (8) below.

(5) For section 3(1) there shall be substituted the following subsections—

“(1) Subject to subsections (1A) to (7) below, where—

- (a) a document bears to have been subscribed on behalf of a local authority by the proper officer of the authority;
- (b) the document bears—
 - (i) to have been signed by a person as a witness of the proper officer’s subscription and to state the name and address of the witness; or
 - (ii) (if the subscription is not so witnessed), to have been sealed with the common seal of the authority; and
- (c) nothing in the document, or in the testing clause or its equivalent, indicates—
 - (i) that it was not subscribed on behalf of the authority as it bears to have been so subscribed; or
 - (ii) that it was not validly witnessed for any reason specified in paragraphs (a) to (e) of subsection (4) below or that it was not sealed as it bears to have been sealed or that it was not validly sealed for the reason specified in subsection (4)(h) below,

the document shall be presumed to have been subscribed by the proper officer and by the authority.

(1A) For the purposes of subsection (1)(b)(i) above, the name and address of the witness may bear to be stated in the document itself or in the testing clause or its equivalent.”.

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(6) In section 3(4) after paragraph (g) there shall be inserted the following paragraph—

“(h) if the document does not bear to have been witnessed, but bears to have been sealed with the common seal of the authority, that it was sealed by a person without authority to do so or was not sealed on the date on which it was subscribed on behalf of the authority;”.

(7) For paragraph 1(1) of Schedule 1 there shall be substituted the following sub-paragraphs—

“(1) Subject to sub-paragraphs (1A) to (7) below, where—

(a) an alteration to a document bears to have been signed on behalf of a local authority by the proper officer of the authority;

(b) the alteration bears—

(i) to have been signed by a person as a witness of the proper officer’s signature and to state the name and address of the witness; or

(ii) (if the signature is not so witnessed), to have been sealed with the common seal of the authority; and

(c) nothing in the document or alteration, or in the testing clause or its equivalent, indicates—

(i) that the alteration was not signed on behalf of the authority as it bears to have been so signed; or

(ii) that the alteration was not validly witnessed for any reason specified in paragraphs (a) to (e) of sub-paragraph (4) below or that it was not sealed as it bears to have been sealed or that it was not validly sealed for the reason specified in sub-paragraph (4)(h) below,

the alteration shall be presumed to have been signed by the proper officer and by the authority.

(1A) For the purposes of sub-paragraph (1)(b)(i) above, the name and address of the witness may bear to be stated in the alteration itself or in the testing clause or its equivalent.”.

(8) In paragraph 1(4) of Schedule 1 after paragraph (g) there shall be inserted the following paragraph—

“(h) if the alteration does not bear to have been witnessed, but bears to have been sealed with the common seal of the authority, that it was sealed by a person without authority to do so or was not sealed on the date on which it was signed on behalf of the authority;”.

Other bodies corporate

5.—(1) This paragraph applies to any body corporate other than a company or a local authority.

(2) Except where an enactment expressly provides otherwise, where a granter of a document is a body corporate to which this paragraph applies, the document is signed by the body if it is signed on its behalf by—

(a) a member of the body’s governing board or, if there is no governing board, a member of the body;

(b) the secretary of the body by whatever name he is called; or

(c) a person authorised to sign the document on behalf of the body.

(3) Sub-paragraphs (1) and (2) of this paragraph apply in relation to the signing of an alteration made to a document as they apply in relation to the signing of a document.

(4) Where a granter of a document is a body corporate to which this paragraph applies, section 3 of and Schedule 1 to this Act shall have effect subject to the modifications set out in sub-paragraphs (5) to (8) below.

(5) For section 3(1) there shall be substituted the following subsections—

“(1) Subject to subsections (1A) to (7) below, where—

(a) a document bears to have been subscribed on behalf of a body corporate to which paragraph 5 of Schedule 2 to this Act applies by—

(i) a member of the body’s governing board or, if there is no governing board, a member of the body;

(ii) the secretary of the body; or

(iii) a person bearing to have been authorised to subscribe the document on its behalf;

(b) the document bears—

(i) to have been signed by a person as a witness of the subscription of the member, secretary or other person signing on behalf of the body and to state the name and address of the witness; or

(ii) (if the subscription is not so witnessed), to have been sealed with the common seal of the body; and

(c) nothing in the document, or in the testing clause or its equivalent, indicates—

(i) that it was not subscribed on behalf of the body as it bears to have been so subscribed; or

(ii) that it was not validly witnessed for any reason specified in paragraphs (a) to (e) of subsection (4) below or that it was not sealed as it bears to have been sealed or that it was not validly sealed for the reason specified in subsection (4)(h) below,

the document shall be presumed to have been subscribed by the member, secretary or authorised person (as the case may be) and by the body.

(1A) For the purposes of subsection (1)(b)(i) above, the name and address of the witness may bear to be stated in the document itself or in the testing clause or its equivalent.

(1B) A presumption under subsection (1) above as to subscription of a document does not include a presumption—

(a) that a person bearing to subscribe the document as a member of the body’s governing board, a member of the body or the secretary of the body was such member or secretary; or

(b) that a person subscribing the document on behalf of the body bearing to have been authorised to do so was authorised to do so.”.

(6) In section 3(4) after paragraph (g) there shall be inserted the following paragraph—

“(h) if the document does not bear to have been witnessed, but bears to have been sealed with the common seal of the body, that it was sealed by a person without authority to do so or was not sealed on the date on which it was subscribed on behalf of the body;”.

(7) For paragraph 1(1) of Schedule 1 there shall be substituted the following sub-paragraphs—

“(1) Subject to sub-paragraphs (1A) to (7) below, where—

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- (a) an alteration to a document bears to have been signed on behalf of a body corporate to which paragraph 5 of Schedule 2 to this Act applies by—
- (i) a member of the body's governing board or, if there is no governing board, a member of the body;
 - (ii) the secretary of the body; or
 - (iii) a person bearing to have been authorised to sign the alteration on its behalf;
- (b) the alteration bears—
- (i) to have been signed by a person as a witness of the signature of the member, secretary or other person signing on behalf of the body and to state the name and address of the witness; or
 - (ii) (if the signature is not so witnessed), to have been sealed with the common seal of the body; and
- (c) nothing in the document or alteration, or in the testing clause or its equivalent, indicates—
- (i) that the alteration was not signed on behalf of the body as it bears to have been so signed; or
 - (ii) that the alteration was not validly witnessed for any reason specified in paragraphs (a) to (e) of sub-paragraph (4) below or that it was not sealed as it bears to have been sealed or that it was not validly sealed for the reason specified in sub-paragraph (4)(h) below,

the alteration shall be presumed to have been signed by the member, secretary or authorised person (as the case may be) and by the body.

(1A) For the purposes of sub-paragraph (1)(b)(i) above, the name and address of the witness may bear to be stated in the alteration itself or in the testing clause or its equivalent.

(1B) A presumption under sub-paragraph (1) above as to signing of an alteration to a document does not include a presumption—

- (a) that a person bearing to sign the alteration as a member of the body's governing board, a member of the body or the secretary of the body was such member or secretary; or
- (b) that a person signing the alteration on behalf of the body bearing to have been authorised to do so was authorised to do so."

(8) In paragraph 1(4) of Schedule 1 after paragraph (g) there shall be inserted the following paragraph—

"(h) if the alteration does not bear to have been witnessed, but bears to have been sealed with the common seal of the body, that it was sealed by a person without authority to do so or was not sealed on the date on which it was signed on behalf of the body;"

Ministers of the Crown and office-holders

6.—(1) Except where an enactment expressly provides otherwise, where a granter of a document is a Minister or an office-holder, the document is signed by the Minister or office-holder if it is signed—

- (a) by him personally; or
- (b) in a case where by virtue of any enactment or rule of law a document by a Minister may be signed by an officer of his or by any other Minister, by that officer or by that other Minister as the case may be; or
- (c) in a case where by virtue of any enactment or rule of law a document by an office-holder may be signed by an officer of his, by that officer; or

(d) by any other person authorised to sign the document on his behalf.

(2) For the purposes of the signing of a document under this paragraph, a person purporting to sign—

- (a) as an officer as mentioned in sub-paragraph (1)(b) or (1)(c) above;
- (b) as another Minister as mentioned in sub-paragraph (1)(b) above;
- (c) as a person authorised as mentioned in sub-paragraph (1)(d) above,

shall be presumed to be the officer, other Minister or authorised person, as the case may be.

(3) Sub-paragraphs (1) and (2) of this paragraph are without prejudice to section 3 of and Schedule 1 to the Ministers of the Crown Act 1975.

1975 c. 26.

(4) Sub-paragraphs (1) to (3) of this paragraph apply in relation to the signing of an alteration made to a document as they apply in relation to the signing of a document.

(5) Where a granter of a document is a Minister or office-holder, section 3 of and Schedule 1 to this Act shall have effect subject to the modifications set out in sub-paragraphs (6) and (7) below.

(6) For section 3(1) there shall be substituted the following subsections—

“(1) Subject to subsections (1A) to (7) below, where—

(a) a document bears to have been subscribed—

(i) by a Minister or, in a case where by virtue of any enactment or rule of law a document by a Minister may be signed by an officer of his or by any other Minister, by that officer or by that other Minister; or

(ii) by an office-holder or, in a case where by virtue of any enactment or rule of law a document by an office-holder may be signed by an officer of his, by that officer; or

(iii) by any other person bearing to have been authorised to subscribe the document on behalf of the Minister or office-holder;

(b) the document bears to have been signed by a person as a witness of the subscription mentioned in paragraph (a) above and to state the name and address of the witness; and

(c) nothing in the document, or in the testing clause or its equivalent, indicates—

(i) that it was not subscribed as it bears to have been subscribed; or

(ii) that it was not validly witnessed for any reason specified in paragraphs (a) to (e) of subsection (4) below,

the document shall be presumed to have been subscribed by the officer, other Minister or authorised person and by the Minister or office-holder, as the case may be.

(1A) For the purposes of subsection (1)(b) above, the name and address of the witness may bear to be stated in the document itself or in the testing clause or its equivalent.”.

(7) For paragraph 1(1) of Schedule 1 there shall be substituted the following sub-paragraphs—

“(1) Subject to sub-paragraphs (1A) to (7) below, where—

(a) an alteration to a document bears to have been signed by—

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- (i) a Minister or, in a case where by virtue of any enactment or rule of law a document by a Minister may be signed by an officer of his or by any other Minister, by that officer or by that other Minister; or
- (ii) an office-holder or, in a case where by virtue of any enactment or rule of law a document by an office-holder may be signed by an officer of his, by that officer; or
- (iii) any other person bearing to have been authorised to sign the alteration on behalf of the Minister or office-holder;
- (b) the alteration bears to have been signed by a person as a witness of the signature mentioned in paragraph (a) above and to state the name and address of the witness; and
- (c) nothing in the document or alteration, or in the testing clause or its equivalent, indicates—
 - (i) that the alteration was not signed as it bears to have been signed; or
 - (ii) that the alteration was not validly witnessed for any reason specified in paragraphs (a) to (e) of sub-paragraph (4) below,

the alteration shall be presumed to have been signed by the officer, other Minister or authorised person and by the Minister or office-holder, as the case may be.

(1A) For the purposes of sub-paragraph (1)(b) above, the name and address of the witness may bear to be stated in the alteration itself or in the testing clause or its equivalent.”.

Section 9(3)

SCHEDULE 3

**MODIFICATIONS OF THIS ACT IN RELATION TO SUBSCRIPTION OR SIGNING BY
RELEVANT PERSON UNDER SECTION 9**

1. For any reference to the subscription or signing of a document by a granter there shall be substituted a reference to such subscription or signing by a relevant person under section 9(1).

2. For section 3(1) there shall be substituted the following subsection—

“(1) Subject to subsections (2) to (6) below, where—

- (a) a document bears to have been subscribed by a relevant person with the authority of a granter of it;
- (b) the document, or the testing clause or its equivalent, states that the document was read to that granter by the relevant person before such subscription or states that it was not so read because the granter made a declaration that he did not wish him to do so;
- (c) the document bears to have been signed by a person as a witness of the relevant person’s subscription and the document, or the testing clause or its equivalent, bears to state the name and address of the witness; and
- (d) nothing in the document, or in the testing clause or its equivalent, indicates—
 - (i) that it was not subscribed by the relevant person as it bears to have been so subscribed;
 - (ii) that the statement mentioned in paragraph (b) above is incorrect; or

(iii) that it was not validly witnessed for any reason specified in paragraphs (a) to (e) of subsection (4) below (as modified by paragraph 4 of Schedule 3 to this Act),

the document shall be presumed to have been subscribed by the relevant person and the statement so mentioned shall be presumed to be correct.”.

3. In section 3(3) for the words “subsection (1)(b)” there shall be substituted the words “subsection (1)(c)”.

4. For section 3(4) there shall be substituted the following subsection—

“(4) Where, in any proceedings relating to a document in which a question arises as to a relevant person’s subscription on behalf of a granter under section 9(1) of this Act, it is established—

- (a) that a signature bearing to be the signature of the witness of the relevant person’s subscription is not such a signature, whether by reason of forgery or otherwise;
- (b) that the person who signed the document as the witness of the relevant person’s subscription is a person who is named in the document as a granter of it;
- (c) that the person who signed the document as the witness of the relevant person’s subscription, at the time of signing—
 - (i) did not know the granter on whose behalf the relevant person had so subscribed;
 - (ii) was under the age of 16 years; or
 - (iii) was mentally incapable of acting as a witness;
- (d) that the person who signed the document, purporting to be the witness of the relevant person’s subscription, did not see him subscribe it;
- (dd) that the person who signed the document as the witness of the relevant person’s subscription did not witness the granting of authority by the granter concerned to the relevant person to subscribe the document on his behalf or did not witness the reading of the document to the granter by the relevant person or the declaration that the granter did not wish him to do so;
- (e) that the person who signed the document as the witness of the relevant person’s subscription did not sign the document after him or that such subscription and signature were not one continuous process;
- (f) that the name or address of such a witness was added after the document was founded on or registered as mentioned in subsection (3)(a) above or is erroneous in any material respect; or
- (g) in the case of a testamentary document consisting of more than one sheet, that a signature on any sheet bearing to be the signature of the relevant person is not such a signature, whether by reason of forgery or otherwise,

then, for the purposes of those proceedings, there shall be no presumption that the document has been subscribed by the relevant person on behalf of the granter concerned.”.

5. In section 3(6) the words “or acknowledgement” in both places where they occur shall be omitted.

6. Section 3(7) shall be omitted.

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7. For section 4(1) there shall be substituted the following subsection—

“(1) Where—

- (a) a document bears to have been subscribed by a relevant person under section 9(1) of this Act on behalf of a granter of it; but
- (b) there is no presumption under section 3 of this Act (as modified by paragraph 2 of Schedule 3 to this Act) that the document has been subscribed by that person or that the procedure referred to section 3(1)(b) of this Act as so modified was followed,

then, if the court, on an application being made to it by any person who has an interest in the document, is satisfied that the document was so subscribed by the relevant person with the authority of the granter and that the relevant person read the document to the granter before subscription or did not so read it because the granter declared that he did not wish him to do so, it shall—

- (i) cause the document to be endorsed with a certificate to that effect; or
- (ii) where the document has already been registered in the Books of Council and Session or in sheriff court books, grant decree to that effect.”.

8. At the end of section 4(5)(a) there shall be added the following words—

“and that the procedure referred to in section 3(1)(b) of this Act as modified by paragraph 2 of Schedule 3 to this Act was followed.”.

9. For paragraph 1(1) of Schedule 1 there shall be substituted the following sub-paragraph—

“(1) Subject to sub-paragraphs (2) to (6) below, where—

- (a) an alteration to a document bears to have been signed by a relevant person with the authority of a granter of the document;
- (b) the document or alteration, or the testing clause or its equivalent, states that the alteration was read to that granter by the relevant person before such signature or states that the alteration was not so read because the granter made a declaration that he did not wish him to do so;
- (c) the alteration bears to have been signed by a person as a witness of the relevant person’s signature and the alteration, or the testing clause or its equivalent, bears to state the name and address of the witness; and
- (d) nothing in the document or alteration, or in the testing clause or its equivalent, indicates—
 - (i) that the alteration was not signed by the relevant person as it bears to have been so signed;
 - (ii) that the statement mentioned in paragraph (b) above is incorrect; or
 - (iii) that the alteration was not validly witnessed for any reason specified in paragraphs (a) to (e) of sub-paragraph (4) below (as modified by paragraph 11 of Schedule 3 to this Act),

the alteration shall be presumed to have been signed by the relevant person and the statement so mentioned shall be presumed to be correct.”.

10. In paragraph 1(3) of Schedule 1 for the words “sub-paragraph (1)(b)” there shall be substituted the words “sub-paragraph (1)(c)”.

11. For paragraph 1(4) of Schedule 1 there shall be substituted the following sub-paragraph—

“(4) Where, in any proceedings relating to an alteration to a document in which a question arises as to a relevant person’s signature on behalf of a granter under section 9(1) of this Act, it is established—

- (a) that a signature bearing to be the signature of the witness of the relevant person’s signature is not such a signature, whether by reason of forgery or otherwise;
- (b) that the person who signed the alteration as the witness of the relevant person’s signature is a person who is named in the document as a granter of it;
- (c) that the person who signed the alteration as the witness of the relevant person’s signature, at the time of signing—
 - (i) did not know the granter on whose behalf the relevant person had so signed;
 - (ii) was under the age of 16 years; or
 - (iii) was mentally incapable of acting as a witness;
- (d) that the person who signed the alteration, purporting to be the witness of the relevant person’s signature, did not see him sign it;
- (dd) that the person who signed the alteration as the witness of the relevant person’s signature did not witness the granting of authority by the granter concerned to the relevant person to sign the alteration on his behalf or did not witness the reading of the alteration to the granter by the relevant person or the declaration that the granter did not wish him to do so;
- (e) that the person who signed the alteration as the witness of the relevant person’s signature did not sign the alteration after him or that the signing of the alteration by the granter and the witness was not one continuous process;
- (f) that the name or address of such a witness was added after the alteration was founded on or registered as mentioned in sub-paragraph (3)(a) above or is erroneous in any material respect; or
- (g) in the case of an alteration to a testamentary document consisting of more than one sheet, that a signature on any sheet of the alteration bearing to be the signature of the relevant person is not such a signature, whether by reason of forgery or otherwise,

then, for the purposes of those proceedings, there shall be no presumption that the alteration has been signed by the relevant person on behalf of the granter concerned.”.

12. In paragraph 1(6) of Schedule 1 the words “or the acknowledgement of his signature” and the words “or acknowledgement” shall be omitted.

13. Paragraph 1(7) of Schedule 1 shall be omitted.

14. For paragraph 2(1) of Schedule 1 there shall be substituted the following sub-paragraph—

“(1) Where—

- (a) an alteration to a document bears to have been signed by a relevant person under section 9(1) of this Act on behalf of a granter of the document; but

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- (b) there is no presumption under paragraph 1 of Schedule 1 to this Act (as modified by paragraph 9 of Schedule 3 to this Act) that the alteration has been signed by that person or that the procedure referred to in paragraph 1(1)(b) of Schedule 1 to this Act as so modified was followed,

then, if the court, on an application being made to it by any person who has an interest in the document, is satisfied that the alteration was so signed by the relevant person with the authority of the granter and that the relevant person read the alteration to the granter before signing or did not so read it because the granter declared that he did not wish him to do so, it shall—

- (i) cause the document to be endorsed with a certificate to that effect; or
 (ii) where the document has already been registered in the Books of Council and Session or in sheriff court books, grant decree to that effect.”.

15. At the end of paragraph 2(5)(a) of Schedule 1 there shall be added the following words—

“and that the procedure referred to in paragraph 1(1)(b) of Schedule 1 to this Act as modified by paragraph 9 of Schedule 3 to this Act was followed.”.

Section 14(1)

SCHEDULE 4

MINOR AND CONSEQUENTIAL AMENDMENTS

General adaptation

1.—(1) Any reference in any other enactment to a probative document shall, in relation to a document executed after the commencement of this Act, be construed as a reference to a document in relation to which section 6(2) of this Act applies.

(2) For the purposes of any enactment—

(a) providing for a document to be executed by a body corporate by affixing its common seal; or

(b) referring (in whatever terms) to a document so executed,

a document signed or subscribed by or on behalf of the body corporate in accordance with the provisions of the Requirements of Writing (Scotland) Act 1995 shall have effect as if so executed.

*Specific enactments**Lands Clauses Consolidation (Scotland) Act 1845*

1845 c. 19.

2. In Schedules (A) and (B) to the Lands Clauses Consolidation (Scotland) Act 1845 at the end of each of the forms there shall be added—

“Note - Subscription of the document by the granter of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

Infefment Act 1845

3. In Schedules (A) and (B) to the Infefment Act 1845 for the words from “In witness” to the end there shall be substituted the words “Testing clause + 1845 c. 35.

+ Note - Subscription of the document by the granter of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

Commissioners Clauses Act 1847

4. At the end of section 59 of the Commissioners Clauses Act 1847 there shall be added the following subsection— 1847 c. 16.

“(2) This section shall apply to Scotland as if—

(a) for the words from “by deed under” to “recorded” there were substituted the words—

“by a document—

(a) if they are a corporation, subscribed in accordance with section 7 of, and paragraph 5 of Schedule 2 to, the Requirements of Writing (Scotland) Act 1995;

(b) if they are not a corporation, subscribed in accordance with the said section 7 by the commissioners or any two of them acting by the authority of and on behalf of the commissioners; and a document so subscribed, followed by infefment duly recorded.”;

(b) for the words from “under such” to “acting” there were substituted the word “subscribed”.”.

5. At the end of section 75 of that Act there shall be added the following subsection—

“(2) This section shall apply to Scotland as if for the words “by deed” to “five of them” there were substituted the words—

“in a document—

(a) which is duly stamped;

(b) in which the consideration is truly stated; and

(c) which is subscribed, if the commissioners—

(i) are a corporation, in accordance with section 7 of, and paragraph 5 of Schedule 2 to, the Requirements of Writing (Scotland) Act 1995;

(ii) are not a corporation, in accordance with the said section 7 by the commissioners or any five of them.”.”.

6. At the end of section 77 of that Act there shall be added the following subsection—

“(2) This section shall apply to Scotland as if for the words “by deed duly stamped” there were substituted the words “in a document which is duly stamped and which is subscribed in accordance with the Requirements of Writing (Scotland) Act 1995.”.”.

7. In Schedule (B) to that Act—

(a) the words from “or, if the deed” to “case may be,” are hereby repealed;

(b) at the end there shall be added the words “[or, if the document is granted under Scots law, insert testing clause +]

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+ Note - As regards a document granted under Scots law, subscription of it by the granter will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).".

8. In Schedule (C) to that Act—

- (a) the words from “[or, if the deed” to “Scotland,]” are hereby repealed;
- (b) at the end there shall be added the words “[or, if the document is granted under Scots law, insert testing clause +]

+ Note - As regards a document granted under Scots law, subscription of it by the granter will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).".

Entail Amendment Act 1848

1848 c. 36.

9. In section 50 of the Entail Amendment Act 1848 for the word “tested” there shall be substituted the word “subscribed”.

10. In the Schedule to that Act—

- (a) the words “and of the witnesses subscribing,” are hereby repealed;
- (b) for the words from “In witness whereof” to the end there shall be substituted the words “Testing clause +

+ Note - Subscription of the document by the heir of entail in possession and the notary public will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).".

Ordnance Board Transfer Act 1855

1855 c. 117.

11. At the end of section 5 of the Ordnance Board Transfer Act 1855 there shall be added the following subsection—

“(2) This section shall apply to Scotland as if for the words from “signing” to “his deed” there were substituted the words “subscribing it in accordance with the Requirements of Writing (Scotland) Act 1995”.

Registration of Leases (Scotland) Act 1857

1857 c. 26.

12. In Schedule (A) to the Registration of Leases (Scotland) Act 1857 for the words “in common form” there shall be substituted—

“+

+ Note - Subscription of the document by the granter of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).".

13. In each of Schedules (B), (C), (D), (F), (G) and (H) to that Act after the words “Testing clause” there shall be inserted “+

+ Note - Subscription of the document by the granter of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).".

Transmission of Moveable Property (Scotland) Act 1862

14. In each of Schedules A and B to the Transmission of Moveable Property (Scotland) Act 1862 for the words from “In witness whereof” to the end there shall be substituted the words “Testing clause +” 1862 c. 85.

+ Note - Subscription of the document by the granter of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

15. In Schedule C to that Act for the words from “and D” to the end there shall be substituted the words “Testing clause”.

Titles to Land Consolidation (Scotland) Act 1868

16. In Schedule (B) nos. 1 and 2 and (AA) no. 3 to the Titles to Land Consolidation (Scotland) Act 1868 for the words from “In witness whereof” to “usual form]” there shall be substituted the words “Testing clause +” 1868 c.101.

+ Note - Subscription of the document by the granter of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

17. In Schedules (J), (BB) no. 1, (CC) nos. 1 and 2 and (OO) to that Act for the words from “In witness whereof” to the end there shall be substituted the words “Testing clause +”

+ Note - Subscription of the document by the granter of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

18. In Schedule (FF) no. 1 to that Act—

(a) for the words from “In witness whereof” to “usual form]” there shall be substituted the words “Testing clause +”;

(b) at the end there shall be added “+ Subscription of the document by the granter of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

19. In Schedule (GG) to that Act—

(a) for the words from “In witness whereof” to “I K Witness” there shall be substituted the words “Testing clause +”;

(b) after Note (b) there shall be inserted—

“+ (c) Subscription of the document by the granter of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

20. In Schedule (NN) to that Act—

(a) for the words from “In witness whereof” to “G H Witness” there shall be substituted the words “Testing clause +”;

(b) at the end there shall be added—

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“+ Subscription of the document by the granter if it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

Conveyancing (Scotland) Act 1874

1874 c. 94.

21. In Schedules C, F, L nos. 1 and 2 and N to the Conveyancing (Scotland) Act 1874 for the words “In witness whereof [testing clause]” there shall be substituted the words “Testing clause+”

+ Note - Subscription of the document by the granter of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

22. In Schedule G to that Act—

(a) for the words “In witness whereof [testing clause]” there shall be substituted the words “Testing clause+”;

(b) at the end of the Note there shall be added—

“+ Subscription of the document by the granter of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

23. In Schedule M to that Act for the words “and add testing clause]” there shall be substituted the words “Testing clause+]

+ Note - Subscription of the document by the granter of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

Colonial Stock Act 1877

1877 c. 59.

24. At the end of subsection (1) of section 4 of the Colonial Stock Act 1877 there shall be added the words “or, in relation to Scotland, subscribed in accordance with section 7 of the Requirements of Writing (Scotland) Act 1995.”.

25. At the end of section 6 of that Act there shall be added the following subsection—

“(2) This section shall have effect in relation to Scotland as if for the words from “given” to “attested” there were substituted the words “subscribed by the person not under disability in accordance with section 7 of the Requirements of Writing (Scotland) Act 1995.”.

Colonial Stock Act 1892

1892 c. 35.

26. After subsection (2) of section 2 of the Colonial Stock Act 1892 there shall be added the following subsection—

“(2A) This section shall have effect in relation to Scotland as if—

(a) in subsection (1) for the words from “deed according” to “parties” there were substituted the words “a document in the form set out in the Schedule to this Act or to the like effect and the document as executed”;

(b) in subsection (2) for the words “by deed” there were substituted the words “under this section”.

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27. At the end of the Schedule to that Act there shall be added the words “[If the document is granted under the law of Scotland, for the words from “Witness our hands” to the end substitute “[Testing clause +

+ Note - Subscription of the document by the granter of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995.)”].”

Feudal Casualties (Scotland) Act 1914

28. In each of Schedules B and C to the Feudal Casualties (Scotland) Act 1914— 1914 c. 48.

- (a) for the words “In witness whereof” there shall be substituted the words “Testing clause”; and
- (b) at the end of the Note there shall be added the words “Subscription of the document by the granter of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

Trusts (Scotland) Act 1921

29. In Schedule A to the Trusts (Scotland) Act 1921— 1921 c. 58.

- (a) for the words “(To be attested)” there shall be substituted the words “Testing clause +”;
- (b) at the end there shall be added—

+ Note - Subscription of the document by the granter of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

30. In Schedule B to that Act for the words “(To be attested)” there shall be substituted the words “Testing clause +

+ Note - Subscription of the document by the granter or granters of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

Conveyancing (Scotland) Act 1924

31. In Schedule B to the Conveyancing (Scotland) Act 1924— 1924 c. 27.

- (a) in forms nos. 1 to 6 for the words “[To be attested]” there shall be substituted the words “Testing clause +”;
- (b) at the end of the Notes there shall be added—

+ Note 8 - Subscription of the document by the notary public (or law agent) on behalf of the granter of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

32. In Schedule E to that Act for the words “[To be attested]” there shall be substituted the words “Testing clause +

+ Note - Subscription of the document by the granter of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

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33. In Schedules G and H to that Act for the words “[to be attested]” there shall be substituted the words “Testing clause +

+ Note - Subscription of the document by the granter of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

34. In Schedule K to that Act—

(a) in forms nos 1 to 7 for the words “[To be attested]” there shall be substituted the words “Testing clause +”;

(b) at the end of the notes there shall be added—

“ + Note 5 - Subscription of the document by the granter of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

35. In Schedule L to that Act, in form 4, for the words “[To be attested]” there shall be substituted the words “Testing clause +

+ Note - Subscription of the document by the notary public or law agent on behalf of the granter of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

36. In Schedule N to that Act for the words “[To be attested]” there shall be substituted the words “Testing clause +

+ Note - Subscription of the document by the granter of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

Long Leases (Scotland) Act 1954

1954 c. 49.

37. In the Fourth Schedule to the Long Leases (Scotland) Act 1954—

(a) for the words “[To be attested]” there shall be substituted the words - “Testing clause +”;

(b) at the end of the Notes there shall be added—

“ + 4 Subscription of the feu contract by the parties to it will be sufficient for the contract to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

Succession (Scotland) Act 1964

1964 c. 41.

38. At the end of section 21 of the Succession (Scotland) Act 1964 there shall be added the following subsection—

“(2) This section shall not apply to a testamentary document executed after the commencement of the Requirements of Writing (Scotland) Act 1995.”.

39. After section 21 of that Act there shall be inserted the following section—

“Evidence as to testamentary documents in commissary proceedings.

21A. Confirmation of an executor to property disposed of in a testamentary document executed after the commencement of the Requirements of Writing (Scotland) Act 1995 shall not be granted unless the formal validity of the document is governed—

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- (a) by Scots law and the document is presumed under section 3 or 4 of that Act to have been subscribed by the granter so disposing of that property; or
- (b) by a law other than Scots law and the court is satisfied that the document is formally valid according to the law governing such validity.”.

40. For section 32 of that Act there shall be substituted the following section—

“Certain testamentary dispositions to be formally valid.

32.—(1) For the purpose of any question arising as to entitlement, by virtue of a testamentary disposition, to any relevant property or to any interest therein, the disposition shall be treated as valid in respect of the formalities of execution.

(2) Subsection (1) above is without prejudice to any right to challenge the validity of the testamentary disposition on the ground of forgery or on any other ground of essential invalidity.

(3) In this section “relevant property” means property disposed of in the testamentary disposition in respect of which—

- (a) confirmation has been granted; or
- (b) probate, letters of administration or other grant of representation—
 - (i) has been issued, and has noted the domicile of the deceased to be, in England and Wales or Northern Ireland; or
 - (ii) has been issued outwith the United Kingdom and had been sealed in Scotland under section 2 of the Colonial Probates Act 1892.”.

41. In Schedule 1 to that Act for the words “[To be attested by two witnesses] [Signature of A B]” there shall be substituted the words “Testing clause +

+ Note - Subscription of the document by the granter of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

Industrial and Provident Societies Act 1965

42. In Schedule 3 to the Industrial and Provident Societies Act 1965 in each of Forms C, D and E for the words from “Signed” to the end there shall be substituted the words “Testing clause + 1965 c. 12.

+ Note - Subscription of the document by the granter of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

43. In Schedule 4 to that Act, in Form C for the words from “Signed” to the end there shall be substituted the words “Testing clause +

+ Note - Subscription of the document by the cautioner will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

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Conveyancing and Feudal Reform (Scotland) Act 1970

1970 c. 35.

44. In Schedule 2 to the Conveyancing and Feudal Reform (Scotland) Act 1970—

- (a) in forms A and B for the words “[To be attested]” there shall be substituted the words “Testing clause +”;
- (b) at the end of the Notes there shall be added—

“+ Note 8 - Subscription of the document by the granter of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

45. In Schedule 4 to that Act—

- (a) in form A and forms C to F for the words “[To be attested]” there shall be substituted the words “Testing clause +”;
- (b) at the end of the Notes there shall be added—

“+ Note 7 - Subscription of the document by the granter of it, or in the case of form E the granter and the consenter to the variation, will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

46. In Schedule 5 to that Act, in form D—

- (a) in nos 1 and 2 for the words “[To be attested]” there shall be substituted the words “Testing clause +”;
- (b) at the end there shall be added—

“+ Note - Subscription of the document by the granter of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

47. In Schedule 9 to that Act—

- (a) for the words “[To be attested]” there shall be substituted the words “Testing clause +”;
- (b) at the end of the Notes there shall be added—

“+ Note 4 - Subscription of the document by the granter of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.

Petroleum and Submarine Pipe-lines Act 1975

1975 c. 74.

48. At the end of section 18(5)(b) of the Petroleum and Submarine Pipelines Act 1975 there shall be added the words “or, as respects Scotland, by an instrument subscribed by the Secretary of State and the licensee in accordance with the Requirements of Writing (Scotland) Act 1995.”.

Patents Act 1977

1977 c. 37.

49. In section 31(6) of the Patents Act 1977 for the words from “probative” to the end there shall be substituted the words “subscribed in accordance with the Requirements of Writing (Scotland) Act 1995.”.

Oil and Gas (Enterprise) Act 1982

50. At the end of section 19(2) of the Oil and Gas (Enterprise) Act 1982 there shall be added the words “or, as respects Scotland, by an instrument subscribed by the Secretary of State and the licensee in accordance with the Requirements of Writing (Scotland) Act 1995.” 1982 c. 23.

Companies Act 1985

51. For section 36B of the Companies Act 1985 there shall be substituted the following section— 1985 c. 6.

“Execution of documents by companies.

36B.—(1) Notwithstanding the provisions of any enactment, a company need not have a company seal.

(2) For the purposes of any enactment—

(a) providing for a document to be executed by a company by affixing its common seal; or

(b) referring (in whatever terms) to a document so executed,

a document signed or subscribed by or on behalf of the company in accordance with the provisions of the Requirements of Writing (Scotland) Act 1995 shall have effect as if so executed.

(3) In this section “enactment” includes an enactment contained in a statutory instrument.”.

52. At the end of section 38 of that Act there shall be added the following subsection—

“(3) This section does not extend to Scotland.”.

53. In section 39 of that Act—

(a) after subsection (2) there shall be inserted the following subsection—

“(2A) Subsection (2) does not extend to Scotland.”;

(b) in subsection (3) after the words “common seal” there shall be inserted the words “or as respects Scotland by writing subscribed in accordance with the Requirements of Writing (Scotland) Act 1995”.

54. Section 40 of that Act shall become subsection (1) of that section and at the end there shall be added the following subsection—

“(2) Nothing in this section shall affect the right of a company registered in Scotland to subscribe such securities and documents in accordance with the Requirements of Writing (Scotland) Act 1995.”.

55. Section 186 of that Act shall become subsection (1) of that section and at the end there shall be added the following subsection—

“(2) Without prejudice to subsection (1), as respects Scotland a certificate specifying any shares held by a member and subscribed by the company in accordance with the Requirements of Writing (Scotland) Act 1995 is, unless the contrary is shown, sufficient evidence of his title to the shares.”.

56. In section 188 of that Act in subsection (2) after the words “common seal” there shall be inserted the words “(or, in the case of a company registered in Scotland, subscribed in accordance with the Requirements of Writing (Scotland) Act 1995)”.

SCH. 4

Companies Consolidation (Consequential Provisions) Act 1985

1985 c. 9. 57. At the end of section 11 of the Companies Consolidation (Consequential Provisions) Act 1985 there shall be added the following subsection—

“(3) The foregoing provisions of this section are without prejudice to the right of a company to subscribe such securities and documents in accordance with the Requirements of Writing (Scotland) Act 1995.”.

Insolvency Act 1986

1986 c. 45. 58. In section 53 of the Insolvency Act 1986—

(a) in subsection (1) for the words “a validly executed instrument in writing” there shall be substituted the words “an instrument subscribed in accordance with the Requirements of Writing (Scotland) Act 1995”;

(b) for subsection (4) there shall be substituted the following subsection—

“(4) If the receiver is to be appointed by the holders of a series of secured debentures, the instrument of appointment may be executed on behalf of the holders of the floating charge by any person authorised by resolution of the debenture-holders to execute the instrument.”.

Housing (Scotland) Act 1987

1987 c. 26. 59. In section 53(1) of the Housing (Scotland) Act 1987 for the words from “probative” to the end there shall be substituted the words “subscribed by the parties in accordance with the Requirements of Writing (Scotland) Act 1995”.

60. In section 54(6) of that Act for the words “probative or holograph of the parties” there shall be substituted the words “subscribed by the parties in accordance with the Requirements of Writing (Scotland) Act 1995”.

Section 14(2)

SCHEDULE 5

REPEALS

Chapter	Short title	Extent of repeal
1540 c. 37 (S.).	The Subscription of Deeds Act 1540.	The whole Act.
1579 c. 18 (S.).	The Subscription of Deeds Act 1579.	The whole Act.
1672 c. 47 (S.).	The Lyon King of Arms Act 1672.	The words from “And his Maiestie with consent” to “contraveiners heirof”.
1681 c. 5 (S.).	The Subscription of Deeds Act 1681.	The whole Act.
1696 c. 15 (S.).	The Deeds Act 1696.	The whole Act.
1696 c. 25 (S.).	The Blank Bonds and Trusts Act 1696.	The whole Act.
1698 c. 4 (S.).	The Registration Act 1698.	The whole Act.
10 & 11 Vict. c. 16.	The Commissioners Clauses Act 1847.	In section 56, the words from “(that is to say,)” to “discharge the same” where they first occur. In Schedule (B), the words

SCH. 5

Chapter	Short title	Extent of repeal
		from "or, if the deed" to "case may be,".
		In Schedule (C), the words from "[or, if the deed" to "Scotland,]".
11 & 12 Vict. c. 36.	The Entail Amendment Act 1848.	In the Schedule the words "and of the witnesses subscribing,".
19 & 20 Vict. c. 60.	The Mercantile Law Amendment Act, Scotland 1856.	Section 6.
31 & 32 Vict. c. 101.	The Titles to Land Consolidation (Scotland) Act 1868.	Sections 139 and 149.
37 & 38 Vict. c. 94.	The Conveyancing (Scotland) Act 1874.	Sections 38 to 41. Schedule I.
7 Edw. 7 c. 51.	The Sheriff Courts (Scotland) Act 1907.	In section 35 the words "either holograph or attested by one witness". In Schedule 1, paragraph 67 and in the Appendix in Form M the words from "If not holograph" to the end of the form.
4 & 5 Geo. 5 c. 48.	The Feudal Casualties (Scotland) Act 1914.	In section 8 the words "which need not be tested or holograph".
14 & 15 Geo. 5 c. 27.	The Conveyancing (Scotland) Act 1924.	Section 18. Schedule I.
23 & 24 Geo. 5 c. 44.	The Church of Scotland (Property and Endowments) (Amendment) Act 1933.	Section 13.
2 & 3 Geo. 6 c. 20.	The Reorganisation of Offices (Scotland) Act 1939.	In section 1(8) the words from "and any such" to the end.
1959 c. 40.	The Deer (Scotland) Act 1959.	In Schedule 1, paragraphs 12 and 13.
1963 c. 18.	The Stock Transfer Act 1963.	Section 2(4).
1965 c. 12.	The Industrial and Provident Societies Act 1965.	In section 34(5)(a), in the definition of "receipt" the words from "signed by two members" to "as such". Section 36.
1967 c. 10.	The Forestry Act 1967.	Section 39(5).
1968 c. 16.	The New Towns (Scotland) Act 1968.	In Schedule 2, paragraphs 10 and 11.
1970 c. 35.	The Conveyancing and Feudal Reform (Scotland) Act 1970.	Section 44.

SCH. 5

Chapter	Short title	Extent of repeal
1973 c. 52.	The Prescription and Limitation (Scotland) Act 1973.	Section 5(2). In Schedule 1, paragraphs 2(c), 3 and 4(b).
1973 c. 65.	The Local Government (Scotland) Act 1973.	Section 194, other than subsection (2). In Schedule 8, paragraph 5.
1978 c. 29.	The National Health Service (Scotland) Act 1978.	In section 79(1A) the words from "and where" to the end of the subsection. In Schedule 1, paragraphs 9 and 10. In Schedule 5, paragraphs 10 and 11.
1980 c. 46.	The Solicitors (Scotland) Act 1980.	In Schedule 1, paragraph 12.
1985 c. 6.	The Companies Act 1985.	In section 2(6) the words from "and that" to the end. In section 7(3)(c) the words from "(which attestation" to the end. Section 462(3).
1985 c. 16.	The National Heritage (Scotland) Act 1985.	In Schedule 1, paragraphs 8 and 19.
1986 c. 47.	The Legal Aid (Scotland) Act 1986.	In Schedule 1, paragraph 14.
1988 c. 43.	The Housing (Scotland) Act 1988.	In Schedule 1, paragraphs 18 and 19.
1990 c. 40.	The Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.	Section 72. Section 75(6). In Schedule 8, paragraph 33.
1990 c. 35.	The Enterprise and New Towns (Scotland) Act 1990.	In Schedule 1, paragraph 23.
1991 c. 28.	The Natural Heritage (Scotland) Act 1991.	In Schedule 1, paragraph 18.
1993 c. 44.	The Crofters (Scotland) Act 1993.	In Schedule 1, paragraphs 14 and 15.
1994 c. 39.	The Local Government etc. (Scotland) Act 1994.	In section 172(4), paragraph (h). In Schedule 3, paragraph 11. In Schedule 5, in Part II, paragraph 8. In Schedule 7, paragraph 17. In Schedule 12, paragraph 13. In Schedule 13, paragraph 92(60).

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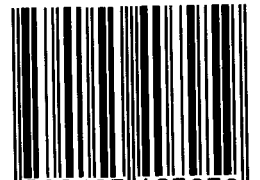
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