

Legal Writings (Counterparts and Delivery) (Scotland) Bill

Bill Number:	SP Bill 50
Introduced on:	14 May 2014
Introduced by:	John Swinney MSP (Government bill)
Passed:	24 February 2015
Royal Assent:	1 April 2015

Passage of the Bill

The Legal Writings (Counterparts) (Scotland) Bill (the Bill) is a Government Bill which was introduced in the Scottish Parliament on 14 May 2014 by the Cabinet Secretary for Finance and Sustainable Growth John Swinney MSP.

The Delegated Powers and Law Reform Committee (the Committee) was designated as lead committee on 21 May 2014. It issued [a call for written evidence](#) on 28 May 2014, which closed on 14 July 2014 receiving [ten responses](#).

The Committee took Stage 1 evidence at its meetings on [17 June](#), [19 August](#), [30 September](#), [7 October](#) and [28 October](#) 2014 and received additional written information from: the [Scottish Law Commission on signatures in Scots law](#); [Professor George Gretton](#); [the Scottish Government and the Scottish Law Commission](#); and [the Law Society of Scotland](#).

The Finance Committee issued a [call for evidence](#) on the financial implications of the Bill which closed on 15 August 2014 receiving four responses.

The Committee published its [Stage 1 Report](#) on 14 November 2014 and the [Stage 1 debate took place on 25 November 2014](#).

No amendments were lodged and [Stage 2 proceedings took place on 20 January 2015](#).

The [Stage 3 debate took place on 24 February 2015](#). The Bill received Royal Assent on 1 April 2015 to become the Legal Writings (Counterparts) (Scotland) Act 2015 (asp 4).

Purpose and objectives of the Bill

The Bill is the first Scottish Law Commission (SLC) bill to be considered by the Committee following changes to the Scottish Parliament's Standing Orders in June 2013 which altered the Committee's remit, allowing it to take the lead role in scrutinising certain SLC bills.¹

The Bill implements the vast majority of the legislative recommendations in [the SLC Report on Formation of Contract: Execution in Counterpart](#) (the SLC Report) which was published in April 2013. It proposed two changes to Scots law, namely:

1. Making it clear that legal documents can be “executed in counterpart”, in other words brought into legal effect by each party signing separate identical copies, (the counterparts) rather than the same physical document. The aim being to resolve the uncertainty as to whether counterparts are a valid way of creating legally effective documents
2. Making it possible to deliver paper legal documents electronically, the aim being to resolve doubts as to whether faxing or e-mailing a copy of a signed paper document creates something which is legally effective.

The broad objective was to modernise the law to make it easier for parties to enter into commercial transactions.

Provisions of the Bill

The main provisions in the Bill included:

- **Section 1** – This confirms that execution in counterpart is a legal, albeit optional, process for signing documents and that the counterparts are to be treated as a single legal document. It also confirms that a document executed in counterpart becomes effective when both or all the counterparts are delivered (the method of delivery can be chosen by the parties, but delivery must be made to each party whose signature is not on the counterpart).
- **Section 2** – This allows counterparts to be delivered to a nominee (for example a solicitor) as an alternative to delivery to a party to the transaction (section 2(1)). It also provides, unless otherwise agreed, that nominees are to, “hold and preserve the counterpart(s) for the benefit of the parties.”
- **Section 3** – This confirms that the rules on execution in counterpart also apply to electronic documents as defined by the Requirements of Writing (Scotland) Act 1995 (1995 Act).² The 1995 Act provides that a

¹ These changes were recommended by the Standards, Procedures and Public Appointments Committee in its [report on the matter published on 18 April 2013](#)

² The Bill, however, recognises that this provision is unlikely to be used in practice since amendments to the 1995 Act mean that electronic documents can be delivered and hence executed electronically (See Explanatory Notes, para. 15).

limited number of legal documents, including contracts for the sale of land and wills, are only valid if correctly signed and in writing (certain of these can now be drawn up in electronic form).

- **Section 4** – This provides that traditional paper documents can be delivered by electronic means.

Parliamentary consideration

Issues which were considered during Stage 1 included: the potential benefits of the Bill for the Scottish legal sector, Scottish business, and individuals more generally; the possible potential for fraud and error under the Bill's rules; the use of pre-signed signature pages; the need for greater use of electronic signatures; and the benefits provided by electronic document repositories.

No amendments were lodged at Stage 2 and the Bill was passed without amendment at Stage 3.

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