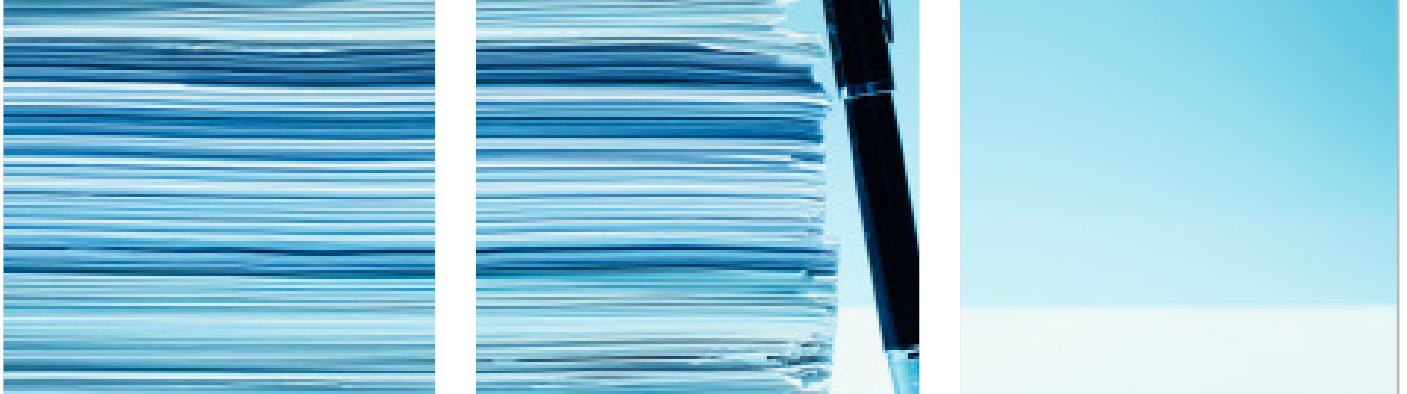


## Vive la (Counterpart) Révolution



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It is just over two years since the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 brought counterpart execution to Scots law. With technology having made it possible in recent years for parties in different geographical locations to sign documents and complete transactions, the 2015 Act was a welcome and overdue addition to the Scottish rules on the execution of Scots law documents.

Earlier in the summer we undertook an internal survey within Shepherd and Wedderburn and the results show the warm welcome the 2015 Act has been given. Over two thirds of respondents had seen a significant increase in the use of counterparts for Scottish documents in transactions over the first two years and 69% had seen an increase in the use of the electronic delivery arrangements that the 2015 Act makes provision for.

Beyond recording its wide usage, the survey also confirmed the positive impact on transactions that the 2015 Act was having. Seventy-nine percent of respondents felt that counterpart execution made completion of transactions more efficient, particularly those with an international dimension. The feedback highlighted that counterpart execution reduced the time taken for documents to be signed (which, depending on the number of parties, may have previously taken days or weeks), made better use of signatory availability, eased pressure on deadlines making for smoother completions and removed the risk of relying on third party postal and courier services to ensure originals arrived with the right party on the right day.

Our clients, together with professional advisers from other jurisdictions that we deal with, have also been vocal in welcoming our new counterpart arrangements, especially in matters with a cross-border element. No longer is Scottish execution seen an issue needing special treatment as we are now able to link our arrangements much more closely with those in other, counterpart friendly, jurisdictions.

However, as with any new process there have been teething issues as users experience the process for the first time and build their experience and confidence in using it. Many of these issues arise in part due to familiarity with the English law counterpart process and assuming the Scottish process works in the same way (which, broadly, it does albeit with some small differences). There is also caution from signatories about doing the wrong thing or inadvertently creating legal obligations before they actually intended to.

So, to celebrate the two year anniversary of the 2015 Act, here are our top 3 points to remember about the Scottish counterpart signing process:

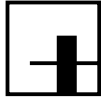
### 1. Sign on separate counterparts

How a document is signed in counterpart rests wholly on the provisions of the 2015 Act and it states that a document is signed in counterpart if it is signed in two or more duplicate parts and no part is subscribed by all parties.

If a single counterpart ends up being signed by all parties then it falls out of the scope of the 2015 Act and will (if it is a multi-party document) become effective from the date of the last party's signature. If completion is not occurring until a later date, it is therefore important for all parties to remember to sign on separate counterparts.

### 2. Print out and return the whole document

Under the 2015 Act, once the document has been printed off and signed it can be delivered electronically



as either (a) the entire counterpart or (b) a part of that counterpart. However, any 'part' must include the signature page and enough of the rest of document to demonstrate that it is that document.

In these circumstances it is, in our view, best practice to always deliver an electronic copy of the whole document in order to avoid any argument or debate as to whether a partial copy of a document satisfies the statutory criteria.

Of course, there are documents that are of a length where sending a partial copy is desirable and in those cases there should be an assessment from the Scottish solicitors involved about what is needed to objectively meet the requirements of the 2015 Act.

### 3. Dates and Delivery

In most cases, once a Scots law counterpart document is fully signed and delivered it will have a number of different dates shown around the signature blocks and testing clause (or on the front page depending on where the effective date is inserted). What are these dates? Why could they be different? What do they signify?

Firstly, each party's signature block will show the date on which that party signed their counterpart. This stems from the Requirements of Writing (Scotland) Act 1995 and is a direct link to authenticating the act of signing. The date of signing does not imply delivery and adding it will not make a document signed in counterpart effective.

Secondly, there is the effective date. Often inserted in a space left for this date on the first page of the document or in the testing clause the effective date is included to evidence the date on which the parties agreed their counterparts were delivered (and therefore when the document became effective). The document becomes effective from the point of delivery of each counterpart

and inserting the effective date is an 'after the fact' evidential step.

As a result, a Scottish document signed in counterpart will show the dates on which the signatories signed the document and also show the date on which the signed counterparts were delivered – this is entirely normal.

Delivery of a counterpart under the 2015 Act has a lot of flexibility and broadly leaves it to the parties involved to agree the arrangements for dealing with delivery, whether it is lawyers holding a call to confirm that signed counterparts can be held as delivered or linking delivery to the satisfaction of an agreed condition.

Signing legal documents should be the simplest of processes and over the years the Scottish legislative framework that covers signing has been criticised for being outdated and overly rigid when compared to the relative ease and flexibility of other jurisdictions where counterpart signing has been established for many years. The Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 was not a glamorous, high profile, or headline grabbing piece of law reform but for a statute which is only six pages long (including the contents page) it is a very useful tool and its value comes in its simplicity. For the transactional lawyer, that simplicity brings efficiency, practicality and flexibility and, for clients, the positive experience of a more user-friendly signing process.

It's fair to say that we have become very fond of the 2015 Act over its first two years; it scores highly for ease of use and for solving a number of common practical issues. In this small corner of Scots law it has achieved a successful revolution.

For more information, you can find our detailed guidance on Scots law execution in counterpart [here](#) or contact Neil Cowan, Hamish Patrick or Neil Campbell in our Banking and Finance team.



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