Submission from the Law Society of Scotland

Introduction

The Law Society of Scotland aims to lead and support a successful and respected Scottish legal profession. Not only do we act in the interest of solicitor members but we also have a clear responsibility to work in the public interest. That is why we actively engage and seek to assist in the legislative and public policy decision making processes.

To help us do this, we use our various Society committees which are made up of solicitors and non-solicitors and ensure we benefit from knowledge and expertise from both within and outwith the solicitor profession.

The Obligations Sub-Committee of the Law Society of Scotland, welcomes the opportunity to consider and respond to the Delegated Powers and Law Reform Committee's call for written evidence on the Legal Writings (Counterparts and Delivery) (Scotland) Bill.

General comments

We note that the bill is the first to be considered under the new legislative process for Law Commission Bills, and we welcome this process which gives recognition to the importance and valuable role that the Scottish Law Commission plays in reviewing, evaluating and reforming the law in Scotland.

We are fully supportive of the policy intent and objectives of the bill, which is to modernise the law relating to legal documents, speeding up transactions and allowing traditional documents to be delivered by electronic means. We responded to the Scottish Law Commissions Discussion Paper on Formation of Contract (paper 154)\(^1\) in 20012.

The Society believes there are significant benefits for consumers of legal services, Scottish businesses, and the Scottish Legal sector in allowing execution of

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documents in counterpart and for this to include electronic documents. To help realise the benefits for these groups quickly and efficiently the Society is currently issuing qualified secure digital signature to all Scottish practicing solicitors. More detail of the project can be found at www.lawscot.org.uk/smartcard

Question responses

2. How will the Bill improve the process of the execution of legal documents in Scotland?

We believe that enabling execution in counterpart will bring Scots Law into line with many of the other international jurisdictions, including England and New York, both of which are often considered to be two of the world’s key legal centres. We believe that the bill will enable a more efficient process for execution where parties are based in different locations.

3. Do you consider that the Bill will precipitate an increase in the use of Scots Law to govern transactions?

Yes, and in our view this is to be welcomed. As we understand, in the experience of many commercial practitioners the primary reason for a change in choice of Scots Law in commercial transactions involving parties in multiple locations and/or jurisdictions is the requirement that a single agreement is executed. In the experience of the Committee members, international parties will often choose English law for commercial transactions as this offers the option of counterparts.

6. What is your view of the potential environmental impact of the Bill?

Although we are not in a position to comment fully on the potential environmental impact of the Bill, we do believe that the ability to effect remote execution and delivery of agreements will most likely reduce travel requirements for contract parties and advisors.