

Draft Order laid before Parliament under section 4(2) of the Regulatory Reform Act 2001 for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2005 No. []

REGULATORY REFORM, ENGLAND AND WALES

**The Regulatory Reform (Execution of Deeds and Documents)
Order 2005**

Made - - - - - *2005*

Coming into force in accordance with Article 1(1)

Whereas:

- (a) the Lord Chancellor consulted—
 - (i) such organisations as appeared to him to be representative of interests substantially affected by his proposals for this Order,
 - (ii) the Law Commission,
 - (iii) the National Assembly for Wales, and
 - (iv) such other persons as he considered appropriate;
- (b) following this consultation the Lord Chancellor considered it appropriate to proceed with the making of this Order;
- (c) a document containing the Lord Chancellor's proposals was laid before Parliament as required by section 6 of the Regulatory Reform Act 2001^(a) and the period for Parliamentary consideration under section 8 of that Act has expired;
- (d) the Lord Chancellor had regard to the representations made during that period and in particular to the Fourteenth Report of the Session 2003-04 of the House of Commons Regulatory Reform Committee and the Thirty-fourth Report of the Session 2003-04 of the House of Lords Delegated Powers and Regulatory Reform Committee
- (e) a draft of this Order was laid before Parliament with a statement giving details of any such representations and the changes to the Lord Chancellor's proposals made in the light of them;

^(a) 2001 c.6.

(f) the draft was approved by resolution of each House of Parliament;

(g) the Lord Chancellor is of the opinion that this Order does not remove any necessary protection or prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise;

(h) this Order creates burdens affecting persons in the carrying on of certain activities, and the Lord Chancellor is of the opinion that—

(i) the provisions of this Order, taken as a whole, strike a fair balance between the public interest and the interests of the persons affected by the burdens being created, and

(ii) the extent to which this Order removes or reduces one or more burdens, or has other beneficial effects for persons affected by the burdens imposed by the existing law, makes it desirable for this Order to be made;

Now, therefore, the Lord Chancellor, in exercise of the powers conferred upon him by section 1 of the Regulatory Reform Act 2001, makes the following Order:—

Citation, commencement, application and extent

1.—(1) This Order may be cited as the Regulatory Reform (Execution of Deeds and Documents) Order 2005 and shall come into force at the end of the period of 12 weeks beginning with the day on which it is made.

(2) The provisions of this Order shall not apply in relation to any instrument executed before the date on which this Order comes into force.

(3) This Order extends to England and Wales only.

Interpretation

2. In this Order—

“the 1925 Act” means the Law of Property Act 1925(a);

“the 1985 Act” means the Companies Act 1985(b);

“the 1989 Act” means the Law of Property (Miscellaneous Provisions) Act 1989(c).

Execution by corporations

3. For section 74(1) of the 1925 Act substitute—

“(1) In favour of a purchaser an instrument shall be deemed to have been duly executed by a corporation aggregate if a seal purporting to be the corporation’s seal purports to be affixed to the instrument in the presence of and attested by—

(a) two members of the board of directors, council or other governing body of the corporation, or

(b) one such member and the clerk, secretary or other permanent officer of the corporation or his deputy.”.

(a) 1925 c.20.
(b) 1985 c.6.
(c) 1989 c.40.

Execution of deeds by corporations

4. After section 74 of the 1925 Act insert—

“Execution of instrument as a deed

74A.—(1) An instrument is validly executed by a corporation aggregate as a deed for the purposes of section 1(2)(b) of the Law of Property (Miscellaneous Provisions) Act 1989, if and only if—

- (a) it is duly executed by the corporation, and
- (b) it is delivered as a deed.

(2) An instrument shall be presumed to be delivered for the purposes of subsection (1)(b) of this section upon its being executed, unless a contrary intention is proved.”.

Repeal of irrebuttable presumption of delivery

5. In section 36A(6) of the 1985 Act (which makes provision to deem documents to be duly executed by companies) omit the words from “and, where” to “executed”.

Execution of deeds by companies

6. After section 36A of the 1985 Act insert—

“Execution of deeds: England and Wales

36AA.—(1) A document is validly executed by a company as a deed for the purposes of section 1(2)(b) of the Law of Property (Miscellaneous Provisions) Act 1989, if and only if—

- (a) it is duly executed by the company, and
- (b) it is delivered as a deed.

(2) A document shall be presumed to be delivered for the purposes of subsection (1)(b) upon its being executed, unless a contrary intention is proved.”.

Execution on behalf of another person

7.—(1) After section 74(1) of the 1925 Act insert—

“(1A) Subsection (1) of this section applies in the case of an instrument purporting to have been executed by a corporation aggregate in the name or on behalf of another person whether or not that person is also a corporation aggregate.”.

(2) After section 36A(6) of the 1985 Act insert—

“(7) This section applies in the case of a document which is (or purports to be) executed by a company in the name or on behalf of another person whether or not that person is also a company.”.

(3) In section 1(2)(b) of the 1989 Act (requirements for valid execution as a deed), for the words from “by” to the end substitute—

“(i) by that person or a person authorised to execute it in the name or on behalf of that person, or

(ii) by one or more of those parties or a person authorised to execute it in the name or on behalf of one or more of those parties.”.

(4) After section 1(4) of the 1989 Act insert—

“(4A) Subsection (3) above applies in the case of an instrument executed by an individual in the name or on behalf of another person whether or not that person is also an individual.”.

Execution under seal not evidence of intention to create a deed

8. After section 1(2) of the 1989 Act insert—

“(2A) For the purposes of subsection (2)(a) above, an instrument shall not be taken to make it clear on its face that it is intended to be a deed merely because it is executed under seal.”.

Extension of presumption of authority to deliver

9. In section 1(5) of the 1989 Act (presumption of authority to deliver an instrument on behalf of another) omit the words “involving the disposition or creation of an interest in land”.

Minor and consequential amendments and repeals

10.—(1) Schedule 1 has effect.

(2) The enactments specified in Schedule 2 are repealed to the extent specified in the third column of that Schedule.

Dated

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Minor and Consequential Amendments

Law of Property Act 1925

1. Section 74 of the 1925 Act (execution by or on behalf of corporations) shall be amended in accordance with paragraphs 2 to 4.

2. After subsection (1A), inserted by article 7(1) above, insert—

“(1B) For the purposes of subsection (1) of this section, a seal purports to be affixed in the presence of and attested by an officer of the corporation, in the case of an officer which is not an individual, if it is affixed in the presence of and attested by an individual authorised by the officer to attest on its behalf.”.

3. In subsection (3) (execution of conveyance by individual in the name or on behalf of a corporation), after “witness” insert “who attests the signature”.

4. In subsection (4) (execution by corporation as attorney)—

(a) for “deed or other instrument” substitute “instrument by signing it”, and

(b) after “such other person” insert “or, if the instrument is to be a deed, by so signing it in the presence of a witness who attests the signature”.

Powers of Attorney Act 1971

5. Section 7 of the Powers of Attorney Act 1971(a) (execution of instrument by donee of power of attorney) shall be amended in accordance with paragraphs 6 to 8.

6. In subsection (1) (effect of execution by donee), for the words from “document” to the end substitute “instrument executed or thing done in that manner shall, subject to subsection (1A) of this section, be as effective as if executed by the donee in any manner which would constitute due execution of that instrument by the donor or, as the case may be, as if done by the donee in the name of the donor.”.

7. After subsection (1) insert—

“(1A) Where an instrument is executed by the donee as a deed, it shall be as effective as if executed by the donee in a manner which would constitute due execution of it as a deed by the donor only if it is executed in accordance with section 1(3)(a) of the Law of Property (Miscellaneous Provisions) Act 1989.”.

8. Omit subsection (3).

Companies Act 1985

9. Section 36A of the 1985 Act (execution of documents: England and Wales) shall be amended in accordance with paragraphs 10 to 12.

10. After subsection (4) insert—

“(4A) Where a document is to be signed by a person as a director or the secretary of more than one company, it shall not be taken to be duly signed by that person for the purposes of subsection (4) unless the person signs it separately in each capacity.”.

(a) 1971 c.27.

11. After subsection (7), inserted by article 7(2) above, insert—

“(8) For the purposes of this section, a document is (or purports to be) signed, in the case of a director or the secretary of a company which is not an individual, if it is (or purports to be) signed by an individual authorised by the director or secretary to sign on its behalf.”.

12. In Schedule 22 to the 1985 Act (application of provisions of that Act to unregistered companies), in the entries relating to Part 1—

- (a) in the first column, after “36A” insert “, 36AA”, and
- (b) in the second column, after “documents” insert “and deeds”.

Law of Property (Miscellaneous Provisions) Act 1989

13. Section 1 of the 1989 Act (deeds and their execution) shall be amended in accordance with paragraphs 14 and 15.

14. In subsection (4) (interpretation of references to signing an instrument), for the words from “making” to the end substitute—

- “(a) an individual signing the name of the person or party on whose behalf he executes the instrument; and
 - (b) making one’s mark on the instrument,
- and “signature” is to be construed accordingly.”.

15. In subsection (6) (interpretation) in the definitions of “disposition” and “purchaser”, for ““disposition” and “purchaser” have the same meanings” substitute ““purchaser” has the same meaning”.

Companies Act 1989

16. In section 130(6) of the Companies Act 1989^(a) (power to make regulations applying provisions of the 1985 Act to foreign companies), after “documents;” insert “execution of deeds;”.

Land Registration Act 2002

17. At the end of section 91(9) of the Land Registration Act 2002^(b) (application of section 36A of the Companies Act 1985 in relation to electronic conveyancing), insert “(and subsection (8) of that section, in so far as it relates to the document, shall be read accordingly)”.

^(a) 1989 c.40.
^(b) 2002 c.9.

SCHEDULE 2

Article 10(2)

Repeals

<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
1971 c. 27.	The Powers of Attorney Act 1971.	Section 7(3).
1985 c. 6.	The Companies Act 1985.	In section 36A— (a) subsection (5); and (b) in subsection (6), the words from “and, where” to “executed”.
1989 c. 34.	The Law of Property (Miscellaneous Provisions) Act 1989.	In section 1— (a) in subsection (3)(b), the words from “by him” to the end; (b) in subsection (5), the words “involving the disposition or creation of an interest in land”; and (c) in subsection (6), the definition of “interest in land” and the word “and” preceding it.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order reforms the legislation governing the execution of deeds and documents in order to standardise the formal requirements for companies, corporations and individuals.

Article 3 replaces the wording in section 74(1) of the Law of Property Act 1925 (c.20) (“the 1925 Act”) in order to extend the presumption in favour of a purchaser of due execution by a corporation to all instruments under seal. Such instruments may be attested by two members of the corporation’s governing body.

Article 4 adds a new section 74A to the 1925 Act. New section 74A(1) clarifies what is needed for an instrument to be executed as a deed. New section 74A(2) provides a rebuttable presumption that an instrument is delivered on being executed, and thereby makes the provision for corporations analogous to that applicable to companies under the Companies Act 1985 (c.6) (“the 1985 Act”). The relevant provision in the 1985 Act is re-enacted with modifications by Article 6.

Article 5 amends section 36A(6) of the 1985 Act and repeals the irrebuttable presumption in favour of a purchaser of delivery upon execution by a company of a document. Article 6 inserts a new section 36AA into the 1985 Act, mirroring new section 74A of the 1925 Act which applies in respect of corporations, and clarifying the requirements for a document to be executed as a deed by a company. Articles 5 and 6 and Schedule 2 also remove the “face-value” requirement from the 1985 Act, which is still required of all deeds by virtue of section 1(2)(a) of the Law of Property (Miscellaneous Provisions) Act 1989 (c.40) (“the 1989 Act”), and which is clarified by the amendment made by article 8.

Article 7 clarifies the rules which apply where an instrument is executed on behalf of another person by a corporation, company or individual. Article 7(1) inserts a new section 74(1A) into the 1925 Act, which provides that the deemed execution in favour of a purchaser in section 74(1) (as amended by article 3) applies where the corporation executes an instrument on behalf of another person. Article 7(2) inserts a new section 36A(7) into the 1985 Act, clarifying that the provisions of section 36A (as amended by article 6 and Schedule 2) which state how a company may execute a document and provide for deemed execution in favour of a purchaser, apply where a company executes a document on behalf of another person. Article 7(3) amends section 1(2)(b) of the 1989 Act to clarify that a document may be executed by a person on behalf of another, and that it is the person who executes the document (whether or not on behalf of another) who must comply with the formalities. Article 7(4) inserts a new section 1(4A) into the 1989 Act to provide that where one person executes on behalf of another, the witnessing, attesting and delivery requirements of section 1(3) apply.

Article 8 inserts a new section 1(2A) into the 1989 Act to clarify that the “face-value” requirement set out in section 1(2)(a) is not satisfied merely because an instrument is executed under seal.

Article 9 amends section 1(5) of the 1989 Act to provide that the presumption in favour of a purchaser that solicitors, etc, are authorised to deliver a deed on behalf of a party to it, is no longer limited to the creation or disposal of an interest in land.

Schedule 1 makes minor and consequential amendments. Paragraph 2 inserts a new section 74(1B) into the 1925 Act to clarify how the presumption of due execution in section 74(1) applies, where the corporation has a director or secretary who is not an individual. Paragraph 3 amends section 74(3) to clarify that the witness to a conveyance by an individual in the name or on behalf of a corporation must attest the signature. Paragraph 4 amends section 74(4) to provide that where a corporation acts on behalf of another person, it may sign the instrument in the name of that other person. Where the instrument is a deed, this must be done in the presence of a witness who attests the signature. This mirrors the position for individuals, as provided by article 7(4).

Paragraphs 6 and 7 amend section 7(1) of the Powers of Attorney Act 1971 (c.27) and insert a new section 7(1A) to make more appropriate provision for execution by an individual attorney on behalf of a corporate donor.

Paragraphs 10, 11 and 12 amend the 1985 Act. Paragraph 10 inserts a new section 36A(4A) to provide that for a document to be validly executed, a director or secretary signing in respect of more than one company must sign for each company which is a party to the document. Paragraph 11 inserts a new section 36A(8) to clarify the position in respect of execution where a company has a director or secretary which is itself a corporation. Paragraph 12 makes a consequential amendment to Schedule 22 to include the new section 36AA inserted by article 6 above in the provisions which apply to unregistered companies.

Paragraph 14 amends section 1(4) of the 1989 Act to confirm that where an instrument is executed on behalf of another person, signing includes signing the name of the person on whose behalf the instrument is executed as well as signing the individual's own name.

Paragraph 16 makes a consequential amendment to section 130(6) of the Companies Act 1989 (c.40) to include the new section 36AA inserted by article 6 above in the provisions which apply to foreign companies.

Paragraph 17 makes a consequential amendment to the Land Registration Act 2002 (c.8) to take account of the effect of the amendments to the Companies Act 1985 on electronic dispositions.