

**Law Society of Scotland Guidance - [Notary Public - execution of document - updated 17 June](#)**

The [Coronavirus \(Scotland\) \(No2\) Act 2020 Schedule 4, part 7](#) came into effect on 27 May 2020 and has made changes to the requirements for the personal presence of a notary or solicitor when executing certain documents.

Schedule 4 part 7 states:

(1) The following requirements (however expressed) do not apply -

(a) a requirement for a relevant person to be physically in the same place as another person when that person -

(i) signs or subscribes a document,

(ii) takes an oath, or

(iii) makes an affirmation or declaration,

(b) a requirement for another person to be physically in the same place as a relevant person when the relevant person signs or subscribes a document.

(2) In this paragraph -

“relevant person” means -

(a) a solicitor,

(b) an advocate,

(c) a notary public,

“requirement” means a requirement arising from an enactment or rule of law.

(3) For the avoidance of doubt -

(a) the requirements described by sub-paragraph (1)(a) include a requirement that may be fulfilled by the physical presence of a professional of a type not mentioned in the definition of “relevant person” as well as by a professional of a type that is (for example, it includes a requirement for the physical presence of a solicitor or a registered medical practitioner), but

(b) sub-paragraph (1) only causes such a requirement not to apply in relation to a professional of a type that is mentioned in the definition of “relevant person”.

**What this means for notarising documents**

Schedule 4 Part 7 has relaxed any rule of law or statute which requires a solicitor or advocate ([s9 of the Requirements of Writing \(Scotland\) Act 1995](#)) or notary (general notarial law) to be physically present when the grantor signs a document where physical presence would have ordinarily been needed. It does not affect the ordinary law which requires witnesses to certain types of document such as wills or registerable deeds where there is no need for a solicitor or notary to be present. This approach is limited by the validity of the Coronavirus legislation.

Accordingly a solicitor or notary may authenticate the subscription or execution of a document remotely using video technology during the coronavirus crisis whilst social distancing measures or the provisions of the [Health Protection \(Coronavirus\), \(Restrictions\) \(Scotland\) Regulations 2020](#) apply to preclude meeting individuals in person.

The solicitor or notary must be satisfied that the procedure followed will not preclude the acceptance of the document concerned by the jurisdiction where it is ultimately received.

This guidance acknowledges that there are other ways to authenticate the execution of a document remotely but video technology should make execution of documents under section 9 of the Requirements of Writing (Scotland) Act 1995 and notarial documents easier for individuals and notaries who cannot be physically present together for the execution of such documents.

## **1. Interpretation**

In this guidance:

- “video technology” means any electronic device or process that facilitates communication of visual images and audio in real time between a notary and a remotely located individual, including a remotely located individual who has visual, hearing or speech impairment:
- “remotely located individual” means an individual who is not in the physical presence of the notary who wishes to have the execution of a document authenticated by a notary or who is blind or unable to write and wishes a solicitor to carry out the execution of a document under section 9 of the Requirements of Writing (Scotland) Act 1995) and ‘individual’ shall be interpreted accordingly.

## **2. Notarial acts using video technology**

(a) A notary may, subject to the conditions set out in paragraph 4, use video technology to certify the execution of a document signed (including by electronic signature) by an individual by means of a notarial act.

(b) Both parties should begin the process by each having an unsigned version of the document, in relation to which notarial acts are to be performed, which can be transmitted one to the other via post, fax, email or other electronic means.

The individual will require to provide the notary with documents necessary to satisfy the notary as to their identity having regard to the Coronavirus Guidance on Non Face-to-Face Identification and Verification published by the Society (available on this page under Practice Updates Non face-to-face identification and verification) which provides guidance on client identity verification using video conferencing.

The notary can use free basic software products that enable video conferencing to assist with the identification and verification process. This is a more manual process and where personal or sensitive information supporting identity verification is sent by email or other electronic means, the notary should consider taking additional steps to mitigate security risks, including, where appropriate, encryption.

To undertake manual identification and verification, the notary should follow this process:

- Request that the individual sends a clear, legible colour image of their passport / ID document using a suitably secure means, such as encrypted email
- Arrange to video call the individual. During this call, ask the individual to hold the passport/ID document to their face. By checking the digital copy along with capturing the image of the client with the passport/ID document, the notary should be satisfied that they are one and the same before proceeding
- In addition to the passport/ID document, ask the individual to provide a digital copy of their valid proof(s) of address
- The notary should ensure that the rationale for adopting revised identification and verification measures is documented in the client/matter level risk assessment and to risk grade the relationship accordingly
- Policies, controls and procedures should be revised to take into account the new process

Should the individual be unable to satisfy these requirements and/or present a higher risk of money laundering, the firm should ensure that they are satisfied that those risks are addressed before proceeding. This may include obtaining further verification of identity or undertaking other measures as stipulated under [r.33 \(5\) of the Money Laundering Regulations 2017](#).

(c) Once both parties have an unsigned copy of the relevant document the notary should take steps during the video conference to ensure that the document that they have sight of is an exact copy of the same document that is before the individual. This can be done by, for example, having the individual read out the document or by having the individual share their screen.

Once the notary has confirmed that each document is the same, the notary should then either place the individual on oath or take the solemn affirmation or receive the statutory declaration and observe the signature or requisite act of the individual.

The signed document must then be sent to the notary to allow them to notarise it and this can be done in a number of ways:

- i) If the document is an electronic document and has been electronically signed by the deponent it can be electronically notarised upon receipt;
- ii) If the document is a traditional, hard-copy document and has been signed by traditional means that document can be returned to the notary by post or courier for them to notarise;
- iii) In order to fulfil the intention behind the legislative change it will be acceptable for a traditional document that has been signed in a traditional manner to be scanned and returned to the notary to notarise upon receipt.

If option (iii) is considered the most appropriate or necessary process to undertake it would be best practice to request that the original, traditionally signed document is kept by the individual until such time as the current movement restrictions are no longer in place as this will allow for the document to be provided, when safe to do so, to the notary to form part of their file and audit trail.

The notary should also take care when producing a narration (see 2(i) below) to ensure that if the process in (iii) is followed that it is clear that they have notarised a ‘copy’ rather than an ‘original’ document.

(d) If practicable the notary or where applicable the solicitor must, having obtained the prior consent of the individual, record the video conference and retain that recording for a period of 10 years.

(e) Where it is not practicable to record the video conference the notary shall, having obtained the prior consent of the individual, take screen capture photographs of the individual and his or her identity documents.

(f) The notary must use all reasonable endeavours to establish that this procedure will result in the acceptance of the document in the receiving jurisdiction. If the document will not be accepted in the receiving jurisdiction the notary must so advise the individual.

(h) The notary should not be considered, and should not be described as, a witness to the document certified under this guidance.

(i) The notarial certificate should narrate the exact procedure followed by the notary. The certificate must not state or imply that the notary was physically present with the individual when the document was executed. The procedure followed, including a description of the type of video technology used, should be recorded.

(j) Where the document has been sworn/declared before a notary by way of video conference rather than in person, appropriate wording should be inserted in the declaration to confirm that.

For example:

“Declared by way of video conference

Signed: [Signature of deponent]

This: \_\_\_\_\_ day of \_\_\_\_\_ 20XX

At: [insert place of signing by deponent]

before me [insert name of person authorised to administer the oath/declaration], via video conference which I attended from [my address at] [*insert address*].”

### **3. Requirements of Writing (Scotland) Act 1995 section 9**

(a) A solicitor may use video technology to subscribe a document or sign a testamentary document under section 9 of the Requirements of Writing (Scotland) Act 1995.

(b) The requirement under section 9(2) that ‘subscription or signing by a relevant person under subsection (1) above shall take place in the presence of the granter’ does not apply in terms of Schedule 4 Part 7 of the Coronavirus (Scotland)(No2) Act 2020.

(c) The solicitor must ensure that the granter and the solicitor have complied with the terms of section 9(1) by video technology and that the other requirements of this guidance regarding client identity verification using video technology have been complied with.

#### **4. Refusal to perform notarial act**

A notary who is requested to perform a notarial act using video technology may refuse to do so where the notary is not satisfied that the notarial act, if performed, would comply with this guidance.

#### **5. Saving of existing requirements**

This change in the Society's guidance does not affect the application of the existing guidance concerning confirmation of the understanding of a deponent or the manner of administration of an oath or affirmation.

#### **6. Effect and Expiry**

This guidance comes into effect on 27 May 2020.

This guidance shall cease to have effect on the repeal of Schedule 4 part 7 of the Coronavirus (Scotland) (No2) Act 2020.